



Cherotich (Donee) (Suing on Behalf of Edwin Kabuiywa Mamit) v Dc Ngeno & Company Advocates (Environment and Land Miscellaneous Application E013 of 2025) [2025] KEELC 7708 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7708 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E013 OF 2025
LA OMOLLO, J
NOVEMBER 6, 2025

BETWEEN

ROSELINE CHEROTICH (DONEE) APPLICANT
SUING ON BEHALF OF EDWIN KABUIYWA MAMIT

AND

DC NGENO & COMPANY ADVOCATES RESPONDENT

RULING

Introduction

1. This ruling is in respect of the Applicant's Chamber Summons application dated 22nd May, 2025. It is expressed to be brought under Sections 3A & 89 of the *Civil Procedure Act*, Rule 11(2) of the Advocates Remuneration Order and Schedule 6 of the Advocates (Remuneration) Order 2014.
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the entire decision of the Taxing Master, FM Nyakundi dated 29.04.2025 in the Kericho Chief Magistrate Misc. Application No. E001 of 2025, DC Ngeno & Company Advocates versus Roseline Cherotich be set aside and taxed or assessed afresh by this Honourable Court from Item No. 1 to Item No. 70.
 - d. That the costs of this application be provided.
3. The application is based on the grounds on its face and the supporting affidavit of Roseline Cherotich sworn on 22nd May, 2025.



Factual background.

4. The application under consideration first came up for hearing on 26th May, 2025. The Court issued directions that it be served upon the Respondent and be heard by way of written submissions.
5. It was mentioned on 14th July, 2025 and reserved for ruling.

The Applicant's Contention.

6. The Applicant contends that she was the Respondent in Kericho CM Misc Application No. E001 of 2025 DC Ngeno & Company Advocates versus Roseline Cherotich.
7. The Applicant also contends that the Taxing Officer vide the ruling delivered on 29th April, 2025 awarded the Respondent kshs. 1,560,320/= as costs which were punitive and excessive.
8. The Applicant further contends that she was aggrieved by the said ruling and she wrote the letter dated 8th May, 2025 requesting for reasons for the decision as required under Rule 11(2) of the Advocates Remuneration Order.
9. It is her contention that the issues in dispute were not with respect to the entire parcel of land which measured 59 acres and valued at Kshs. 41,700,000 as per the valuation report. She goes on to state that the Taxing Officer stated in his ruling that the value of the subject matter was Kshs. 49,000,000/=.
10. It is also her contention that the Respondent failed to attach documents in support of the costs sought for under item No's 12, 14, 20, 27, 30, 36, 39, 42, 66, 67, 68 and 69 of its bill of costs and goes on to state that the said items ought to have been taxed off.
11. It is further her contention that the Taxing Officer failed to apply and comply with the cardinal principles which were essential in guiding him while taxing the advocate-client bill of costs.
12. She contends that she is advised by her advocates on record that item No. 4 is not provided for under the Advocates Remuneration Order while item No's 5 & 6 ought to be covered under Instruction fees.
13. She further contends that the Taxing Officer did not consider the Respondent's (sic) Replying Affidavit sworn on 6th February, 2025 and submissions dated 19th March, 2025.
14. It is her contention that the Taxing Officer erred in awarding the Respondent getting up fees and yet the matter did not proceed for hearing.
15. It is also her contention that item No. 3 was taxed at Kshs. 7,000 and yet it ought to have been covered under instruction fees. She explains that item No. 3 was with respect to attendance to the client to take instructions and goes on to state that the Taxing Officer did not give any reason for awarding the said sum.
16. It is further her contention that the Taxing Officer erred in taxing item No. 4 at Kshs. 102,250/= and yet the said amount is not provided for under the Advocates Remuneration Order.
17. She contends that item No. 64 is with respect to attendance in Court on 25th October, 2024 and goes on to state that the said item was taxed at Kshs. 7,700/= and yet the said matter was not listed before Court that day.
18. She also contends that the Taxing Officer stated that the matter had been in Court since the year 1997 and yet the suit was filed in the year 2021. She goes on to state that the matter has never proceeded for hearing and had a hearing date for 23rd September, 2025.



19. She further contends that the amounts taxed are inordinately high and do not reconcile with the total amount taxed and declared at the end of the ruling.
20. She ends her deposition by stating that the said discrepancy raises concerns of mathematical errors and/or misapplication of amounts which directly affect the integrity of the ruling.
21. The Respondent did not file any response to the application.

Issues for Determination.

