



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

ELC NO E120 OF 2021

MUVOKANZA

LIMITED.....PLAINTIFF/RESPONDENT

VERUS

MURI MWANIKI THIGE & KAGANI LLP.....1ST
DEFENDANT/APPLICANT

ZIMELE ASSET MANAGEMENT COMPANY

LIMITED2ND
DEFENDANT/APPLICANT

RULNG

1. The Applicant filed this Reference dated 24/05/2024 against the Bill of Costs taxed on 9/04/2024 by the Taxing Master in the sum of Kshs.629,670/=.
2. This is a Reference by the Advocate with the bill seeking that the Taxation of the Party & Party Bill of Costs dated 9/04/2024 be set aside or the Court be pleased to tax the Bill or in the alternative the Court do remit for Taxation before another Taxing Master. The application is supported by the Affidavit of Njuguna Muri sworn on 24/05/2024.

3. The Applicant filed this Reference dated 7/2/2022 against the Bill of Costs taxed on 26/1/2022 by the Taxing Master in the sum of Kshs.216, 744/=.
4. The Application is supported by the Affidavit of Wycliffe Kipkemoi Ngenoh of even date.
5. The Application is opposed vide a Replying Affidavit sworn by Mumo Mwendwa on 6/07/2024. The gist of the Replying Affidavit is that the Applicant has not followed the laid-out procedure provided in Order 11 of Advocates Remuneration Order (ARO).
6. It is the Plaintiff/Respondent's contention that the application being defective the Court does not have jurisdiction to act as the Taxing Master of the Applicant's Bill of Costs as this would breach provisions of Order 10 of the ARO.
7. Further that Order 11 (1) make it clear that the objecting party must within 14 days give notice in writing to the Taxing Officer of the specific items of the Taxation to which he objects. That the Advocates on record wrote to the Taxing Officer on 9/04/2024 after the Taxing Master had delivered his Ruling on the same day 09/04/2024.
8. Also the Respondent averred that the Applicant is misleading this Court since the Ruling referred to of this Court dated 16/05/2022 never made any Reference to the value of the subject matter of the suit and point which is clearly made out by the Taxing Master in his Ruling at the last paragraph of page 2.

9. On 14/10/2024 the parties sought leave to canvass the application by written submissions and the Court reserved date for Ruling. The 1st and 2nd Defendant/Applicants filed their submissions dated 27/11/2024 which I have considered in my Ruling. At the time of writing this Ruling the Plaintiff/Respondent had not filed their submissions.
10. Having read and analyzed the pleadings, the submissions and the case law cited by the Applicant, the Court framed the following two questions for determination of the Reference;
- i. *Whether the Reference is defective.*
 - ii. *Whether the Ruling on Party and Party costs should be set aside/taxed afresh.*
11. Rule 11 of the Advocates Remuneration Order provides;
- “11. Objection to decision on Taxation and appeal to Court of Appeal**
- 1) Should any party object to the decision of the Taxing Officer, he may within fourteen days after the decision give notice in writing to the Taxing Officer of the items of Taxation to which he objects.**
 - 2) The Taxing Officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber**

summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired."

12. In the case of **Ahmed Nassir v National Bank of Kenya Ltd [2006] EA** the Court held:

"Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Hon. Taxing Officer should do so within 14 days, after the said decision and thereafter file his

Reference within 14 days from the date of receipt of the reasons, where the reasons for the Taxation on the disputed items in the bill are already contained in the considered Ruling, there is no need to seek for further reasons simply because of the unfortunate wording of Sub-rule (2) of Rule 11 of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed Taxation are already contained in the formal and considered Ruling.”

13. From the foregoing, the Court must satisfy itself of the Respondent's objection on the premise of the material and record before it. From the record before the Court, it can be gathered or rather it is not in dispute that the Taxing Officer delivered his Ruling on 9/04/2024. The record presented shows that the Applicant wrote to the Taxing Master on the same day 09/04/2024 seeking reasons since the Defendant/Applicant objected to the entire Ruling.
14. The Applicant then lodged this Reference vide the Chamber Summons dated 24/05/2024 without seeking any leave and or enlargement of time within which to lodge a Reference.
15. My understanding of 11 (1) & (2) of the ARO, is that time begins running upon delivery of the Taxing Officer's Ruling. Upon delivery, it is incumbent upon the Applicants to

have complied with Paragraph 11(1) of the ARO, it appears that they did so. However, notwithstanding the wording in first limb of Paragraph 11(2) of the ARO and the contents of the Applicants letter lodged on 09/04/2024, firstly it would seem that the Applicants were alive to the contents of the impugned Ruling and had sufficiently digested its constituent elements where the Taxing Master had provided the reasoning behind his decision.

