

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC MISCELLANEOUS (REFERENCE) NO. E006 OF 2024**

MARY WAMBUI SIRONGA RUPANDE

MARY NJERI KARUGA

Suing as -

The administrators of the ESTATE OF THE LATE -

JOSEPH

SIRONGA

RUPANDE.....CLIENT/APPLICANT

AND

TALITI

COLLINS

ADVOCATES.....ADVOCATE/RESPONDENT

*(Arising from the ruling on Taxation in Miscellaneous ELC No. 176 of 2018(TAXATION) by the Honourable Jane Kamau delivered on 19<sup>th</sup> January, 2024 being the Advocate Client Bill of Costs)*

BETWEEN

TALITI

COLLINS

ADVOCATES.....ADVOCATE/APPLICANT

MARY WAMBUI SIRONGA RUPANDE

MARY NJERI KARUGA

Suing as -

The Administrates of the ESTATE OF THE LATE -

JOSEPH

SIRONGA

RUPANDE.....CLIENT/RESPONDENT

**FOR SERVICES RENDERED IN KAJIADO ELC CASE NO. 176  
OF 2018**

MARY WAMBUI SIRONGA RUPANDE

MARY NJERI KARUGA

Suing as -

The Administrators of the ESTATE OF THE LATE -

JOSEPH SIRONGA RUPANDE.....

....PLAINTIFFS

-VERSUS-

THE COUNTY GOVERNMENT OF KAJIADO.....

.....RESPONDENT

**RULING**

***(In respect of the chamber summons dated 17<sup>th</sup> September 2024  
seeking to set aside the decision of the Taxing Master delivered on  
19<sup>th</sup> January 2024)***

**Introduction**

1. The chamber summons under consideration is brought under the provisions of rule 11 of the Advocates Remuneration Order, 2014. It seeks to set aside the decision of the Taxing Master, Hon. Jane Kamau (Senior Deputy Registrar), delivered on 19<sup>th</sup> January 2024 awarding the Applicant Kshs. 3,398,220/- as taxed costs.
2. The application is premised on the grounds on the face of it and is further supported by the affidavit of Dorcus Cheptoo sworn on

16<sup>th</sup> February 2024. The Applicants asserts that the Taxing Master erred in principle in finding that the Bill of Costs was unopposed as filed and by failing to take into account the Applicants' notice of preliminary objection dated 22<sup>nd</sup> June 2023 which addressed Kajjado ELC Miscellaneous 176 of 2018 and Kajjado ELC Miscellaneous 177 of 2018 and which was brought to the attention of the Taxing Master.

3. The deponent of the supporting affidavit at paragraph 3 of the affidavit deposes that the Applicants had filed a notice of preliminary objection to the Advocate-client bill of costs dated 19<sup>th</sup> April 2023 which she has attached as an annexure marked 'DCW1'. The gist of the preliminary objection was that the Taxing Master lacked the jurisdiction under **Section 45(6) of the Advocates Act**. The deponent asserts that there existed a valid and binding legal agreement between the Advocate and the clients; the import of which was that the Advocate was therefore barred from presenting a Bill of Costs for taxation.

4. The deponent has attached what she refers to as the agreement for legal fees and marked it as 'DCW3'. The said agreement is between Stephen Saibulu Sironga and the Administratrices of the

Estate of the Late Joseph Sironga Rupande witnessed by Taliti Collins Advocate.

5. The deponent faults the Taxing Master for awarding the Advocate Kshs. 1,500,000/- as instruction fees whereas the legal agreement fees had provided for instruction fees of Kshs. 500,000/-. She further avers that the Taxing Master erred in principle by failing to consider that no pleadings were filed in the matter where the Advocate had represented the Applicants as it was settled out of court, a consent entered and a decree issued.

**Response by the Advocate/Respondent.**

6. The application is opposed by the Advocate/Respondent vide the replying affidavit sworn on 20<sup>th</sup> November 2024 by Collins Taliti. The Advocate terms the Applicants' chamber summons application dated 17<sup>th</sup> September 2024 as untenable having been filed out of time and without leave of the court for enlargement of time under the provisions of rule 11 of the Advocates Remunerations Order.
7. The Advocate further asserts that there was no legal fees agreement between him and the Applicants and the Taxing Master was therefore clothed with the jurisdiction to tax the

Advocate-Client Bill of Costs dated 19<sup>th</sup> April 2023 as she did. He insists that the Taxing Master correctly exercised her discretion in taxing the bill of costs dated 19<sup>th</sup> April 2023.

