



Kamau & another v JMW (Suing as the Next Friend & Mother of FLK - Minor) (Miscellaneous Civil Application E086 of 2025) [2025] KEHC 15374 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E086 OF 2025**

A MABEYA, J

OCTOBER 31, 2025

BETWEEN

KATHANGA PETER KAMAU 1ST APPLICANT

NOAH OTEKO SUMBA 2ND APPLICANT

AND

JMW (SUING AS THE NEXT FRIEND & MOTHER OF FLK - MINOR) RESPONDENT

RULING

1. This ruling determines the Chamber Summons dated 19/5/2025. The same was brought under Section 89 of the *Civil Procedure Act*, Section 11 of the *Advocates Remuneration Order* and Schedule 7 of the *Advocates Remuneration Order*. It is a reference against the ruling of the taxing master dated 30/8/2024.
2. It sought to set aside the said ruling and substitute therefor with a fresh taxation of the Bill of Costs dated 3/5/2024. The applicant also sought that the same orders apply to files in Winam PMCC Nos. 62 of 2018, 63 of 2018, 64 of 2018, 69 of 2018, 71 of 2018, 73 of 2018 and 74 of 2018.
3. The application was grounded on the grounds set out in the body thereof and in the supporting affidavit of Theldred Wesonga, Advocate.
4. It was the applicant's case that the taxing master erred in principle in taxing Items 6 - 30 and 70 - 71 as the taxing master failed to take into account the scale of fees prescribed under Schedule 7 of the *Advocates Remuneration Order 2014*.
5. In response, the respondent relied to rely on a replying affidavit sworn on the 16/6/2025 by her advocate Kenney Owuor. It was deposed that the application was incompetent, frivolous, vexatious, an afterthought and was merely intended to annoy and waste the Court's time.



6. That the applicants were given the opportunity before the taxing officer to file their submission in line with the items they intended to oppose but non-the-less they ignored and or failed to do so leaving the taxing officer with no option but to assess the respondent's bill of cost which was not contested.
7. That the attached written submissions by the applicants was never filed in court and that the applicants had not attached any evidence that the same was filed and thus sought to convert this appellate Court into a Taxing Officer by submitting fresh issues which were never tabled before the trial court.
8. That the Taxing officer applied the right principles in assessing the Respondent's costs and the disbursements approved for assessment was based on the receipts found in the court file whereas the issue of service of pleadings is pegged on the distance from court to the premises of the applicant and not necessarily by proof of receipts.
9. That in any case, the applicants have not complied with the conditions for leave granted vide the order of Omido J. issued on the 8/5/2025 by paying the uncontested costs and as such their Reference stands dismissed.
10. I have considered the record. The applicants filed the reference pursuant to leave granted on the 8/05/2025 by Omido J. following an application by the applicants vide Motion dated 15.10.2024.
11. The leave granted to the applicant was conditional on the ground that the applicants pay the amount taxed less the entered amounts in items 6 – 13, 10 – 18, 19 -30 and 70 – 71 within 30 days.
12. Consequently, the applicants ought to have settled the undisputed items by the 12/06/2025. It is contended by the respondent, and not denied, that the applicants have not complied with the said order. Further, there was no evidence to show that the said explicit order had been complied with.
13. In the circumstances, the leave granted having been conditional and the condition having not been complied with, the same lapsed and the reference dated 19/05/2025 is incompetent and hereby stuck out with costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF OCTOBER, 2025.

A. MABEYA, FCI Arb

JUDGE

