



**Omuma Advocates Llp v Falcon Signs Limited (Commercial Miscellaneous Application E903 of 2023) [2025] KEHC 15285 (KLR) (Commercial and Tax) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15285 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E903 OF 2023**

**MN MWANGI, J  
OCTOBER 24, 2025**

**BETWEEN**

**OMUMA ADVOCATES LLP ..... ADVOCATE**

**AND**

**FALCON SIGNS LIMITED ..... CLIENT**

**RULING**

1. The client/applicant filed a Chamber Summons application dated 22<sup>nd</sup> July 2024 under the provisions of Paragraph 11 of the Advocates Remuneration Order seeking orders that the Ruling of the learned Taxing Master dated 9<sup>th</sup> July 2024 in respect to item Nos. 1, 6, 7, 11, 13, 15, 20, 21, 22 & 23, the items titled “sub- title” and “grand total” be set aside. In the alternative, the client prays for an order for the Advocate-Client bill of costs to be referred to a different Taxing Master for Taxation of items 1, 6, 7, 11, 13, 15, 20, 21, 22 & 23, as well as the items titled “sub-title” and “grand total”.
2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Ms Heena Joshi, one of the client company’s Director and Shareholder. She averred that the Taxing Master failed to exercise discretion judiciously by ignoring a prior payment of Kshs.75,000/= and not considering established principles for awarding costs such as the complexity of issues, length of the Trial, and value of the subject matter. She contended that the Taxing Master’s Ruling was based on wrong principles, making intervention by this Court necessary. Ms Joshi stated that the respondent had objected in writing to the taxation of specific items that are being challenged in the instant Reference, which was filed within the prescribed 14 days.
3. In opposition to the Reference, the Advocate filed a replying affidavit sworn on 29<sup>th</sup> July 2024 by Mr. Mark Omuga, an Advocate of the High Court of Kenya practicing in the Advocate/respondent law firm. Mr. Omuga averred that the client did not file a Notice of Objection to the Taxing Master’s



Ruling delivered on 9<sup>th</sup> July 2024 within the required 14 days, making the instant Reference defective. He stated that the client's claim of having paid Kshs.75,000/= is inconsistent, as the client had previously sworn it never instructed the Advocate to act for it in the matter giving rise to these taxation proceedings. Mr. Omuga further stated that the payment of Kshs.75,000/= was for unrelated matters and was never an issue before the Taxing Master. In addition, that the said payment record has also been relied upon in other unrelated cost disputes. Counsel asserted that the client never opposed the Advocate-Client bill of costs items before the Taxing Master, thus the instant application is merely an improper attempt to have this Court re-tax the said bill.

4. The application herein was canvassed by way of written submissions. The client's submissions were filed by the law firm of Macharia, Gaitho & Murigu Advocates LLP on 1<sup>st</sup> February 2025, whereas the Advocates submissions were filed on 16<sup>th</sup> December 2024 by the law firm of Omuma Advocates LLP.
5. Mr. Macharia, learned Counsel for the client relied on the case of Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & others [1972] EA 162 and submitted that it is trite law that the discretion exercised by the Taxing Master must be exercised judiciously and in line with established principles. Counsel cited the case of Mugambi & Co. Advocates v John Okal & another [2013] eKLR, and argued that the Taxing Master erred by failing to consider an advance payment of Kshs.75,000/= leading to an unjustifiable inflation of the Award.
6. Mr. Macharia relied on the case of Twiga Motors Limited v Hon. Dalmas Otieno Anyango [2015] eKLR, and contended that the filing of a letter of objection under Paragraph 11(1) of the Advocates Remuneration Order is not mandatory where the Taxing Master's Ruling contains sufficient reasons. He contended that requiring the client to file an objection letter in the circumstances of this case would be an unnecessary procedural technicality contrary to the provisions of Article 159(2)(d) of *the Constitution*. Counsel submitted that the instant Reference was filed within the prescribed timelines and it meets the requirements under Paragraph 11(3) of the Advocates Remuneration Order.
7. Mr. Omuga, learned Counsel for the Advocate relied on the case of Multiline Motors (Kenya) Ltd v Migori County Government [2021] eKLR, and submitted that the filing a Notice of Objection under Paragraph 11 of the Advocates Remuneration Order is mandatory. He argued that although the client claims to have filed a Notice of Objection in compliance with the said provisions, none was annexed to the client's affidavit in support of the application herein or found in the Judiciary's Case Tracking System (CTS). Counsel contended that in as much as the client claimed that a payment of Kshs.75,000/= was not credited, that payment was unrelated to the current bill and has been repeatedly cited in opposing the Advocate's bills of costs in other matters.

### **Analysis And Determination.**

8. Upon consideration of the application filed herein, the grounds on the face of it and the affidavit filed in support thereof, as well as the replying affidavit filed by the Advocate and the written submissions by Counsel for the parties, the issues that arise for determination are-
  - i. Whether there is a competent Reference before this Court; and
  - ii. Whether the client is entitled to the reliefs sought in the instant application.

