



**Afyare Enterprises Company Limited v Mugambi & 2 others;
Mugambi (Interested Party) (Environment and Land Case
1626 of 2016) [2025] KEELC 7716 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7716 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1626 OF 2016
MN KULLOW, J
NOVEMBER 4, 2025**

BETWEEN

AFYARE ENTERPRISES COMPANY LIMITED PLAINTIFF

AND

GIDEON KIREMAH MUGAMBI 1ST DEFENDANT

MAX GAS AND LOGISTICS LIMITED 2ND DEFENDANT

THE CHIEF LANDS REGISTRAR, NAIROBI 3RD DEFENDANT

AND

GLADYS KALUYU MUGAMBI INTERESTED PARTY

RULING

A. Background

1. This dispute arises from a long-running contest over ownership of the property known as L.R. No. 36/VIII/403, Eastleigh, Nairobi, which was the subject of a sale between the 1st and 2nd Defendants and an earlier agreement involving the Plaintiff, Afyare Enterprises Company Limited. The Plaintiff's suit dated 22nd December 2016 sought, among other reliefs, declarations that the transfer to the 2nd Defendant, Max Gas and Logistics Limited, was null and void and orders compelling the 3rd Defendant, the Chief Lands Registrar, to transfer the property to the Plaintiff.
2. The 2nd Defendant filed a defence and counterclaim asserting ownership and seeking special damages and declaratory reliefs. Upon the Plaintiff's failure to prosecute its claim, the suit was dismissed on 4th October 2022, leaving the counterclaim for determination. After hearing two witnesses for the 2nd Defendant, the Court (E.K. Wabwoto J.) delivered judgment on 13th October 2022, allowing the



counterclaim, awarding special damages of Kshs. 500,000, declaring the 2nd Defendant the lawful owner of the property, and granting it costs of the suit and counterclaim.

3. Subsequently, the 2nd Defendant lodged a Party and Party Bill of Costs dated 27th June 2024, which was taxed by the Taxing Officer, Hon. T.E. Marienga (Deputy Registrar), on 19th December 2024. The Taxing Officer, applying Schedule 6 of the Advocates (Remuneration) Order, 2014, treated the award of Kshs. 500,000 as the subject value for taxation, allowed instruction fees at Kshs. 1,400,000, computed getting-up fees at one-third thereof, struck out items 14, 43 and 63, and taxed the total bill at Kshs. 1,998,596.67. Dissatisfied, the 2nd Defendant signaled objection through a letter dated 26th February 2025 requesting reasons under Paragraph 11 of the Advocates (Remuneration) Order; the record shows an endorsement of 14th April 2025, when the Taxing Officer furnished reasons for the ruling.

B. The Applications

4. Following receipt of the reasons, the 2nd Defendant filed a Reference by way of a Chamber Summons dated 24th April 2025, supported by the affidavit of Mohamed Bulle Ahmed. The application seeks to set aside or vary the taxation, alleging that the Taxing Officer misapplied Schedule 6, ignored the value of Kshs. 445,000,000 proved in evidence, and arbitrarily reduced instruction fees and struck out items without justification. It prays for re-taxation or remission to a different Taxing Officer.
5. The Plaintiff reacted by filing a Notice of Motion dated 9th May 2025 seeking to strike out the Reference for being filed out of time contrary to Paragraph 11(1) and (2) of the Advocates (Remuneration) Order. The Plaintiff argues that the notice of objection was made long after the 14-day limit lapsed and no application for enlargement of time under Paragraph 11(4) was filed, rendering the Reference incompetent. Both parties filed written submissions, which now form the basis of this ruling.

C. Submissions

6. In its submissions, the 2nd Defendant/Applicant maintains that the Taxing Officer's discretion must be exercised within the framework of Schedule 6 Paragraph 1(b) of the Advocates (Remuneration) Order (2014), which ties instruction fees to the value of the subject matter discernible from the pleadings or judgment. It relies on the decisions in *Joreth Ltd v Kigano & Another* [2002] E.A. 92, for the principle that a taxing officer must consider complexity, importance, time, research, and skill expended. The Applicant contends that the Taxing Officer failed to consider the Kshs. 445 million value, instead relying on the Kshs. 500,000 award, which resulted in a manifestly low figure. It argues that the Reference was properly filed within time after receipt of reasons and urges the Court to re-tax or remit the Bill.
7. The Plaintiff/Respondent, on its part, anchors its case on Paragraph 11(1) and (2) of the Advocates (Remuneration) Order and the decisions in *Ngomeni Swimmers Ltd v Zedi Ahmed Said & 9 Others* (ELC Malindi Case No. 15 of 2010, affirming that a reference filed outside the 14-day statutory period without an order enlarging time is incompetent. It submits that the notice of objection was lodged nearly two months late and that the Deputy Registrar lacked jurisdiction to extend time. Consequently, this Court lacks jurisdiction to entertain the Reference.

D. Analysis and Determination

8. Having carefully considered the two applications, the affidavits on record, and the written submissions of both parties, the Court is of the view that one central question underlies this entire dispute: whether the 2nd Defendant's Reference dated 24th April 2025 was competently filed in accordance with



Paragraph 11 of the Advocates (Remuneration) Order, 2014, and if so, whether the Court should interfere with the decision of the Taxing Officer. However, before delving into the substance of the taxation, it is necessary to first determine the issue of timeliness and jurisdiction, since the Plaintiff's application raises a preliminary question that strikes at the heart of the Court's power to entertain the Reference.

