

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMM. MISC NO. E392 OF 2025**

**YOUTH ENTERPRISE DEVELOPMENT FUND BOARD.....**  
**APPLICANT**

**-VERSUS-**

**CHASE BANK (K) LIMITED (In Liquidation).....1<sup>st</sup>**  
**RESPONDENT**

**QUORANDUM LIMITED.....2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

1. What is before this Court for determination are two applications both filed by the Applicant. This first one is a Chamber Summons Reference application filed on 15/4/2025 and amended on 16/5/2025 seeking to challenge the ruling on the taxation of the bill costs delivered on 1<sup>st</sup> April 2025 by Hon. C. Adisa.
2. The second application is a notice of motion application filed on 5<sup>th</sup> May 2025 seeking to stay the execution of the ruling of Hon Adisa issued on 1<sup>st</sup> April 2025 in ***HCCOMM No. E083 of***

**2021.** The two application are supported by the grounds set out therein and the supporting and further affidavits of JOSIAH MORIASI. Both applications are opposed and the directions were issued by the Court to file written submissions which I have carefully considered.

### **Analysis and Determination**

3. Upon perusal of the Court file, I note that the Applicant has filed two separate motions. One is a Reference application commenced by way of a Chamber Summons filed on 10<sup>th</sup> April 2025 and a Notice of Motion dated 5<sup>th</sup> May 2025.
4. The two set of applications are opposed and the Respondents have equally filed their replying affidavit in opposition thereto. The Court issued directions on the filing of submissions to the said application. I have perused the Court record. I note that while the Respondent has filed their written submissions to both the Chamber Summons Reference applications, the Applicant have only submitted on the Notice of Motion application seeking to stay the execution of the taxed costs.
5. I agree with the Respondent that the Advocates Remuneration Order does not envision the filing of a

separate motion for stay of execution pending appeal. In any event, it is trite that in an application of this nature where a party is seeking to stay execution must be ready and willing to make provisions for security of costs as set under Order 42 Rule 6(2) of the Civil Procedure Rules which provides as follows; -

**“(2) No order for stay of execution shall be made under subrule (1) unless—**

**(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and**

**(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”**

6. It is therefore my finding that while it is not necessary to file such an application as the orders sought would have adequately been sought under the Chamber Summons on the Reference challenging the Bill of Costs, the application having been so filed must be determined.

7. I have considered the said application and I note that the Bill of Costs was taxed at the sum of Kshs.4,012,330.52/= and is to be payable to the Respondent who is now a body under liquidation. The fears expressed by the Applicant that if these funds are paid and it is successful in setting aside the Reference application are unfounded as there is a liquidator in place mandated to manage the affairs of the Respondent, being the Kenya Depository Insurance Corporation KDC, which has capacity to refund any monies so paid out of the decision of the Taxing Master is reversed.
8. I have also noted that the Applicant has not in her application complied with Order 42 Rule 6 and has not offered any form of security to warrant the grant of orders of stay of execution sought herein. I therefore decline to allow the application as prayed. The same is dismissed with costs to the Respondents.
9. As regards the Reference the Court notes that while the Applicant has filed the same, they are yet to file their written submissions despite Courts directions to do so when they appeared before this Court on 1<sup>st</sup> September, 2025.

10. In their response the Respondents argue that the Chamber Summons Reference application is incompetent as the same has failed to disclose the error of principle committed by the Taxing Master in their assessment of the Bill of Costs. I also note that the Bill seeks to challenge all the items set out on the Bill but no reasons have been adduced to the Court as to why the said items are being challenged. Order 11(2) of the Advocates Remuneration Order provides as follows: -

**11. *Objection to decision on taxation and appeal to Court of Appeal***

***(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. It is therefore imperative that a challenge to taxation must demonstrate why the decision of the Taxing Master is being challenged and also identify the error of principle so committed in the process. It is therefore difficult for this

Court to interfere with the discretion of the Taxing Master without proper grounds being laid out. I agree with the Respondent that the Reference application as filed herein is incompetent and incapable being determined within the parameters set out by the law under the Advocates Remuneration Order.

12. In addition, I also note the argument that the Bill of Costs was filed by an Advocate who was not properly on record as they took over the matter post judgment and without leave of the Court. I agree with the position taken by the Respondents that such challenge should have first been made before the Taxing Master and a decision made during the taxation process. Where such a challenge was not made, this Court therefore cannot interfere with a process that proceeded with the concurrence of both parties. To me, it appears an afterthought and not a ground for challenge before the Court. In an event, the Court can only in Reference application, which ideally is an appeal against the taxation hereby, determine issues that were properly before the Taxing Master. New issues cannot be introduced at a determination of a Reference as this Court is not mandated

to delve into issues not first considered by the trial Court, that is the Taxing Master in this case. The said issue of proper representation by Counsel having not been placed before the Taxing Master during taxation cannot be introduced during the determination of the Reference as the same is not permitted by the Advocates Remunerations Order which is the law that is applicable in determining application of this nature.

13. I therefore find and hold that the Reference as filed is incompetent, having failed to disclose the error of principle committed by the Taxing Master in assessing the Bill of Costs placed before her for consideration. I decline to allow the said application dated 5<sup>th</sup> April 2025 and amended on 16<sup>th</sup> May 2025. I dismiss the same and award costs of the two applications to the Respondent. It is so ordered.

**DATED SIGNED and DELIVERED virtually at NAIROBI this  
1<sup>ST</sup> DAY of DECEMBER 2025**

.....  
**J.W.W. MONGARE**  
**JUDGE**

**IN THE PRESENCE OF:-**

1. Mr. Mugambi for the Applicant.
2. Mr. Kiplangat for the 1<sup>st</sup> Respondent.
3. Ivan - Court Assistant

ORIGINAL