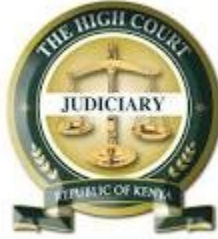


RULING
HCCCMISC E038 OF 2025



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)

HCCCMISC E038 OF 2025

BETWEEN

**CLIMAX COACHES
LIMITED**
APPLICANT

AND

**SHABAN MOKEBO
MOMANYI.....**
RESPONDENT

RULING

INTRODUCTION

1. This ruling concerns the Applicant’s Chamber Summons dated 04th August 2025, brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 of the Civil Procedure Rules, Rule 11 of the Advocates (Remuneration) Order, 2014, and all other enabling provisions of the law. The application arises from the decision of the Taxing Officer delivered on 30th July 2025 in Keroka MCCC E095 of 2022, Shaban Mokebo Momanyi v Climax Coaches Limited, taxing the Respondent’s Party and Party Bill of Costs dated 17th July 2024.

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2. The substantive prayers sought are, inter alia, stay of execution of the taxed costs pending determination of the reference, setting aside of the taxation conducted on 30th July 2025, and fresh taxation by this Court.

3. The application is supported by the Supporting Affidavit of Lydia Ongwacho sworn on 04th August 2025 and the Applicant's Written Submissions dated 18th October 2025. The Respondent opposed the application through the Replying Affidavit of Gogi Dorah sworn on 03rd September 2025 and the Respondent's Written Submissions dated 08th October 2025.

4. From the pleadings and submissions, the issues that arise for determination are whether the reference is properly before this Court in compliance with Rule 11 of the Advocates (Remuneration) Order, whether the Applicant has met the threshold for grant of stay of execution, and whether the decision of the taxing officer discloses an error of principle warranting interference by this Court.

5. I will begin with the issue of competence, as it goes to the jurisdiction of the Court. Rule 11 of the Advocates (Remuneration) Order prescribes the procedure for challenging a decision of a taxing officer. An objector is required, within

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fourteen days of the decision, to give notice in writing to the taxing officer specifying the items objected to. Upon receipt of such notice, the taxing officer is required to record and forward to the objector the reasons for the decision on those items, and the objector may thereafter, within fourteen days of receipt of the reasons, file a reference before a Judge.

6. The Respondent submitted that the Applicant did not comply with this mandatory procedure. In particular, it was contended that there was no evidence that the Applicant issued a proper notice of objection specifying the impugned items, nor that it sought or obtained reasons for the taxation from the taxing officer. Reliance was placed on the decision of the Court of Appeal in **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board, Civil Appeal No. 220 of 2004 [2005] 1 KLR 528 (CA)**, where it was held that compliance with Rule 11 is not a technicality but a jurisdictional requirement, and that failure to comply renders a reference incompetent.
7. The Applicant's submissions focused largely on the merits of the taxation and the alleged errors by the taxing officer. While the Applicant asserted that it had requested for reasons, the record only contains an undated letter addressed to the taxing officer

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requesting reasons for the taxation. Crucially, there is no evidence that the said letter was filed in court, served upon or received by the taxing officer, or that it elicited any response. There is no filing stamp, registry receipt, or correspondence from the taxing officer confirming receipt or supply of reasons. Despite the issue being expressly raised in the Respondent's submissions, the Applicant did not address this deficiency.

8. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* (supra), the Court of Appeal emphasized that the sequence set out in Rule 11 must be adhered to, as it is the basis upon which the jurisdiction of the Judge is invoked. In the absence of proof that reasons were sought and supplied, or that there was substantial compliance with Rule 11, this Court cannot assume jurisdiction.
9. I am consequently persuaded that the Applicant has not demonstrated compliance with the mandatory procedure set out under Rule 11 of the Advocates (Remuneration) Order. The reference is, on that basis, incompetent.
10. Having reached that conclusion, this Court cannot properly proceed further in the matter. The issues relating to whether the Applicant has met the threshold for stay of execution under

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Order 42 Rule 6 of the Civil Procedure Rules, and whether the taxing officer committed an error of principle in taxing the Bill of Costs, are both predicated on the existence of a competent reference. To address them in the absence of jurisdiction would amount to an impermissible determination on the merits and would risk prejudicing the parties, particularly if the Applicant elects to file a competent reference in accordance with the law.

11. Accordingly, while those issues were correctly isolated for determination, this Court is precluded from pronouncing itself on them in the absence of jurisdiction.

12. In the result, I find that the Chamber Summons dated 04th August 2025 is incompetent for failure to comply with the mandatory procedure under Rule 11 of the Advocates (Remuneration) Order, and it is hereby struck out with costs to the Respondent.

13. This matter having been dispensed with, the file is closed

DELIVERED AT NYAMIRA THIS 22nd DAY OF
January 2026



WAMAE.T. W. CHERERE
JUDGE

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Appearances

Court Assistant - Hilda

For Applicant - Ms. Ongwacho for KRK Advocates LLP

**For Respondent - Ms. Gogi for Gogi & Associates
Advocates**