



Mulure v S.M. Onyango & Co. Advocates (Miscellaneous Civil Application E110 of 2022) [2025] KEHC 15068 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E110 OF 2022**

**JM OMIDO, J
OCTOBER 23, 2025**

BETWEEN

ERIC VINCENT MULURE APPLICANT

AND

S.M. ONYANGO & CO. ADVOCATES RESPONDENT

RULING

1. The Applicant herein filed the Notice of Motion dated 7th June, 2022 in which he sought that this court sets aside, varies and/or reviews the ruling of the Taxing Master rendered on 28th April, 2022 on the Advocate/Client amended bill of costs dated 28th April, 2022 and a further order that this court either proceeds to determine the contested and/or referenced items or remits the bill back to a different Taxing Master for a fresh taxation.
2. The said application was placed before my sister Shariff J. who directed that it be canvassed by way of written submissions, which the parties filed.
3. In her ruling delivered on 25th October, 2024, my learned sister found that the application was incompetent as the court had been moved by way of a notice of motion, whereas the law provided that a taxation reference ought to be by way of a chamber summons. She concluded as follows in her determination:

- “ 11. I also take cognizance that this issue was not raised by either of the parties but going by the provisions of Rule 11, the prescribed procedure is a chamber summons as opposed to a notice of motion as done in the instant case.
12. Putting all the above into perspective, I come to the irresistible conclusion that the application is incompetent for flouting the mandatory provisions of the



Advocates (Remuneration) Order and I therefore disallowed (sic) it with costs to the Respondent assessed at Ksh.15,000/-.”

4. Subsequent to the above ruling and order, the Applicant filed the chamber summons dated 25th November, 2024 in which the following orders are sought:
 - a. [Spent].
 - b. That this Applicant be granted leave to file a Taxation Reference out of time by this Honourable Court against the Ruling of the Honourable Court’s Taxing Officer delivered on 28th April, 2022.
 - c. That the leave granted in prayer (a) above do operate as a stay of execution of the ruling/order of the Taxing Officer and this Honourable Court delivered on 25th October, 2024 and any other consequential proceedings and orders.
 - d. That the Ruling of this Honourable Court dated 25th October, 2024 be set aside and/or discharged.
 - e. That the Applicant’s Taxation reference by the Chamber Summons annexed hereto be deemed as duly filed and served upon payment of requisite fees.
 - f. That the costs of this application be in the cause.
5. Although the application was not opposed, I note from this court’s ruling of 25th October, 2024 that upon finding that the court had been wrongly moved by way of a notice of motion instead of a chamber summons, Shariff J. proceeded to disallow the notice of motion dated 7th June, 2022 that had sought to challenge the findings of the Taxing Master in her ruling delivered on 28th April, 2022.
6. According to the Oxford English Dictionary, the definition of the verb disallow is:
to refuse to allow something;
to reject; or
to refuse to accept something officially.
7. From that definition, when an application is said to be disallowed, it generally means, in my view, that the court has considered the application on its merits and rejected it. In practical effect, such an application is dismissed — not struck out.
8. For instance, if the court is to say that “prayer 1 of the application is allowed; and prayer 2 of the application is disallowed”, that would mean that prayer 1 has been granted on its merits while prayer 2 has been considered on its merits and has been declined, refused or dismissed. Here “disallowed” means the court refused that particular prayer/application (i.e., the court refused to allow the reliefs or orders sought in that application).
9. When an application is dismissed, there is a bar to the same application from being filed as it is considered res judicata under Section 7 of the [Civil Procedure Act](#). Considering that “disallowed” means “dismissed” and not “struck out”, the Applicant cannot now seek for extension of time within which to file his application afresh as the earlier application was finally decided by a competent court. The avenue one would have in such a case would be to seek review under Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules or to appeal, but not to file a fresh application seeking the same orders as the earlier one.



10. The chamber summons dated 25th November, 2024 is for the foregoing reasons incompetent. I proceed to strike it out but make no order as to costs as the Respondent did not file a response to the same.
11. This file is hereby closed.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 23RD DAY OF OCTOBER, 2025.

JOE M. OMIDO.

JUDGE

For Applicant: Mr. Marienga.

For Respondent: No appearance.

Court Assistants: Mr. Juma & Mr. Ngoge.