16. At the same time, a perfunctory review of the impugned Ruling that is the subject of the Reference reveals that the Taxation Ruling is substantive, complete and contains reasons for the Taxing Officer's decision on the taxed items. Thus, if the Applicant was alive to the aggrieving facets of the Ruling, they ought to have within fourteen (14) days applied to this Court by way of a Reference setting out their grounds.
17. In the Court's view, it was unnecessary, in the circumstances, for the Applicants to request and or wait to receive written reasons from the Taxing Officer to enable them to lodge their Reference, as the Ruling by design or form provided the reasons for the Taxation.
18. This reasoning was equally shared earlier by Odunga, J. (as he then was) in **Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited [2012] KEHC 4274 (KLR)** wherein it was stated that-

“.... Where there are reasons on the face of the decision, it would be futile to expect the Taxing Officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the Reference since that insufficiency may be the very reason for preferring a Reference. Otherwise mere adherence to the procedure may lead to absurd results if the Advocate was to continue waiting for reasons, as it happened in the case of Kerandi Manduku & Company vs. Gathecha Holdings Limited Nairobi (Milimani) HCMA No. 202 of 2005, where the Taxing Officer had left the judiciary. Where reasons are contained in the decision, I share the view that to file the Reference more than 14 days after the delivery of the same would render the Reference incompetent.”

19. My sister Meoli, J’s decision in **Chege v Muiruri [2024] KEHC 8181 (KLR)** is one I concur with where she succinctly observed:-

“It has become a routine practice that Taxing Officers deliver written Taxation Rulings containing their reasons for such Taxation, therefore obviating the need for requests for such reasons and curbing delay. The Court cannot encourage a practice as evident here, where a

party who has full reasons for Taxation at the delivery of the Ruling routinely and superfluously seeks written reasons for Taxation and waits to file the Reference when it best suits him.”

20. The Applicant contends that the Taxing Master ignored the value of the suit property which was referred to in this Court’s Ruling dated 16/05/2022. I have reread the said Ruling which I delivered but I have not glimpsed anywhere referring to the value of the suit property. I therefore share in the Respondent’s averment that the Applicant’s inference to the value of the suit property is misleading.

21. The gist of the Reference is based on the value of the suit property which however is not mentioned anywhere in the Ruling. Further the Taxing Master noted the repetitive particulars which he removed from the Bill.

22. The Court of Appeal in **Peter Muthoka & Another v Ochieng & 3 Others [2019] eKLR** expounded on the principles in **Joreth Ltd v Kigano & Associates s NRB CA Civil Appeal No. 66 of 1999 [2002] eKLR** and set down the proper basis of taxing the instruction fees as follows;

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before Judgment, it is the pleadings that form the basis for determining subject value.

Once Judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the Judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the Court.”

23. In the case of **Ngatia & Associates Advocates Vs Interactive Gaming & Lotteries Limited, Judicial Review Misc. Application No. 8 & 9 of 2016**, Aburili J. quoted, with approval the following words of Ojwang J. (as he then was) in **Republic Vs Ministry of Agriculture & 2 Others Exparte Muchiri W. Njuguna & Others Misc. Civil Application No. 621 of 2000**;

“The Taxation of Advocate Instruction fees is to seek no more than and no less than reasonable compensation for professional work done; The Taxation of Advocates instruction fees should avoid any prospect of unjust enrichment, for any particular party or parties”

24. I note however that Plaintiff has referred to items dismissed being from pages 4 - 6 but he has not indicated the items he is not happy about. The Taxing Master in his Ruling indicated that the Bill was all jumbled up with repetition. Without the Applicant mentioning the items that were struck out unfairly

or not considered it is difficult for me to provide any useful guidance.

25. From the foregoing, I believe I have reasonably addressed myself to the Reference and the upshot is that the Reference is unmerited and it is struck out with attendant costs in favour of the Respondent.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 22ND DAY OF OCTOBER, 2025.

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**MOGENI J
JUDGE**

In the presence of:-

Dr. Khaminwa, SC for the Plaintiff

Mr. Lundi for the 1st and 2nd Defendants

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**