



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ochieng t/a M/S Ochieng' Gai & Company Advocates v Okita (Miscellaneous Application E005 of 2025) [2025] KEELC 5719 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5719 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
MISCELLANEOUS APPLICATION E005 OF 2025**

**MAO ODENY, J  
JULY 31, 2025**

**BETWEEN**

**WILFRED OCHIENG T/A M/S OCHIENG' GAI & COMPANY  
ADVOCATES ..... APPLICANT**

**AND**

**DAN ODHIAMBO OKITA ..... RESPONDENT**

**RULING**

1. This ruling is in respect of Chamber Summons application dated 6<sup>th</sup> February, 2025 seeking the following orders:
  1. That the Honourable Court be pleased to set aside the ruling and order of Hon. Priscah Nyotah delivered, dated and signed on the 28<sup>th</sup> November, 2024 herein extend time and grant leave to the applicant herein to object to the said ruling to facilitate taxation of the advocate/client bill dated 15<sup>th</sup> December, 2022.
  2. That via this reference the Honourable Court be pleased to call up proceedings and ruling in Nakuru ELC Misc Application No E056 of 2022 for the purposes of setting aside the ruling and taxation of the advocate/client bill of costs herein dated 15<sup>th</sup> December, 2022.
  3. That the costs of this application be provided for.
2. The application is supported by the annexed affidavit of Ochieng' Gai Advocate, the Applicant who deponed that a ruling on a bill of costs that he filed was due on 28<sup>th</sup> November, 2024, but the same was not delivered. He deponed that a ruling notice was not issued and they only became aware that a ruling on the bill had been delivered on 17<sup>th</sup> December, 2024.
3. Mr. Gai further deponed that the ruling dismissed with costs the Advocate/Client bill dated 15<sup>th</sup> December, 2022, on the ground that the documents supporting the bill were not attached.



4. It was his deposition that they filed a list of documents and submissions dated 26<sup>th</sup> April, 2023, submitting on their grievance of the dismissal of the advocate/client bill. Counsel further stated that they filed an application for reinstatement dated 13<sup>th</sup> September, 2023, which application reinstated the Bill of costs for taxation.
5. Dan Odhiambo Okita filed a Replying Affidavit sworn on 10<sup>th</sup> March, 2025, and deponed that any reference ought to have been brought within fourteen days with the last day of filing being 13<sup>th</sup> December, 2024 which was not done. He deponed that the application has been filed after more than forty-five days from the date of the ruling without any explanation. He prayed that the application be dismissed with costs.

### **Applicant's Submissions**

6. Counsel for the Applicant filed submissions dated 23<sup>rd</sup> July, 2025, and submitted that a bill once filed must be taxed as that is the only way to bring closure to an advocate/client dispute. It was counsel's submission that the bill was filed but not taxed. Further that there were documents supporting the bill and the reason for failing to tax the same was incorrect.
7. It was counsel's submission that it is probable that the Honourable Court only checked the CTS system and not the physical file. Counsel relied on the case of M/s L.R Kipsang & Co Advocates vs Francis Kemei Kericho HC Misc No 29 of 2018 and urged the court to grant the orders sought.

### **Respondent's Submissions**

8. Counsel for the Respondent filed submissions dated 14<sup>th</sup> June, 2025, and submitted that the application is an abuse of the court process and that the Applicant had filed a defective bill to the extent that it relied on provisions of law that were not applicable. Counsel submitted that the ruling date of 28<sup>th</sup> November, 2024 was issued in the presence of all the parties and the applicant chose not to appear.
9. Counsel submitted that the Respondent would be prejudiced as the applicant has not yet refunded him Ksh 50,000/= the amount he received and did not render a service but the Respondent is also incurring expenses in defending himself.

### **Analysis and Determination**

10. The issue for determination is whether the applicant is entitled to the orders sought. It was the Applicant's case that the ruling notice was not issued and only became aware that the same had been delivered on 17<sup>th</sup> December, 2024. The applicant deponed that the ruling dismissed with costs the Advocate/Client bill dated 15<sup>th</sup> December, 2022 as the documents supporting the bill were not attached.
11. Paragraph 11 of the Advocates (Remuneration) Order which provides that:
  - “(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.”

12. The subject matter of this ruling is the Taxing Master’s decision of 28<sup>th</sup> November, 2024. The applicant has asked this court to extend time and grant leave to the applicant herein to object to the said ruling to facilitate taxation of the advocate/client bill dated 15<sup>th</sup> December, 2022.
13. In the case of *Otieno v Co-operative Bank of Kenya Limited (Miscellaneous Civil Case E119 of 2024) [2025] KEHC 4963 (KLR) (25 April 2025) (Ruling)* Neutral citation: [2025] KEHC 4963 (KLR), the court stated as follows on the provisions of Paragraph 11 of the Advocates Remuneration Order:

“Litigation under paragraph 11 is progressive. It goes step by step. It starts with the step under paragraph 11(1), followed by paragraph 11(2), and then paragraph 11(3). Consequently, there can be no reference to the Judge of the High Court without the reasons given by the taxing officer, and the taxing officer cannot give reasons unless prompted under paragraph 11(1). It is the objection to the taxing officer which triggers the reference, much the same way that the decision of the Judge on the reference triggers the appeal to the Court of Appeal. A reference cannot be mounted under paragraph 11(2), by jumping the step in paragraph 11(1). I have seen the decisions in *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited [2017] eKLR (Meoli, J)* and *David Anunda v John Karu (sued on his own capacity and as Chairman of Kileleshwa Githunguri Road Residents Association) & 2 others [2021] KEELC 1785 (KLR) (Ogutu-Mboya, J)*. I agree with them. The notice of objection, envisaged under paragraph 11(1) (2), is the foundation for the reference to the judge, and without it there can be no reference.
14. The Applicant has admitted that he filed this application outside the fourteen days stipulated by provisions of Paragraph 11 (1) of the Advocates (Remuneration) Order. No plausible explanation has been given by the Applicant why he did not file the Application immediately after finding out that the bill of costs was dismissed.
15. The Applicant’s application was not filed timeously to benefit from the court’s discretion, which must be exercised judiciously. In this case, the court is not satisfied that it can exercise its discretion in the Applicant’s favour.
16. I have considered the application, the submissions by counsel and find that the Application lacks merit and is therefore dismissed with each party bearing their own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**M. A. ODENY**

**JUDGE**

