



Mereka & Company Advocates v New Kenya Co-operative Creameries Limited (Miscellaneous Civil Application 499 of 2012) [2025] KEHC 15252 (KLR) (Civ) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION 499 OF 2012
NW SIFUNA, J
OCTOBER 30, 2025**

BETWEEN

MEREKA & COMPANY ADVOCATES ADVOCATE

AND

NEW KENYA CO-OPERATIVE CREAMERIES LIMITED RESPONDENT

RULING

1. The Client New Kenya Co-operative Creameries Limited (also known as NEW KCC) is by its Chamber Summons dated 28th April 2025, seeking enlargement of time for purposes of filing a Notice of Objection and a Reference against a Taxing Officer's Taxation decision dated 4th March 2025.
2. Client is by that Application seeking leave because the time that Paragraph 11 of the Advocates Remuneration Order (ARO) provides for lodging of an objection and filing of a Taxation Reference long lapsed. The Advocate/Respondent Mereka & Company Advocates, has in opposition to the said Application, raised a Preliminary Objection to the Application.
3. The Objection is on the ground that the intended Reference will be a second Reference and that the law does not permit a second Reference on the same grounds as the first. Hence that the Application is therefore is an abuse of the Court process. The Client has opposed the Objection on the ground that it is not on a pure point of law; hence that it is an improper Preliminary Objection.
4. The Objection was canvassed by way of oral submissions.

Analysis and Determination

5. Upon considering the rival arguments of the parties, the Client's said Chamber Summons as well as the Advocates Preliminary Objection and the original record of the Taxation proceedings, I am not



convinced that the Advocate's opposition was the proper one to be raised by way of a Preliminary Objection.

6. On the Authority of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] E.A 696, a Preliminary Objection should be on a crisp pure point of law. Not where the court has in determining it, to rummage through, interrogate and establish facts.
7. I hold that where the objection is alleging an abuse of the Court process that is so fluid, and generalized to be described as a crisp one. One of the acceptable attributes of a Preliminary Objection is specificity as opposed of generalization. The other is the clarity and crispness. It should be on a point that is clearly a pure point of law. As opposed to a mix of law and facts, or facts alone. These to me are some of the salient features of a Preliminary Objection properly so-called.
8. The Advocate's Objection is the direct opposite. In the sense that it requires an interrogation of the history in the entire taxation file, an extensive examination of the record, as well as the drawing of inferences. This is undeniably not the legitimate scope of a Preliminary Objection.
9. The issues and points that the Advocate has raised in this Preliminary Objection are such as ought to be argued within the Application itself, and as a response to it.
10. For those reasons the objection is hereby dismissed with costs.

DATED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF OCTOBER 2025.

PROF (DR) NIXON SIFUNA

JUDGE

