



**PAMM & 3 others v Shoprite Checkers Kenya Ltd; Attorney General
(Interested Party) (Petition E004 of 2021) [2025] KEHC 18632 (KLR)
(Constitutional and Human Rights) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E004 OF 2021

B MWAMUYE, J

DECEMBER 4, 2025

BETWEEN

PAMM 1ST PETITIONER

ANN MALINDA TOMA 2ND PETITIONER

**SMM (MINOR SUING THROUGH THE 1ST PETITIONER, HER FATHER
AND NEXT FRIEND) 3RD PETITIONER**

**JMM (MINOR SUING THROUGH THE 1ST PETITIONER, HER FATHER AND
NEXT FRIEND) 4TH PETITIONER**

AND

SHOPRITE CHECKERS KENYA LTD RESPONDENT

AND

ATTORNEY GENERAL INTERESTED PARTY

RULING

(On Petitioners Chamber summons dated 12th March 2024)

1. The Petitioners have approached this Court by way of Chamber Summons dated 12th March, 2024 brought under Rule 11 of the Advocates Remuneration Order. The application substantially seeks to set aside the entire taxing officer ruling of 27th February, 2024.
2. The said application is premised on the grounds on its face and is supported by the affidavit of Patrick Alouis Macharia Maina, the 1st Petitioner.



3. In challenging the Taxing Officer's decision, the Applicants contend that the taxing officer's ruling was unlawful, unreasonable, and unconstitutional, having been rendered in disregard of their right to a fair hearing. They averred that the Taxing Officer disregarded their affidavit evidence and submissions on the erroneous ground that the same were res sub judice.
4. It is also deponed that the Taxing Officer ignored mandatory provisions of Rule 62 A (2) & (3) of the Advocates Remuneration order. They further argued that the Taxing Officer improperly taxed items for which no orders for costs existed, including fictitious or duplicate entries, in violation of the principle that taxation must only indemnify a successful litigant for actual costs incurred thereby urging this court to find that the Taxing Officer exercised discretion arbitrarily.
5. The Petitioners also averred that the Bill of costs was an abuse of Court process since a substantial portion, approximately 49.48% of it was taxed off, exceeding the threshold under the Advocates Remuneration Order. In that regard they argued that the taxing officer ought to have imposed punitive or compensatory sanctions.
6. The Petitioners also invited this court to invoke its inherent powers under Rule 3 (7) of the Mutunga Rules to prevent abuse of the court process and to award punitive costs against the Respondent's advocates personally, for allegedly filing an oppressive and fraudulent Bill of Costs.
7. In response to the application, the Respondent filed its grounds of opposition dated 20th May, 2025 in which it was asserted that the Reference application is misconceived and incompetent contrary to the provisions of Paragraph 11 (2) of the Advocates Remuneration Order.
8. It was also contended that this court lacks jurisdiction to award the orders sought under prayer No. 3.2, 3.4 and 3.5 of the application. Further it was contended that the Applicant failed to provide sufficient reasons to warrant this court to interfere with the Taxing Officers Ruling and reasons for the taxation. It was averred that Taxing Officer properly exercised discretion within the parameters of law by arguing that Paragraph 62 A of the Advocates Remuneration Order seeks to have the last Advocate present the Bill of costs when the matter is finally settled for himself and those that preceded him. Furthermore, it was averred that the power to disallow taxation of costs under Paragraph 77 of the ARO is discretionary and the court was urged to dismiss the application with costs.
9. The application was canvassed by way of written submissions and both parties complied by filing their respective submissions.

Petitioners' Submissions

10. The Petitioners submitted that their Reference was filed within time since the taxation ruling and reasons were delivered concurrently on 27th February 2024, and the Notice of Objection was filed the following day and the reference was filed on 12th March 2024. They therefore urge the Court to disregard the Respondent's objection on timelines.
11. It was also submitted that the Taxing Officer violated the rules of natural justice by excluding their evidence and submissions without notice, on the ground that the same were res sub judice. They argued that such exclusion deprived them of the right to be heard and rendered the decision null and void.
12. The Petitioners further submitted that the Taxing Officer misapprehended the law by disregarding the mandatory requirements of Rule 62A of the Advocates Remuneration Order, which they maintain is couched in peremptory terms.
13. Further, they contend that the Respondent's Bill of Costs was not only excessive but also manifestly fraudulent, pointing to numerous items that lacked any supporting record or order for costs.



