

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC CAUSE NO. 805 OF 2018
(Before Hon. Lady Justice Hellen Wasilwa, J)

LUCY **WANJIKU** **MBUGUA....**
..... **PETITIONER**

VS

KENYA **RESPONDENT** **AIRPORTS**
AUTHORITY.....

RULING

- 1 The Respondent/Applicant filed a Chamber summons dated 16th March 2025 seeking orders that: -
1. *there Honourable Court be pleased to review and/or set aside the decision of the Taxing Officer delivered on the 23rd of May, 2025, Taxing and/or certifying costs due payable to the Claimant/Applicant by the Respondents at Kshs. 567,364.18*
 2. *costs of this application be in the cause.*

Claimant/Applicant's Case

- 2 The Applicant avers that a consent judgment in the matter was entered in favour of the Claimant/Applicant in the sum of Kshs. 21,430,013 with costs of the suit.

- 3 It is the Applicant's case that the Taxing officer delivered her Ruling on the 23rd May, 2025 and taxed the Party and Party Bill of Costs dated 14th February, 2025 in the sum of Kshs. 567,364.18 in respect of the said judgment sum of Kshs. 21,430,013.
- 4 The Applicant avers that the Claimant/Applicant being aggrieved by the ruling of the Taxing Officer objects to the decision and moves the Court to review the ruling of the Taxing Officer as it is in the interest of justice that the prayers sought are granted.

Respondent's Case

- 5 In opposition to chamber summons, the Respondent filed grounds of opposition dated 7th July 2025 on the following grounds:
1. *The application is statute time barred having been filed 24 days after the decision by the Deputy Registrar on taxation.*
 2. *The application is incompetent, bad in law and fatally defective.*
 3. *The application does not identify the items which the Applicant seeks to challenge by way of a reference.*
 4. *The taxing officer/Master did not apply the wrong principles in the determination.*
 5. *The taxing officer/Master correctly exercised her discretion.*

Claimant/Applicant's Submissions

- 6 The Applicant submitted on two issues: whether the Grounds of Opposition are merited; and whether the Claimant/Applicant's Reference Application is merited.
- 7 On the first issue, the Applicant submitted that paragraph 11 of the Advocates Remuneration Order denotes that upon delivery of the decision of the Taxing Officer, the aggrieved party who objects such a decision may within 14 days after delivery of the ruling, elect to write to the Taxing Officer citing the items he objects. The word "may" indicate that an aggrieved party has a discretion whether to write to the Taxing Officer or not however, within the specified timeline.
- 8 The Applicant submitted that vide a letter dated 23rd May 2025, she filed an objection to the Taxing Officer in respect to the instruction fees and getting up fees awarded within the meaning of Paragraph 11(1) of the ARO, therefore, she was in compliance with the strict timelines.
- 9 The Applicant submitted that Paragraph 11(2) of the ARO provides that upon the Taxing Officer receiving the objection letter, the Taxing Officer shall forward his reasons forthwith. The Taxing Officer has never responded to her letter despite the mandatory provisions of Paragraph 11(2) of the ARO prompting the filing of the reference application due to the lack of the requisite response thus the grounds of opposition should be dismissed with costs.

- 10 It is the Applicant's submission that the Respondent's grounds of opposition should be dismissed as the Applicant had complied with the provisions of Paragraph 11 of the Advocates Remuneration Order by writing an objection letter dated 23rd May, 2025 which was the same day that the Taxing Officer delivered her ruling and further, he proceeded to file the reference Application when the mandatory response from the Taxing Officer was not forthcoming.
- 11 On the second issue, the Applicant submitted that the Taxing Officer erred in principle in awarding instruction fees at Kshs. 387,850.64 and did not consider the graduated levels as provided in the Advocates Remuneration Order. The fees payable as instruction fees is Kshs. 3,500,000, therefore, the Taxing Officer erred in awarding instruction fees at Kshs. 387,850.64.
- 12 The Applicant submitted that the fees chargeable as getting up fees is calculated as 1/3 of the instruction fees. Since the instruction fees are Kshs. 3,500,000, a 1/3 of the instruction fees amounts to Kshs. 1,166,666.67.
- 13 It is the Applicant's submission that the Petitioner has not demonstrated any exceptional circumstances justifying a direct constitutional approach or the invocation of the Constitution. Thus, his claim is disguised ordinary employment dispute.

Respondent's Submissions

- 14 The Respondent submitted that it is not disputed that the impugned decision of the Taxing Officer is dated 23rd May 2025. The instant application was filed on 16th June 2025 which was outside the 14 days period. In the premises the said reference was filed out of time, thus, it should be struck out with costs.
- 15 The Respondent submitted that it is trite law that a court of law has no jurisdiction to entertain a suit filed outside a statutory period. Reliance was placed in the Supreme Court case of **Samuel Kamau Macharia v. Kenya Commercial Bank Limited & 2 others [2012] eKLR** wherein it held that a reference filed out of time divests a court's jurisdiction.
- 16 I have examined all the averments of the parties herein. The applicant filed this application contesting that the taxing mistress erred in law in the way the party and party bill of costs was taxed because reasons for the decision were not given.
- 17 The respondents on their part aver that the application was filed late and should therefore not be considered. From the pleadings I note that the applicant wrote to the Deputy Registrar on 23rd May 2025 but the letter was received on 28/5/25 where the objection to the decision was made. There is no indication that the Deputy Registrar responded to the inquiry to provide reasons for her decision. Despite the respondent indicating that the

request was made late, from the pleadings, his was made on 28/5/25 and which was within the required time.

- 18 As to the manner the taxation was done, given the objection raised by the applicant, I would remit this taxation back to be taxed by a different taxing master/mistress other than Hon Aziza. Costs in the cause.

Dated, Signed and Delivered Virtually at Nairobi this 29th Day of October 2025.

HELLEN WASILWA
JUDGE

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