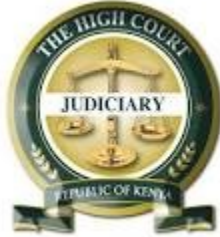


RULING
HCCCMISC E037 OF 2025



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

HCCCMISC E037 OF 2025

BETWEEN

**CLIMAX COACHES
LIMITED**
APPLICANT

AND

**DORINE GACHERI
NGAI**
RESPONDENT

RULING

INTRODUCTION

1. This ruling is in respect of the Applicant's Chamber Summons dated 04th August 2025, expressed to be 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, 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 E096 of 2022: Dorine Gacheri Ngai v Climax Coaches Limited.

2. The substantive orders sought are:

RULING
HCCCMISC E037 OF 2025

- (a) certification of urgency;**
- (b) stay of execution of the Respondent's Bill of Costs arising from the taxation ruling delivered on 30th July 2025;**
- (c) setting aside of the assessment of the Bill of Costs dated 17th July 2024 and taxed on 30th July 2025;**
- (d) setting aside of the decision of the learned magistrate dated 30th July 2025 in respect of all items save for instruction fees, and fresh taxation by this Court; and**
- (e) costs of the application.**

3. The application is supported by the Affidavit of Lydia Ongwacho sworn on 04th August 2025 and the Applicant's Written Submissions dated 18th October 2025.
4. The application is opposed through the Replying Affidavit of Gogi Dorah sworn on 03rd September 2025 and the Respondent's Written Submissions dated 08th October 2025.
5. The Applicant contends that the taxing officer erred both in law and in principle by taxing the Bill of Costs as drawn without subjecting it to the ten per cent contributory negligence apportioned in the judgment delivered on 17th July 2024, by

RULING
HCCCMISC E037 OF 2025

awarding costs that are excessive and punitive in the circumstances of the case, by allowing VAT contrary to the provisions of Schedule 7 of the Advocates (Remuneration) Order, by taxing off-scale items and exaggerated attendances, and by failing to properly exercise discretion as contemplated under Note 3 of Schedule 7 of the Advocates (Remuneration) Order.

6. The Applicant relies on, inter alia, the decisions in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR; *Nyangau & another v Otieno* (Misc. Civil Application E034 of 2022) [2023] KEHC 502; *Arthur v Nyeri Electricity Undertaking* [1961] EA 497; *Devshi Dhanji v Kanji Naran Patel (No. 2)* [1978] KLR 243; and *D'Souza v Ferrao* [1960] EA 602. Civil Application E034 of 2022) [2023] KEHC 502.
7. The Respondent submits that the application is misconceived, incompetent, and an abuse of the court process for failure to comply with Rule 11 of the Advocates (Remuneration) Order.
8. It is argued that the Applicant did not properly issue a notice of objection specifying the items objected to within fourteen days, nor did it seek or obtain reasons for taxation as required by law.
9. On the merits, the Respondent contends that the taxing officer properly exercised discretion, applied Schedule 7 note 3, and

RULING
HCCCMISC E037 OF 2025

that costs follow the event pursuant to Section 27 of the Civil Procedure Act.

10. The Respondent relies on the decision of the Court of Appeal in Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board (supra).

Issues for determination

11. From the pleadings, affidavits and submissions, the following issues arise for determination:

(1) Whether the reference is properly before this Court in compliance with Rule 11 of the Advocates (Remuneration) Order.

(2) Whether the Applicant has satisfied the threshold for grant of stay of execution.

(3) Whether the taxing officer committed an error of principle warranting interference by this Court.

Analysis and determination

1) Whether the reference is properly before the Court

13. The procedure for challenging a taxation is expressly provided for under Rule 11 of the Advocates (Remuneration) Order. An objector is required, within fourteen days of the decision, to give notice in writing to the taxing officer specifying

RULING
HCCCMISC E037 OF 2025

the items objected to and thereafter, upon receipt of reasons for the taxation, to file a reference before a Judge.

14. In the present matter, the Respondent submitted that the Applicant did not comply with this mandatory procedure. In particular, it was contended that the Applicant neither demonstrated that it issued a notice of objection specifying the impugned items nor that it sought or obtained reasons for the taxation from the taxing officer.

15. Despite this issue being expressly raised in the Respondent's submissions, the Applicant did not place before the Court any evidence demonstrating compliance with the requirements of Rule 11. While an undated document titled as a request for reasons addressed to the taxing officer appears in the Applicant's bundle, there is no evidence whatsoever that the said request was filed in court, served upon the taxing officer, or otherwise brought to the attention of the taxing officer in the manner contemplated by Rule 11'

16. In the absence of such proof, the Court cannot presume that the procedural step was duly undertaken.

17. The Court of Appeal in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* (supra) authoritatively held that

RULING
HCCCMISC E037 OF 2025

compliance with Rule 11 is not a technicality but a jurisdictional prerequisite, and that a reference brought in the absence of such compliance is incompetent.

18. In the absence of any material demonstrating compliance with Rule 11, and noting that the alleged request for reasons is neither dated nor shown to have been filed or acted upon, I am satisfied that the mandatory procedure prescribed by law was not complied with.

19. I accordingly find that the reference is incompetent.

20. The issues of stay of execution and alleged error of principle are both predicated on the existence of a competent reference. Where jurisdiction is absent, a court must down its tools and cannot proceed to interrogate the merits or grant ancillary reliefs.

21. To consider the threshold for stay of execution would require the Court to assume jurisdiction over a reference that is not properly before it. Likewise, any pronouncement on whether the taxing officer committed an error of principle would amount to a determination on the merits, notwithstanding the Court's finding that it lacks jurisdiction.

RULING
HCCCMISC E037 OF 2025

22. It is for this reason that, although the issues were properly identified at the outset, this Court cannot address issues No. 2 and 3. Any such analysis would be premature and prejudicial, particularly in light of the Applicant's right to file a competent reference in accordance with the law.

Disposition

24. In the result, the Court finds that:
- 1) The Chamber Summons dated 04th August 2025 is incompetent for failure to comply with Rule 11 of the Advocates (Remuneration) Order**
 - 2) The application is accordingly struck out.**
 - 3) Costs of the application are awarded to the Respondent.**
 - 4) This matter having been dispensed, the file is closed**

DELIVERED AT NYAMIRA THIS 22nd DAY OF
January 2026



WAMAE.T. W. CHERERE
JUDGE

Appearances

- Court Assistant - Hilda**
- For Applicant - Ms. Ongwacho for KRK Advocates LLP**

RULING
HCCCMISC E037 OF 2025

For Respondent - Ms. Gogi for Gogi & Associates
Advocates