



Kimotho & another v Kihumba & another (Miscellaneous Application E186 of 2025) [2026] KEELC 189 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELC 189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E186 OF 2025
MN KULLOW, J
JANUARY 22, 2026
IN THE MATTER OF TAXATION OF THE 1ST AND 2ND
RESPONDENTS' BILL OF COSTS DATED 29/10/2024**

BETWEEN

**WILSON GIKONYO KIMOTHO 1ST APPLICANT
JOHN MAGU 2ND APPLICANT**

AND

**STEPHEN MACHARIA KIHUMBA 1ST RESPONDENT
ANSTEN PROPERTIES LIMITED 2ND RESPONDENT**

RULING

1. The applicants filed the chamber summons application dated 3rd July 2025 to challenge the ruling delivered on the 2^{5th} June 2025 in respect to the bill of costs dated 29th October 2024. The summons challenged the award on item 1 that is instruction fees
2. The chamber summons is based on the following grounds
 - a. That the Taxing Officer erred in law and in principle in finding that ELC Case No. E130 Of 2023 was defended by way of a Preliminary Objection.
 - b. That the Taxing Officer failed to appreciate that, the matter having been determined summarily, the instruction fees under Item 1 ought to have been taxed at 75% of the amount chargeable under Item 1(b) of Schedule 6 of the Advocates Remuneration Order.
 - c. That the amount of Kshs. 300,000 taxed under Item 1 is more than five times the amount allowable under the Advocates Remuneration Order, rendering the taxed amount manifestly excessive, unreasonable, and unjust.



d. Respondent's Reply

3. The respondents in objection filed grounds of opposition date 9th July 2025. The objection was premised on the grounds that the reference was incompetent, the decision on item 1 was sound and reasonable and that the applicants had not demonstrated an error of principle on the part of the taxing officer to interfere with the decision.

Both parties filed submissions as directed.

Legal issues raised in the applicant's submissions dated 7th August 2025

4. Whether Item 1 of 1st and 2nd Respondent's Bill of Costs dated 29/10/2024 should be set aside and/or taxed afresh by this Honourable Court; or in the alternative, be taxed afresh by a different taxing officer
5. The Applicants relied on the case of Premchand Raichand Limited & Anor vs Quarry Services of East Africa Limited and Another [1972] E.A 162, which established the principles for setting aside the decisions of the Taxing Master.
6. The Applicants further submitted that the 1st and 2nd Respondent filed a Preliminary Objection dated 12/2/2024 but failed to file a Defence and therefore the Applicants' suit was left undefended and the that the taxing officer considered irrelevant matters and therefore erred in the Ruling dated 25/6/2025 where she held the suit was defended by way of preliminary objection. That she erred in failing to consider that since the suit was undefended it fell within the ambit of Schedule 6 of the Advocates Remuneration Order Titled "Other Matters" and therefore the instruction fee chargeable was 45,000/=.
7. Counsel for the applicants further submitted that the since the suit was summarily determined and the value of the subject matter could not be ascertained from the pleadings. The instruction fees therefore fell within the purview of Schedule 6(1)(b) of the Advocates Remuneration Order, 2014 which stated that that instruction fee shall be 75% of the fee chargeable under 1(b). To further buttress this point they relied on the supreme court case of Kenya Airports Authority v Otiemo Ragot & Co. Advocates SCoK Petition No. E011 of 2023

Issues in Respondent's submissions dated 2nd September 2025

28. The respondents submitted that the application was incompetent, being that the applicants failed to file the notice of objection in the same cause that gave rise to the ruling that is ELC NO E130 OF 2023. That the filing of a separate cause via a miscellaneous application is not anchored in law making the application incompetent. They relied on the case of William Nembe Obora & 73 others Vs Rift valley Railways (2025) eKLR
9. Further they submitted on whether the application was merited indicating that the applicants had failed to show an error of principle on the decision of the taxing officer on item one. That the taxing officer considered the relevant factors being the nature of the dispute, importance of the matter and value of the subject matter. In this case, it was submitted that the value was not ascertained in the pleadings and the taxing officer used her discretion to arrive at the instruction fees relying on the case of Joreth Limited Vs Kigano Associates (2002)eKLR
10. On the issue raised of error in principle that the taxing master considered the matter to be defended by the preliminary objection yet it was undefended, the respondents indicated that the respondents actually prosecuted the preliminary objection which was determined on merit after both parties were



heard resulting in the dismissal of the suit. It was submitted that the issue of it not being defended was untenable.

11. The applicants further filed supplementary submissions in response to the respondent's submissions and submitted that they filed a notice of objection and that the respondent would not be prejudiced if at all the application was determined on merit.