22. The Applicant filed her submissions on 3rd July, 2025 while the Respondent had filed its submissions on 17th June, 2025.
23. The Applicant submits on the following issues;
 - a. Whether the reference adheres to the provision of Paragraph 11 of the Advocates Remuneration Order and therefore is merited. (sic)
 - b. Whether the Taxing Officer erred in principle while taxing the bill of costs.
24. The Applicant relies on Paragraph 11(1) and (2) of the Advocates Remuneration Order, the judicial decision of Michael Bett Siror and Betham Investment Ltd Veronicah Chemjo (sic) [2023] eKLR and submits that after the Taxing Officer delivered his decision, she filed a Notice of Objection within fourteen days as required.
25. The Applicant also submits that the Taxing Officer did not respond to the Notice of Objection which led to the filing of the present reference.
26. The Applicant further submits that contrary to the submissions by the Respondent, she filed the reference within the required period of thirty days as she did not receive any reasons from the Taxing Officer and adds that the reference was filed on 23rd May, 2025(sic).
27. On the second issue, the Applicant relies on the judicial decisions of Premchand Raichand Limited & another vs Quarry Services of East Africa Limited and another [1972] E.A 162, First American Bank of Kenya vs Shah and Others (2002) EA 64, Joreth Ltd vs Kigano and Associates (2002) 1 EA 92, Zadok Furniture Systems Limited vs Lubullellah & Associates Advocates and while reiterating her averments in her affidavit in support of the application, submits that the Taxing Officer erred in taxing the instruction fees.
28. The Applicant submits that the Taxing Officer misdirected himself by assessing the instruction fees based on the value of Kshs. 49,000,000/= and yet the value of the subject matter is Kshs. 41,700,000/=.
29. The Applicant also submits that the area in dispute measures 6.69 acres whose value is approximately Kshs. 4,728,355.93/=. The Applicant relies on the judicial decisions of Kamunyori & Co. Advocates vs Development Bank of Kenya Limited [2015] eKLR, Kenya Ports Authority Pension Scheme & Others vs Kinyua Kamundi & Ano [2022] eKLR in support of her submissions.
30. The Applicant relies on the judicial decision of Vipul Premchand Haria vs Kilonzo & Company Advocates [2020] eKLR and reiterates that the Taxing Officer ought not to have awarded getting up fees.
31. The Applicant submits that the Taxing Officer taxed the getting up fees at Kshs. 333,000/= and yet the matter did not proceed for hearing.



32. The Applicant relies on Schedule 6 Paragraph 2 (ii) of the Advocates Remuneration Order and submits that the matter did not proceed for hearing because the Defendant in the said matter did not deny liability.
33. The Applicant relies on the judicial decision of Kagwimi Kang'ethe & Co. Advocates versus Nairobi Mamba Village Limited (citation not given) and reiterates that there is a discrepancy between the amounts taxed per item and the total amount taxed.
34. The Applicant concludes her submissions by urging the Court to allow the application as prayed.
35. The Respondent submits that he represented the Applicant in Kericho Environment and Land Court Case No. E019 of 2021.
36. The Respondent also submits that the said matter is pending determination and it involves the parcel of land known as Kericho/Kipkelion/ Barsele Block 2 (Kaplabia) 3 valued at kshs. 41,700,000/=.
37. The Respondent also submits that they were unable to agree on their Advocate-Client fees which led to the filing of the bill of costs dated 5th December, 2024 which was taxed at kshs. 1,564,320/= on 29th April, 2025.
38. The Respondent relies on Paragraph 11 of the Advocates Remuneration Order and reiterates that the Taxing Officer delivered his decision on 29th April, 2025.
39. The Respondent also submits that the present reference was filed on 27th May, 2025 (sic) which was not within the prescribed period.
40. The Respondent further submits that no explanation has been given for the delay of more than fifteen days and neither did the Applicant seek extension of time within which to file the reference.
41. It is the Respondent's submissions that the Court should on this basis find that the reference was filed out of time. The Respondent relies on the judicial decision of Biegon v Tonui (Reference E032 of 2024) [2025] KEHC 3847 (KLR) (27 March 2025) (Ruling) in support of its submissions.
42. It is also the Respondent's submissions that even though the Applicant has filed the reference out of time, it will nonetheless submit on the issues raised.
43. It is further the Respondent's submissions that the value of the subject matter of the suit can be ascertained from the valuation report that it annexed to its supporting Affidavit that was filed in Kericho CM Misc Application No. E001 of 2025 DC Ngeno & Company Advocates vs Roseline Cherotich.
44. The Respondent submits that the Taxing Officer acknowledged and considered the complexity of the matter and observed that it had been pending in Court since the year 1997.
45. The Respondent relies on Schedule 6 (b) of the Advocates Remuneration Order and submits that the Taxing Officer properly exercised his discretion in taxing the instruction fees at Kshs. 1,000,000.
46. The Respondent relies on the judicial decisions of Joreth Ltd v Kigano & Associates [2002] eKLR and reiterates that the Taxing Officer did not err in taxing the instruction fees given that the matter had been pending since the year 1997.
47. It is the Respondent's submissions that the Taxing Officer did not misdirect himself and the Court should therefore not interfere with his discretionary assessment under this head.