### **Whether there is a competent Reference before this Court.**

9. The only recourse available for a party who feels aggrieved by a decision of the Taxing Master is by way of a Reference to a Judge pursuant to the provisions under Paragraph 11 of the Advocates (Remuneration) Order. The said position was clearly articulated in the case of Machira v Magugu



[2002] 2 EA 428, cited by the Court in *Twiga Motors Limited v Dalmás Otieno Onyango* [2017] eKLR, where Ringera, J., (as he then was) held that –

...the Advocates Remuneration Order is a complete code and there is no provision for the invocation of the Civil Procedure Rules... any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to the Judge in accordance with paragraph 11 of the Advocates Remuneration Order...

10. The instant Reference is against the Ruling delivered by the Taxing Officer on 9<sup>th</sup> July 2024 in respect to the Advocate – Client bill of costs dated 19<sup>th</sup> October 2023. As explained hereinbefore, the procedure for challenging a Taxing Master’s decision in the High Court is provided for under Paragraph 11(1) & (2) of the Advocates (Remuneration) Order which states that -
  1. Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the 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...
11. From the above provisions, it is evident that the proper procedure for challenging a Taxing Master’s decision in the High Court begins with an applicant giving the Taxing Master a written Notice specifying the items of taxation being objected to within fourteen (14) days of the decision, which Notice is commonly referred to as a Notice of Objection. Upon receiving such Notice, the Taxing Master is required to provide the reasons for the decision, after which the objector has fourteen (14) days from the date of receipt of the reasons given to file a Reference to a Judge by way of a Chamber Summons application, setting out the grounds of objection.
12. The Supreme Court of Kenya in the case of *Moses Mwigigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] eKLR, considered the importance of adherence to laid down procedure in approaching a Court of law and stated as follows –

This court has on a number of occasions remarked upon the importance of rules of procedure, in the conduct of litigation. In many cases, procedure is so closely intertwined with the substance of a case, that it befits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is the handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the Court would not hesitate to declare the attendant pleadings incompetent.

Yet procedure, in general terms, is not an end in itself. In certain cases, insistence on a strict observance of a rule of procedure, could undermine the cause of justice. Hence the pertinence of Article 159(2)(d) of *the constitution*, which proclaims that, “...courts and tribunals shall be guided by...[the principle that] justice shall be administered without undue regard to procedural technicalities”. This provision, however, is not a panacea for all situations befitting judicial intervention; and inevitably, a significant scope for discretion devolves to the courts.”

13. In as much as the client claims to have filed a Notice of Objection in compliance with the provisions under Paragraph 11(1) of the Advocates (Remuneration) Order, no such Notice was filed as is evident from the Judiciary Case Tracking System and the physical Court record. The purported Notice was



also not annexed to the client's affidavit in support of the Reference herein. It is therefore evident that prior to the filing of the instant Reference, there was no compliance with the provisions under Paragraph 11(1) of the Advocates (Remuneration) Order on the part of the client who is dissatisfied with the Taxing Master's Ruling of 9<sup>th</sup> July 2024.

14. In the case of *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited* [2017] eKLR, the Court in striking out a Reference held that –

The provisions of Paragraph 11 of the Remuneration Order serve several purposes. Firstly, the requirement that a party seeking reasons gives a notice of items objected to, serves to narrow down the issues, and secondly, give notice to the adverse party and the taxing master of his objection. Thus, the taxing master, adverse party and ultimately the reference court in their respective roles can focus on the specific matter objected to rather than entire bills of costs, which often run into several pages. The objective is obvious: the expeditious disposal of taxation disputes. Thus compliance with the requirements of paragraph 11 of the Remuneration Order is not a mere technicality that can be pushed aside peremptorily as the Applicant appears to suggest. The provisions of Article 159(2)(d) of *the Constitution* were not intended to overthrow procedural or technical requirements, but to guard against “undue regard” to procedural technicalities in the administration of justice.

15. In light of the applicable law and the above decision, the High Court's jurisdiction to entertain a Reference arises only upon compliance with the provisions of Paragraph 11(1) of the Advocates (Remuneration) Order. This is because a Notice of Objection is akin to a Memorandum of Appeal, therefore failure to file and serve such a Notice is not a technical issue that can be wished away by the provisions of Article 159(2)(d) of *the Constitution* of Kenya, 2010, for the sake of substantive justice as was contended by the client. Rather, it is a fatal omission as it goes to the root of the High Court's jurisdiction to hear and determine the Reference.
16. In the circumstances, this Court finds that its jurisdiction to hear and determine the instant Reference has not been properly invoked due to the client's failure to comply with the provisions under Paragraph 11(1) of the Advocates (Remuneration) Order.
17. In the end, this Court holds that the client's application dated 22<sup>nd</sup> July 2024 was filed prematurely and is incompetent for want of compliance with Paragraph 11(1) of the Advocates (Remuneration) Order. Consequently, the instant Reference is struck out with costs to the Advocate.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 24<sup>TH</sup> DAY OF OCTOBER 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Ms Mpande holding brief for Mr. Paul Macharia for the client/applicant

Mr. Omuga for the Advocate/respondent

Ms B. Wokabi – Court Assistant.