Issues for the court's determination

Whether the chamber summons application is incompetent

12. A party dissatisfied with the decision of the Taxing Officer may file an objection to the judge of the High Court and thereafter an appeal to the Court of Appeal under Rule 11 of the Advocates Remuneration Order, which provides as follows:
 11. Objection to decision on taxation and appeal to Court of Appeal
 1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 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.
 3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired. [L.N. 8/1965, Sch.]”
13. The applicants have submitted that they issued a notice of objection to file a reference. A perusal through the pleadings points out that indeed the said notice was filed as seen attached at page 57 of the bundle of documents attached in their supporting affidavit dated 3rd July 2025.
14. Regarding whether the reference can be lodged by way of another fresh proceeding other than that in which the taxation decision was made, the applicants argue that there is no express procedural prescription in paragraph 11(2) of how to invoke the court's jurisdiction which leaves it open and one can file a miscellaneous application. The jurisdiction of this court under rule 11 of the Advocates (Remuneration) Order is that the court exercises its jurisdiction on the platform of the suit in which the impugned decision of the Taxing Officer was made. It is not exercised in a separate or fresh suit. Exercise of that jurisdiction is invoked through the filing and service of an objection under rule 11 (1). Upon filing of the Notice of Objection within the suit, and upon service of the Notice, the Objector is required to file a reference to the Judge by way of Chamber Summons within the same suit. The Judge thereafter exercises jurisdiction under rule 11 on the platform of the suit in which the impugned decision of the Taxing Officer was made. This was addressed in the case of F.A. Badia



& Company Advocates v Malambu (Miscellaneous Application E166 of 2022) [2024] KEHC 10268 (KLR) (Family) (13 August 2024) Ruling where the court stated as follows;

(It is my understanding and I hold the view that the objection of the decision of the taxing officer envisaged in paragraph 11 of the Advocates Remuneration Order should be filed in the same cause where the bill of costs was taxed. In the current application, the applicant has filed a fresh and a different cause where this court will not have the benefit of making reference to the bill of costs and the proceedings being challenged. In my view, the applicant has approached this court through the wrong procedure in which situation the court will find it hard to make decision on the issues placed before it.

4. A reference is not an appeal where separate proceedings are taken in a different file. The bills of costs are for all purposes taxed in the High Court save that they are done by a Deputy Registrar and not a Judge. References are referred to the same court but before a Judge. Letting parties open fresh files in matters of references will result to convolution of proceedings and most likely compromise dispensation and administration of justice.
 5. The method the applicant has adopted is not proper. The chamber summons should have been filed in miscellaneous application number E189 of 2020. The application before me is therefore in my view incompetent and irregularly filed and I will not go into its merits.
15. Similarly, in *Kimatta & Co Advocates v Joyce Wambui Jarvis* [2005] eKLR the court held a similar view and stated "I have carefully considered the submissions that were advanced by both counsel. It is not in dispute that under paragraph 11(4) of the Advocates Remuneration Order, this court has power to enlarge time within which an applicant can file a reference to the High Court arising out of a taxation. A proper reading of the entire paragraph 11 reveals that that such an application as envisaged under sub-paragraph (4) ought to be filed in the same cause under which the taxation was done. I say so because under sub-paragraph (1) the party who objects to the decision of the taxing officer is given 14 days after the decision to give notice in writing to the taxing officer of the items of taxation which he objects to and then under sub-paragraph (2) the taxing officer records and forwards to the objector the reasons for his decision and the objector may, within 14 days from the date of receipt of the reasons apply to a Judge by Chamber Summons, setting out the grounds of his objection. Then we now come to subparagraph (4) by which a party who has not been able to comply with the time limits as set out by sub-paragraphs 1 or 2 can file an application for extension of time.
 16. It does not require to be stated that the application under sub-paragraph (4) has to be made in the same file or cause under which the objection was made in the first place, it is logical. The application has to be made in the cause under which the taxation was done so that the Judge, in exercising his discretion one way or the other can see when the objection as required under paragraph 11(1) was made and the sequence of other events that followed thereafter in order to determine whether there are good grounds upon which an extension of time can be allowed under paragraph 11(4).
 17. I therefore hold that it was improper for the applicant to commence this application by way of a different miscellaneous civil application.
 18. Having submitted as above, then it follows that the applicants should have filed the reference in ELC Case No E130 of 2023. However, in this instant case the mistake made is curable and in line with the overriding objective principle, then the reference can be determined as the applicant has attached the pleadings from the taxation proceeding to enable this court effectively determine on the same.



Whether the reference is merited

19. The legal parameters within which the Court can interfere with a Taxing Master's decision are well settled. The Court of Appeal in *Joreth Ltd vs Kigano & Associates Civil Appeal No. 66 of 1999* [2002] eKLR was categorical that a Judge sitting on a Reference against the Taxing Officer ought not to interfere with the assessment of costs unless the Taxing Officer had misdirected himself on a matter of principle. In this regard, application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low. The taxing master in her ruling indicated that the matter had been defended by the fact that the respondents filed a notice of preliminary objection and by virtue of the same relied on the provisions of schedule 6(1)(b) of the advocates remuneration order that gave the instruction fees for a defended suit to be Ksh 75,000. That she considered the nature and importance of the matter by the reliefs sought and more so being a land matter being land hence allowing the figure of Ksh 300,000/= as the instruction fees

Determination:

20. I hold the view that fact that the suit was dismissed based on the preliminary objection achieved the ultimate goal of a successful defense raised by the respondents. The taxing master indicated that she had considered the conduct of the proceedings implying she had considered the amount of work involved and the stage at which the matter concluded therefore in her assessment of costs, the work performed in relation to the preliminary objection was considered as part of the overall legal services rendered in defending the suit, and not a separate, non-defensive action. I hold the view that the determination of the matter at the preliminary stage did not negate the complexity or importance of the work done by respondent's advocates.
21. Having stated as above, I hold the view that the taxing officer did not make any error of principle and the amount given as instruction fees was reasonable.

Costs of the Application to be borne by the Respondents

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22ND DAY OF JANUARY, 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Ondek for the Applicants

Mr. Ahoma for Respondents

Philomena W. Court Assistant