48. The Respondent relies on the judicial decisions of JMM v GNJ (Civil Appeal (Application) E014 of 2022) [2023] KECA 99 (KLR) (3 February 2023) (Ruling), Donald O Raballa v Judicial Service Commission & another [2018] eKLR and submits that the Applicant failed to demonstrate any factors that would enable this Court set aside the findings of the Taxing Officer's decision.
49. The Respondent also submits that the Taxing Officer taxed item No. 2 on getting up fees at kshs. 333,000.
50. The Respondent further submits that the said amount was correctly taxed as it was a third of kshs. 1,000,000/= that was awarded as instruction fees. The Respondent relies on Schedule 6 paragraph 2 of the Advocates Remuneration Order in support of its submissions.
51. It is the Respondent's submissions that the Taxing Officer took into consideration Part B of Schedule 6 of the Advocates Remuneration Order and awarded the sum of Kshs. 300,000/=.
52. It is also the Respondent's submissions that the Taxing Officer ought to have awarded the sum of Kshs. 500,000/= being 50% of the instruction fees which was assessed at kshs. 1,000,000/=.
53. The Respondent relies on the judicial decision of Otieno, Ragot & Company Advocates v Kenya Airports Authority [2015] eKLR and further submits that Part B of Schedule 6 of the Advocates Remuneration Order is couched in mandatory terms and the Taxing Officer ought to have awarded the sum of Kshs. 500,000/=.
54. The Respondent relies on the judicial decisions of Kamunyori & Company Advocates v Development Bank of Kenya Ltd [2006] eKLR, First American Bank of Kenya v Shah and Others [2002] eKLR and submits that all the other items in its bill of costs were drawn to scale and ought to have been awarded as such.
55. The Respondent relies on the judicial decision of Pyramid Motors Limited vs Langata Gardens Limited [2015] eKLR as was cited in Shreeji Enterprises Limited vs John Munga Chai [2022] eKLR and submits that the Taxing Officer erred in failing to award VAT which is 16% of the aggregate fees awarded to the Respondent.
56. The Respondent concludes its submissions by stating that it is entitled to kshs. 1,564,320/=.

Analysis and Determination.

57. Having considered the Applicant's application and the rival submissions. It is my view that the following issues arise for determination;
 - a. Whether the Taxing Officer's decision delivered on 29th April, 2025 should be set aside.
 - b. Who should bear costs of the application.
58. The principles for setting aside the decisions of Taxing Officers were established by the Court of Appeal in the judicial decision of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR. The Court held as follows;

“On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”



59. In *Kamunyori & Company Advocates v Development Bank of Kenya Limited* [2015] Civil Appeal 206 of 2006, the Court of Appeal gave instances where discretion cannot be deemed to have been exercised properly as follows;

“...Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer’s decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside.” (Emphasis mine)

A. Whether the Taxing Officer’s decision delivered on 29th April, 2025 should be set aside.

60. The Applicant is seeking that the Court sets aside the decision of the Taxing Officer delivered on 29th April, 2025 on the ground that the amounts awarded were manifestly high.
61. The Applicant contends that the Taxing Officer erred in stating that the value of the subject matter was Kshs. 49,000,000/= and yet the value of the subject matter was Kshs. 41,700,000/=.
62. The Applicant also contends that the Taxing Officer erred in taxing item No’s 12, 14, 20, 27, 30, 36, 39, 42, 66, 67, 68 and 69 of the Respondent’s bill of costs as no documents in support of the said items were attached.
63. The Applicant further contends that Item No. 4 is not provided for under the Advocates Remuneration Order and item No’s 5 & 6 ought to have been covered under item No. 1 on instruction fees.
64. The Applicant contends that the Taxing Officer also erred in the taxation of item No’s 3, 4 and 64 and submits that it was not true that the matter has been pending since the year 1997 as stated by the Taxing Officer.
65. In response, the Respondent submits that the present reference was filed out of time.
66. The Respondent also submits that the Taxing Officer did not err in taxing the instruction fees at Kshs. 1,000,000/= and the getting up fees at kshs. 333,000/=.
67. The Respondent further submits that the Taxing Officer ought to have awarded it Kshs. 500,000/= being 50% of the instruction fee.
68. It is the Respondent’s submissions that the Taxing Officer ought to have awarded it VAT being 16% of the aggregate fees awarded to the Respondent.
69. Paragraph 11 of the Advocates Remuneration Order provides as follows;
 - “ 1) Should any party object to the decision of the Taxing Officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation which he 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.