### **Further Affidavit on behalf of the Applicants**

8. The Applicants filed a further affidavit sworn by Mary Wangui Kimani, the Advocate for the Applicants sworn on 4<sup>th</sup> August 2025. The deponent states that the Applicants filed their application dated 17<sup>th</sup> September 2024 with leave of the court. She states that they had initially lodged the application dated 16<sup>th</sup> February 2024 but owing to an error in the captured party names, they sought leave of the court to put in an amended application which is the application dated 17<sup>th</sup> September 2024.
9. The deponent states that the delay, if any, was procedural and not prejudicial. She avers that even if the court finds that there was any procedural lapse, it retains the inherent jurisdiction under **Sections 3A and 95 of the Civil Procedure Act** to admit the reference out of time in the interest of justice.
10. The deponent insists that there was a valid and legal binding agreement between the Advocate and the clients dated October 2018 stipulating the legal fees payable. Therefore, the Taxing

Master lacked the jurisdiction to tax the Bill of Costs presented by the Advocate.

11. The deponent further reiterated that the Bill of Costs was opposed by way of a notice of preliminary objection dated 22<sup>nd</sup> June 2023 together with a replying affidavit of even date and later by way of submissions which the Taxing Master failed to consider terming the bill of costs unopposed.
12. The deponent asserts that the figure of Kshs. 3,398,220/- arrived at by the Taxing Master is manifestly excessive considering that the suit did not go to a full hearing. The Taxing Master fundamentally misdirected herself in law and fact by ignoring the binding legal agreement, treating the matter as contested litigation rather than one settled by consent and failing to consider the Applicants' preliminary objection and replying affidavit on record thereby misapplying the principles guiding taxation of Advocate-Client costs.

**Directions**

13. The directions of the court were that the reference be canvassed by way of written submissions. Both sides complied

and filed their respective submissions which the court has had occasion to consider in writing this ruling.

**Issues for determination.**

14. In the court's considered view, the issues that arise for determination in this matter are;

***(a) Whether the reference by the Applicants is time-barred; consequently, whether the court is duly seized of the same.***

***(b) Whether there is an error of principle to justify the court's interference with the decision of the Taxing Master.***

***(c) What orders should issue on the costs of this reference.***

**Determination.**

***A. Whether the reference by the Applicants is time-barred; consequently whether this court is duly seized of the same.***

15. ***Rule 11 of the Advocates Remuneration Order*** makes provisions on the procedure for filing a reference against the decision of an officer 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 to 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 under subsection (2) may, with leave of the judge but not otherwise, appeal to the court of appeal.**
- 4) The High Court shall have the power in its discretion by order to enlarge the time fixed by such paragraph (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 already expired.***

16. The Applicants' reference against the decision of the taxing officer delivered on 19<sup>th</sup> January 2024 is by way of the amended Chamber Summons application dated 17<sup>th</sup> September 2024. The Amended Chambers Summons was filed 8 months after the delivery of the decision of the Taxing Officer. The Advocate/Respondent has submitted that for that reason, the reference is incompetent having been filed out of the prescribed time consequently ousting this court's jurisdiction to handle it.
17. The Applicants' explanation in both their further affidavit and submissions is that they initially filed an application dated 16<sup>th</sup> February 2024 but owing to an error in the names of the parties, they sought leave of the court to put in an amended application. That amended application is the Chamber Summons application dated 17<sup>th</sup> September 2024.
18. I have taken time to peruse the record of this court in a bid to understand the history of the matter. There is indeed on record a chamber summons dated 16<sup>th</sup> February 2024 filed by the Applicants but the Respondent therein is named as the County

Government of Kajiado. It bears a stamp indicating that it was received in court on 28<sup>th</sup> February 2024. The court filing receipt No. "FSBJ - 0027439" shows that the application was filed on 19<sup>th</sup> February 2024.

19. The said application dated 16<sup>th</sup> February 2024 was placed before Gicheru Judge on 29<sup>th</sup> February 2024. The Judge made an order that the application was not certified urgent and directed that it be served for hearing on 23<sup>rd</sup> May 2024.

20. On the date that the application came for hearing; 23<sup>rd</sup> May 2024, the Advocate for the Applicants made an oral application to be allowed to amend the application. The judge granted the Applicants leave to amend the chamber summons dated 16<sup>th</sup> February 2024. He further directed that the same be heard on 1<sup>st</sup> October 2024 but to be served within 30 days.

21. There are no proceedings for the 1<sup>st</sup> October 2024. The next time the matter was before the court was on 2<sup>nd</sup> December 2024. The court directed that the amended chamber summons dated 17<sup>th</sup> September 2024 be mentioned on 27<sup>th</sup> February 2025. The chambers summons dated 16<sup>th</sup> February 2024 was marked as withdrawn.

22. Though the Judge did not specify the time period within which the amendment was to be done, the direction that the amended chamber summons be served within 30 days meant that the amendment had to be within the 30 days. The Applicants however filed the amended chamber summons four months after the grant of leave to amend.