Reliance was placed on the decision in *Sinopec International Petroleum Service Corporation v Public Procurement Administrative Review Board & 3 others* [2024] KECA 184 (KLR) to emphasize that fraud vitiates all proceedings.

14. The Petitioners also submitted by urging the Court to set aside the entire taxation ruling and remit the matter to a different Taxing Officer for fresh taxation or, alternatively, to strike out the Bill of Costs in its entirety. They prayed for compensatory and punitive costs against the Respondent's advocate personally.

Respondent's Submissions

15. The Respondent, in its written submissions submitted that the Petitioners have not demonstrated any error of principle to warrant interference with the Taxing Officer's discretion. They relied on the decision in *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'njuguna* [2006] eKLR, where the Court held that interference is only justified where the Taxing Officer acts on a wrong principle or awards manifestly excessive fees.
16. It was argued that a party filing a Bill of Costs is not required to annex supporting documents, as affirmed in *Mumias Sugar Company Limited v Tom Ojienda & Associates Advocates* [2021] eKLR. It was also argued that Paragraph 13A of the ARO grants discretion to the Taxing Officer to call for documents only where necessary.
17. It was also submitted that Paragraph 62A of the ARO is inapplicable since they filed a singular Bill of Costs through its current Advocate. They further argued that the power to disallow taxation under Paragraph 77 of the ARO is discretionary, and that in any event, the officer exercised her discretion judiciously and prayed that the application should therefore be dismissed with costs.

Analysis and Determination

18. I have considered carefully the pleadings, affidavits and submissions by the respective parties in support of their various arguments. I note that the issues for determination are:
 - i. Whether the reference offends Paragraph 11 of the Advocates Remuneration Order and therefore unmerited.
 - ii. Whether the Taxing officer erred in principle while taxing the Bill of Costs.

Whether the reference offends Paragraph 11 of the Advocates Remuneration Order and therefore unmerited.

19. The impugned ruling was delivered by the Taxing Officer on 27th February, 2024. The Applicants filed their Notice of Objection on 28th February, 2024 and the reference on 12th March, 2024.
20. Rule 11 (1) & (2) of the ARO provides that any aggrieved party by a taxing Officer's decision to file a Notice of Objection within 14 days stating the disputed items. The provision states: -
 - “ 1. Should any party object to the decision of a taxing Officer, he may within 14 days after the decision in writing to the Taxing Officer of items of taxation to which he objects.
 2. The Taxing Officer shall forthwith record and forward to the Objector reasons for the decision on those items and the Objector may within 14 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 grounds of his”

21. In the present case, the Petitioners averred that they filed their Notice of Objection on 28th February, 2024, one day after the delivery of the taxation ruling, and lodged the reference on 12th March, 2024. I am persuaded that where, as in this case, reasons for taxation are contained within the ruling itself, the computation of time runs from the date of the ruling. This position was upheld in *National Oil Corporation Limited v Real Energy Limited & another* [2016] eKLR where the court held that:

“In my view, there is no magic in requiring the Taxing Master to furnish reasons before making a reference. Where reasons are contained in the decision, a party ought not seek the same simply because it is fashionable to do so. Accordingly, nothing turns the issue that the Applicant did not seek the reasons for the decision before filing the reference.”

22. A perusal of the impugned decision by the Taxing Officer reveals that the said decision contained the reasons therein. Nonetheless, the reference was filed on 12th March, 2024 which is within the prescribed time for filing a reference. I accordingly find that the Reference was thus filed within the prescribed timelines. However, timeliness alone does not guarantee success as the substance of the complaint must still meet the threshold for interference with a Taxing Officer's discretion.

whether the taxing officer erred in principle while taxing the Bill of Costs.