- 3) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subparagraph (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.
- 4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have expired."

70. Where a party is dissatisfied with the decision of a Taxing Officer, the said party has to give a Notice of Objection itemizing the items objected to especially where the Taxing Officer has not given any reasons for the decision.
71. A perusal of the Court record shows that on 9th May, 2025 the Applicant filed a Notice of Objection to the Taxing Officer's decision delivered on 29th April, 2025.
72. As submitted by the Respondent, the Applicant filed the present reference on 22nd May, 2025 which was twenty-two days after the Taxing Officer delivered his ruling.
73. In the judicial decision of *Evans Thiga Gaturu, Advocate V Kenya Commercial Bank Limited [2012] KEHC 4274 (KLR)* the Court held as follows;

"In the present case, the ruling on taxation was made on 6th July 2011. If the client considered the said decision to contain the reasons, he could file the reference within 14 days from the date thereof. If, on the other hand, he was of the view that there were no reasons contained in the decision, he could request for the same in writing, in which case, he would be bound to wait for the same. If, however, at a later stage he decided to prefer the reference notwithstanding the failure by the Taxing Master, after the lapse of the 14 day period, it is my view that he would be bound to apply for extension of time under paragraph 11(4) of the Remuneration Order, in which case one of the grounds if not the only ground would be the failure by the Taxing Master to furnish him with the reasons which, according to the decision in *Kipkorir, Titoo & Kiara Advocates (ibid)*, is a ground for allowing a reference. However, a party would not be entitled to an indefinite period within which to prefer a reference simply because the reasons were not given if even by the time of making the same reference, the said reasons have not been furnished.

I, accordingly, find that as the client filed the reference outside the 14 days of the delivery of the decision and before being furnished with the reasons, the reference is incompetent for being out of time and/or being prematurely instituted. I accordingly strike out the Chamber Summons dated 18th January, 2012 but make no order as to costs since the problem has been partly caused by inaction on the part of the Court." (Emphasis mine)

74. In the above cited judicial decision, the Court held that where a Taxing Officer's decision contains no reasons and where a party seeks reasons and none are supplied, if the said party intends to file a reference after the lapse of fourteen days, then the said party has to seek extension of time.



75. In the present matter, the Taxing Officer's decision was delivered on 29th April, 2025. From the face of it, it is evident that it does not contain any reasons.
76. It is also evident that the Applicant sought reasons on 9th May, 2025. The Applicant contends that the Taxing Officer did not supply any reasons.
77. The present reference was filed twenty-two days after the Taxing Officer delivered his ruling.
78. The Court of Appeal in *Mario Rossi v Salama Beach Hotel Limited* [2018] eKLR while considering whether a reference filed out of time is a nullity within the provisions of Rule 55(1)(b) of the Court of Appeal Rules stated thus;
- “It is common ground that time lines fixed by Statute or subsidiary legislation made thereunder are of essence since they are designed to achieve an intended purpose and outcome, that is, not only do they ensure procedural order and certainty within the judicial system, but also advance a just, uniform and efficient dispensation of justice. It is for that reason that Courts advocate for strict compliance with such time lines.”
79. In *Evans Thiga Gaturu, Advocate V Kenya Commercial Bank Limited* (supra) cited above, the Court held that a reference filed out of time and without leave of Court is not competent and ought to be struck out.
80. The present reference was filed on 22nd May, 2025. It is evidently filed out of time. The Applicant neither gave reasons for the delay nor sought to enlarge time as provided for under Paragraph 11(4) of the Advocates Remuneration Order.

B. Who should bear costs of the application?

81. The general rule is that costs follow the event. This is in accordance with the Provisions of Section 27 of the *Civil Procedure Act*. (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

82. Taking the foregoing into consideration, I find that the Applicant's reference dated 22nd May, 2025 is not competent having been filed out of time and without leave. Consequently, it is hereby struck out with costs.
83. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 6TH DAY OF NOVEMBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Miss Chebet for Korir for the Applicant.

Miss Cherotich for Ochieng for the Respondent.

Court Assistant; Mr. Joseph Makori.