23. Under **rule 11 of the Advocates remuneration Order**, the filing of a reference is preceded by an objection, under sub-rule 1. However, there is consensus, as may be discerned from various decisions of the Superior Courts of this country, that where the reasons for the taxation are on the face of the impugned decision of the taxing officer, there is no need for further reasons.

24. I refer to the decision in **Ahmednasir -vs- National Bank of Kenya Limited (2006) IEA 5**, where the court held that;

***“Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of***

***receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek further reasons simply because of the unfortunate wording of sub rule (2) of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling”.***

25. Similarly, Odunga J (as he then was), in the case of **Evans Thiga Gaturu -vs-Kenya Commercial Bank Limited (2012) eKLR**, stated that;

***“Where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to filing of the reference since that insufficiency may be the very reasons for preferring a reference.”***

26. That said, I will go back to the question whether the Applicants’ reference was filed within the stipulated timelines under **rule 11**

**of the Advocates Remuneration Order.** The Applicants' position in answering that question, is that the court should look at and consider the application dated 16<sup>th</sup> February 2024.

27. As I have already stated, the said application dated 16<sup>th</sup> February 2024 was filed on 19<sup>th</sup> February 2024, the 30<sup>th</sup> day after the impugned decision of the taxing officer. There is no evidence on record that the Applicants sought enlargement of time in accordance with the provisions of **rule 11 (4) of the Advocates Remunerations Order.**

28. I too need to add that the Applicants did not file an objection in accordance with the provisions of sub-rule 1 of the rule 11 of the Advocates Remuneration Order prior to filing the reference.

29. From the foregoing, even the application dated 16<sup>th</sup> February 2024 was filed out of time and without leave of court. Further, the filing of the application was not preceded by the mandatory objection as contemplated in rule 11 of the Advocates Remuneration Order.

30. In the case of **Twiga Motors Limited -vs- Hon. Dalmas Otieno Anyango (2015) eKLR**, the court was emphatic that;

***“The time limits in rule 11 of the Advocates remunerations Order have been put there for a reason. Failure to adhere to the said timelines would mean that the application would be rendered incompetent in the first instance.”***

31. The Court of Appeal in the case of ***Machira & Company Advocates -vs- Arthur K. Magugu (2012) eKLR***, upheld a decision by Ringera J (as he then was) striking out a reference for incompetence on the basis that the notice of objection issued prior to its filing did not comply with the provisions of sub rule 1. The ***Court of Appeal*** stated that;

***“Sub-rule (1) requires the party objecting “to give notice in writing within 14 days of the items of taxation to which he objects”. As the trial Judge correctly found, the Respondents’ notice of 1<sup>st</sup> August 2001 did not comply with the provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.***

***As we have pointed out, the intendment of the Rules committee in providing for objections to bills of costs to be dealt with by references and not appeal or review was expedition. If vague notices are given taxing officers might be forced to give the reasons for their taxation of each item including even those not objected to. That would off course, defeat the purpose of that expeditious procedure.***

***Having not specified the items objected to and sought reasons for their taxation, the Respondents' notice of 1<sup>st</sup> August 2001 was fatally defective. It follows that the Respondents' reference based on it was incompetent and we agree with counsel for the appellant that it should have been struck out. Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master's decision was received is immaterial."***

32. The Applicants in their further affidavit stated that even if their reference was defective the court retains the inherent jurisdiction under **Section 3A and 95 of the Civil Procedure Act** to admit the reference out of time in the interests of justice. That statement is incorrect in law. I say so for two reasons.
33. The 1<sup>st</sup> reason is that the Advocates Remunerations Order is a complete code on its own. The provisions of the Civil Procedure Act have no place in matters taxation.
34. The 2<sup>nd</sup> reason is that the court has no authority to act suo moto and enlarge time or as the Applicants state to admit the reference of time. The court must be properly moved under **sub-rule 4 of rule 11** of the **Advocates Remuneration Order**, by Chamber summons prior to the filing of the reference; not after its filing.
35. I need to add that the Applicants' reference was also incompetent on the basis that they had not lodged any objection under sub-rule 1 of the Advocates Remuneration Order; leave alone a defective one, prior to filing the reference.
36. The upshot is that the Applicants' reference is incompetent for failure to comply with the provisions of Rule 11 of the

Advocates Remuneration Order. The amendment of the chamber summons dated 16<sup>th</sup> February 2024 by the amended chamber summons dated 17<sup>th</sup> September 2024 was in vain. Having come to this conclusion, I find no use in discussing the other issue earlier identified.

37. Consequently, the Applicants' reference/amended chamber summons application, amended on 17<sup>th</sup> September 2024, is struck out with costs to the Advocate/Respondent.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 13<sup>th</sup> Day of November 2025.**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Ms. Githui h/b for Ms. Wambui Kimani for the Applicants

Ms. Mudeizi for the Advocate/Respondent

Court Assistant: Mpoye

**M.D. MWANGI**  
**JUDGE**

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