9. It is not in dispute that the ruling on taxation was delivered by the Taxing Officer, Hon. T.E. Marienga, on 19th December 2024. The 2nd Defendant's letter requesting reasons is dated 26th February 2025 and bears a registry endorsement of 14th April 2025, while the Reference itself was filed on 24th April 2025. The question is whether these steps complied with the timelines prescribed under Paragraph 11 of the Advocates (Remuneration) Order.
10. Paragraph 11(1) expressly provides that any party objecting to the decision of a taxing officer "..... may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects." Paragraph 11(2) then allows the taxing officer to provide reasons and for the objector to file a reference within fourteen days of receiving those reasons. Crucially, Paragraph 11(4) vests the power to enlarge the time fixed under subparagraphs (1) and (2) in the High Court (and by extension, this Court).
11. The procedural scheme envisaged under Paragraph 11 is therefore sequential and mandatory. The first step filing a notice of objection within fourteen days is the foundation upon which the subsequent steps rest. Without that initial compliance, or an express order enlarging time, the jurisdiction of this Court to entertain a Reference simply does not arise.
12. This principle has been reaffirmed in numerous authorities, including *Ngomeni Swimmers Ltd v Zedi Ahmed Said & 9 Others* (ELC Malindi Case No. 15 of 2010, E.K. Makori J., 2025), where the Court emphasized that time under Paragraph 11 runs from the date of the ruling on taxation and may only be extended upon a formal application for enlargement.
13. Applying that framework to the present case, it is clear beyond doubt that the 2nd Defendant did not lodge its notice of objection within the statutory fourteen-day window. The taxation ruling was delivered on 19th December 2024, meaning that any objection ought to have been filed by early January 2025 at the latest.
14. The 2nd Defendant's letter dated 26th February 2025, was well outside that period. There is also no record or evidence of any application for enlargement of time having been made under Paragraph 11(4) before the filing of the Reference. The 2nd Defendant's submission that the Reference was filed within fourteen days of receiving the Taxing Officer's reasons does not cure the earlier default, for it presupposes valid initiation of the process within time which is absent here. The entire chain of jurisdiction under Paragraph 11 was thus broken at inception.
15. The Court must therefore determine whether, notwithstanding that procedural defect, it can invoke its inherent powers to salvage the Reference. Jurisprudence on this issue has been consistent: time limits under Paragraph 11(1) are not mere technicalities but jurisdictional prerequisites. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, the Court of Appeal underscored that jurisdiction is everything, and without it, a court must down its tools. The timelines set under Paragraph 11 serve an important purpose ensuring finality in the taxation process and protecting parties who have obtained certified costs from undue delay. To excuse a party who files a notice of objection several months after taxation, without seeking an enlargement of time, would render the statutory framework nugatory.



16. Even if this Court were to overlook the procedural infraction and consider the matter on its merits (which it cannot do without jurisdiction), the Court is satisfied from the record that the Taxing Officer properly exercised her discretion. The decision reflects consideration of the guiding factors in *Joreth Ltd v Kigano & Another* [2002] E.A. 92 and *Premchand Raichand Ltd v Quarry Services of East Africa Ltd* [1972] E.A. 162, particularly the nature and importance of the matter, the interest of the parties, the amount involved, the time taken, and the general conduct of the case. The Taxing Officer correctly identified the award of Kshs. 500,000 as the quantifiable monetary subject for taxation, the judgment having made no finding on the alleged Kshs. 445 million property value. The approach taken cannot, therefore, be said to have been arbitrary or capricious.
17. Having found that the Reference was filed out of time and without leave, this Court is deprived of jurisdiction to entertain it, and that finding alone is dispositive of both applications. It follows that the Plaintiff's Notice of Motion dated 9th May 2025, which seeks to strike out the Reference, is well founded, and the 2nd Defendant's Chamber Summons dated 24th April 2025 must fail.
18. In the result, the Court finds that the Reference is incompetent and that the Taxing Officer's ruling of 19th December 2024 stands undisturbed.

Disposition

19. In view of the findings and analysis above, the Court is satisfied that the 2nd Defendant's Reference was not filed in compliance with the mandatory provisions of Paragraph 11(1) and (2) of the Advocates (Remuneration) Order, 2014, and that no valid application for enlargement of time was ever made. The procedural defect goes to the root of jurisdiction and renders the Reference incompetent and unsustainable before this Court.
20. Accordingly, the Court makes the following final orders:
 - a. The Plaintiff's Notice of Motion dated 9th May 2025 is hereby allowed.
 - b. The 2nd Defendant's Chamber Summons dated 24th April 2025 (Reference) is struck out in its entirety for being filed out of time and without leave of the Court as required under Paragraph 11(4) of the Advocates (Remuneration) Order.
 - c. The Taxing Officer's Ruling delivered on 19th December 2024 and the Certificate of Taxation issued thereunder remain valid and undisturbed.
 - d. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 4TH DAY OF NOVEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Sumba for the Plaintiff

Mr. Mwangi H/B for Gathoni for the 1st Defendant

Mr. Adier H/B for Bulle for the 2nd Defendant

N/A for the Interested Party



Philomena W. Court Assistant

