

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
COMM. CASE NO. E145 OF 2021

BETWEEN

**CHRISTOPHER O. KENYARIRI t/a
KENYARIRI & ASSOCIATES
ADVOCATES.....PLAINTIFF**

AND

**FIRST COMMUNITY BANK
LIMITED.....DEFENDANT**

RULING

INTRODUCTION AND BACKGROUND

1. It is common ground that this suit was dismissed in a judgment dated 18th March 2024 and costs were awarded to the Defendant, who filed a Party & Party Bill of Costs, which was taxed by the Court's Deputy Registrar at Kshs.713,833/=. The Plaintiff was dissatisfied and filed a Reference against this taxation and on 13th February 2025, the reference was partially allowed and the Court reduced the instruction and getting-up fees to Kshs.330,000.00/=

and Kshs.110,000.00/= respectively but upheld the rest of the taxed costs.

2. The Plaintiff, through an application dated 14th February 2025, is now seeking a review of this ruling stating that there is an error apparent on the face of the record. The Defendant opposes the application through the replying affidavit of its Manager, Legal Services, CLARIS OGOMBO, sworn on 13th May 2025. The application has been canvassed by way of written submissions which are on record and I will be making relevant references to them in my analysis and determination below.

ANALYSIS AND DETERMINATION

3. I note that the Defendant has raised a technical and jurisdictional challenge on the application arguing that the Court lacks jurisdiction to entertain the same. It states that **Para. 11** of the ***Advocates Remuneration Order*** provides the clear and mandatory procedure for parties aggrieved by a taxing officer's decision or a judge's decision on a reference as **Para. 11(3)** states that any person aggrieved by the judge's decision on a reference "*....may, with the leave of the judge but not otherwise, appeal to the Court of Appeal*". The Defendant cites various decisions including **Kisia v Lubulella & Associates Advocates**

[2022] KEHC 12011 (KLR) to assert that the **Order**, which governs taxation matters, provides no option for review or setting aside of a judge's ruling on a reference. That once the Court rules on a Reference, its duty is finalized and it becomes *functus officio* and that the Plaintiff's only option was to seek leave to appeal to the Court of Appeal, which they did not do.

4. In ***Kisia(supra)*** the Court (Mulwa J.,) held as follows:

19. On taxation matters, the Court draws its jurisdiction from the Advocates Act and the Advocates Remuneration Order and Rules thereunder; in particular paragraph 11 of the Advocates Remuneration Order allows the Court to interfere with taxation matters.

.....

21. The applicant by the instant application seeks for an order of review to set aside the Court's orders issued on the May 5, 2022 dismissing its reference. The applicant did not obtain leave of the Court to appeal as contemplated under paragraph 11(3) but opted to apply for an order of review and or setting aside of the ruling, and to grant leave to the applicant to file a notice of objection out of time, on the presumption that the first prayer for and setting aside of the Court orders would be granted.

22. Essentially, the applicant has invoked the provisions of order 45 rule 1 of the Civil Procedure Rules on review of orders/judgments though I think he deliberately omitted to

cite the said order, yet substantively submitted on the same.

In the case of Otieno Ragot & Company Advocates (supra), the Court acknowledged that matters of taxations are guided by the Advocates Act, but further rendered that the Court may invoke the provisions of the Civil Procedure Rules so long as they are not inconsistent with the provisions and objects of the Advocates Remuneration order.

.....

28. I agree with the respondent's submission that, paragraph 11(3) of the Advocates Remuneration Order left no option to an applicant dissatisfied with the Court's dismissal of its reference to do anything more; may it be setting aside, or review, save with leave of the Court, and no otherwise, to appeal to the Court of Appeal.

.....

31. As far as taxation matters are concerned, once the Court has rendered itself on a reference, its duty thereof is finalized, save for correction of clerical errors and therefore becomes functus officio. By dint of paragraph 11(3) of the Advocates Remuneration Order, no further action is available to the Court, including review or setting aside; which would in effect be going back to interrogate the merits of the application.

5. I am persuaded with the aforementioned decision that indeed, the **Advocates Remuneration Order**, being a complete code on matters taxation, provides no mechanism for the review of a

judge's ruling on a reference. The language of **Para. 11(3)** prescribes the only available remedy for a party dissatisfied with this Court's ruling on a reference is an appeal to the Court of Appeal, subject to obtaining leave. This Court, having rendered its decision on 13th February 2025, on the Reference, is now *functus officio* with respect to that specific determination.

6. The Plaintiff's reliance on **Order 45** of the **Civil Procedure Rules** cannot circumvent the specific and exclusive procedure laid out in the **Order** as **Order 45** is not applicable to taxation proceedings governed by a specialized statute, that is the **Advocates Act** and the **Order**.
7. Consequently, this Court finds that the application for review is incompetent as it seeks to invoke a jurisdiction not conferred upon the Court by the governing legislation.

CONCLUSION AND DISPOSITION

8. In conclusion, I find and hold that the application dated 14th February 2025 is devoid of merit for want of jurisdiction and it is hereby dismissed with costs assessed at Kshs.20,000.00/=.

**DATED SIGNED and DELIVERED virtually at NAIROBI this
6TH DAY of NOVEMBER 2025**

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J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF

1. Dr. Kenyariri for the Applicant/Advocate.
2. Ms. Faheema holding brief for Mr. Issa for the Respondent.
3. Amos- Court Assistant

ORIGINAL