23. That notwithstanding, I shall proceed to consider whether the taxing officer erred in principle while taxing the Bill of Costs. The principles for setting aside the decisions of Taxing Master were well established in the cases 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 and *Joreth Ltd vs Kigano and Associates* (2002) 1 EA 92. The principles are set out here below as follows: -

- a. That there was an error of principle;
- b. The fee awarded was manifestly excessive or is so high as to confine access to the court to the wealthy;
- c. That the successful litigant ought to be fairly reimbursed for the costs he has incurred;
- d. That so far as practicable there should be consistency in the award.

24. For a court to set aside a ruling of the taxing master, it has to satisfy itself to the existence of the above principles. The court will therefore have to peruse the ruling of the taxing master and scrutinize the same. I have perused the instant application, together with the annexures filed, the applicant essentially objects the entire Bill of Costs.

25. The Petitioners allege that the Taxing Officer disregarded their affidavit and submissions on the erroneous premise that they were *res sub judice*. While the doctrine under Section 6 of the [Civil Procedure Act](#) applies to parallel suits, it does not extend to evidence within ongoing proceedings. The Taxing Officer ought to have limited the application of the doctrine to matters pending before another court, not to evidentiary material.

26. Nonetheless, I note from the record that the Taxing Officer did in fact consider the Petitioners' general objections and addressed them within the ruling, particularly regarding exaggerated or unsupported items. The reasoning was summarized in the ruling's latter paragraphs, where several items were taxed off substantially.



27. The Petitioners also argued that the Taxing Officer ignored the mandatory nature of Rule 62A(3), which they interpret as requiring production of remuneration agreements and proof of payment. From the record, however, there was no particular Bill of Costs filed by another advocate. The Bill of Costs was filed by the current advocate for the Respondent. The officer's reliance on Paragraph 13A, which permits calling for supporting documents "as may be necessary," was proper in the circumstances.
 28. The Court agrees that Rule 62A safeguards against overcharging where multiple advocates are involved. But in this case, only one advocate filed the Bill of Costs, and therefore, the Taxing Officer rightly found no necessity for such certificates. This interpretation aligns with *Mwaura Wachira Advocates v John Nduati Kariuki t/a Johester Merchants* [2005] KEHC 2826 (KLR), which clarified that the rule's intent is to prevent multiplicity of bills, not to invalidate a single advocate's bill.
 29. As to Paragraph 77, it is true that nearly half the Respondent's Bill was taxed off. However, the one-sixth rule confers discretion, it does not mandate punitive sanctions. Exceeding the one-sixth threshold does not automatically establish abuse of process. I find that the Taxing Officer properly exercised her discretion and provided reasonable justification for the amounts allowed. This issue accordingly fails.
 30. Upon review, the Taxing Officer meticulously applied Schedule 6 of the 2014 Advocates Remuneration Order, identified exaggerated or unsupported items, and made downward adjustments. There is no evidence that she considered irrelevant factors or ignored relevant ones. The taxing officer also considered the fact that there is an ongoing appeal on the same and gave reasons for proceeding with the taxation as there was no order staying the proceedings or the taxation. The final figure of Kshs.643,343/= reflects a judicious balance between fairness to the successful party and protection of the losing party from oppression.
 31. I also note that the Petitioners have not demonstrated that the taxed amount was manifestly excessive or founded on an error of principle. The officer's reasoning was consistent with recent decisions where the Court declined to disturb a taxation that demonstrated rational assessment even where large portions were taxed off.
 32. Consequently, while some aspects of the ruling could have been more elaborately reasoned, there is no material error warranting interference. The Court therefore finds no justification to set aside or remit the taxation for fresh hearing.
 33. In light of the foregoing, the Court finds the Reference dated 12th March 2024 to be unmerited. The Ruling and Reasons for Taxation of the Honourable Taxing Officer dated 27th February 2024 are hereby upheld in full.
 34. Each party shall bear its own costs of the application, in recognition that the Petitioners were self-represented and that the issues raised, though unsuccessful, were made in good faith
- Orders accordingly. File closed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF DECEMBER 2025.

BAHATI MWAMUYE MBS

JUDGE

In the presence of: -

1st Petitioner/ Applicant in person - Mr. Patrick Maina

Counsel for the Respondent – Mr. Nyandwa

Counsel for the Interested party – No appearance



