



**Oduor v Trade Winds Aviation Services Ltd (Cause 454 of 2018)
[2026] KEELRC 127 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 127 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 454 OF 2018
JW KELI, J
JANUARY 23, 2026**

BETWEEN

BENARD OCHIENG ODUOR CLAIMANT

AND

TRADE WINDS AVIATION SERVICES LTD RESPONDENT

RULING

1. The applicant aggrieved by the ruling dated 2nd October 2025 of the Taxing Master Hon Mbeja in the suit filed reference by way of Chamber Summons dated 21st October 2025 seeking for the following Orders -
 - a. Spent
 - b. That there be a stay of execution of the Ruling and decision of the Honourable Taxing Officer (Hon. D.O. Mbeja, SPM) delivered on 2nd October 2025, pending the hearing and determination of this application.
 - c. That this Honourable Court be pleased to set aside and/or vary the Ruling of the Honourable Taxing Officer delivered on 2nd October, 2025 in respect of the Claimant's/Respondent's Party and Party Bill of Costs dated 24th March, 2025.
 - d. That the Honourable Court be pleased to re-tax and or remit for fresh taxation of the Party and Party Bill of Costs dated 24th March, 2025.
 - e. That the costs of the Reference abide by the outcome thereof.
2. The application was supported by the Affidavit sworn by Samuel O. Obondo on the following grounds:



- a) Vide a Ruling delivered on 2nd October, 2025 the Honourable Taxing Master awarded the Party costs amounting to Kshs. 229,720 with Kshs. 15,700/- taxed off pursuant to the Party and Party Bill of Costs dated 24th March, 2025.
 - b) The Taxing Officer exercised his discretion and relied on Article 159 (d) of the Constitution to allow items of the Bill of Costs that were not legally tenable as, the 2nd Respondent herein which was Kenya Airways filed a Notice of preliminary objection dated 6th July, 2020 as it was wrongly enjoined in the suit. The Notice of preliminary objection was allowed 'with no orders as to costs on 4 December, 2020.
 - c) The Bill of Cost is equally manifestly excessive and did not take into consideration the evidence presented by the Respondent/Applicant before the Learned Taxing Master.
 - d) There is imminent danger of execution _as the Claimant/Respondent has proceeded to extract the Certificate of Costs dated 9th October, 2025 and a decree dated 15th May, 2025 and served upon the 1st Respondent/Applicant on 16th October, 2025 threatening execution within the next seven (7) days.
 - e) Unless the application is heard on priority the Claimant will be highly prejudiced as the Claimant/Respondent will proceed with execution of the items in the bill of costs that were unjustly taxed.
 - f) It is in the interest of justice that this application be certified urgent and stay orders be issued pending the hearing and determination of this application.
 - g) The award is manifestly excessive and did not take into consideration the evidence presented by the Respondent/Applicant before the Learned Taxing Master.
3. In response to the application, the respondent filed an application by way of Notice of Motion dated 4th November 2025 seeking for the following orders
- a. That the reference filed herein by way of the defendant/applicant's chamber summons application dated 21st October 2025 contesting the ruling on taxation given on 2nd October 2025 be struck out.
 - b. That the defendant/applicant be condemned to pay the costs of this application. has all along been the taxation of the bill of costs, now for the 2nd time. Its applications before this honourable court have therefore been malicious, purely meant to frustrate the claimant/respondent from reaping the fruits of judgment in the matter.
 - c. That the defendant/applicant has severally abused this Honourable Court's process, having set aside the bill of costs as taxed on 2nd October 2025 on account of its advocate's failure to attend court on 9th June 2025. The 2nd contest on the bill of costs taxed herein on 2nd October 2025 is totally frivolous and an abuse of the court process on account of the following reasons:- The reasons behind the respondent/applicant's contest of items 1 and 12 under its paragraph 5 (a) of the affidavit sworn by Samuel O. Obundo in support of the application herein is not understandable. Contesting the same is completely frivolous, considering the minimum preferable fees allowable under the advocates remuneration amendment order 2014. Instruction fees for a claim from 0 – kshs.500,000/= is kshs.75,000/= while 1/3 of the same which is applicable as getting up fees is kshs.25,000/=, all bare minimum fees prescribed as per the advocates remuneration (amendment) order 2014 which is what the taxing master relied on. Contest to items 8, 10, 22, 23, 24, 25, 31, 32, 41, 42, 44, 49, 52, 53, 58, 64, 66, 67, 68, 69



and 70 as indicated under paragraph 5(b) of the affidavit sworn by SAMUEL O. OBUNDO in support of the application herein is also not understandable. 1st and foremost there is nowhere in the ruling specifically where the taxing officer has categorically stated that this particular items were taxed in accordance with article 159 (d) of the *Constitution*, the more reason why the provisions of section 11 (1) and (2) of the advocates remuneration order provides for supply of the reasons for the ruling. The taxing master has referred to the applicability of article 159 (d) in general and not on any specific item in the bill of costs. It is however the claimant/ respondent's position that the said items as drawn are justified and are drawn to scale as the ruling by Justice Maureen Onyango delivered on 4th December 2020 and the costs in respect to proceedings against the initial 2nd respondent in the matter were not excluded. The said ruling speaks for itself and cannot be interpreted otherwise. The judgment delivered herein on 20th February 2025 clearly awards costs to the claimant in the matter without exclusion of any proceedings that had previously taken place. The respondent has chosen to mislead the court on a trivial issue. The contested items under paragraph 5 (c) of the affidavit sworn by Samuel O. Obundo in support of the application herein is totally frivolous. All the items listed therein have been taxed to scale. There is nowhere in the advocates (remuneration) amendment order 2014 where it is indicated that service of letters (correspondence) is not chargeable. The averments under paragraph 5 (d) by Samuel O. Obundo in his affidavit in support of the application herein contradicts his averments under paragraph 5 (c) where he indicates that service of letters (correspondence) should not attract legal fees. Under paragraph 5 (d) he admits that service of letters (correspondence) should attract fees but a lesser amount of kshs.1,000/= yet service under paragraph 9 of the advocates (remuneration) amendment order 2014 is provided for at a standard fees of kshs.1,400/=.The averments under paragraph 5 (e) by Samuel O. Obundo in his affidavit in support of this application is equally frivolous. The attendances as provided for in the bill of costs are strictly upto scale in the circumstances of the facts prevailing in this matter. There can hardly ever be any court attendance for 30 minutes or less and there was none in this matter for a fact. That the application filed herein is an afterthought but clothed as urgent. The application was prompted by the claimant/ respondent's letter dated 15th October 2025 served on the defendant/applicant's advocates on 16th October 2025 demanding for payment of the decretal sum, interest and costs, which informs why the defendant/applicant took close to three weeks to file the present application, in full breach of the provisions of section 11 (1) and (2) of the advocates remuneration order. It is high time the Honourable Court stops the defendant/applicant in its tracks from abusing this Honourable Court's process, by frustrating the claimant/respondent from reaping the fruits of his judgment, 7 years down the line, despite the court finding that his termination from employment was unlawful. The court should only aid the vigilant and not the indolent as has been the case with the respondent/applicant. The application filed herein is in the circumstances, an abuse of the court process and should be struck out.

4. The Respondent's application in response to the reference was supported by the annexed affidavit of Benard Ochieng Oduor and based on the following grounds, That the respondent/applicant is in breach of the provisions of section 11 (1) and 11 (2) of the advocates remuneration order by its failure to file a notice of objection to the taxing officer of the items to which it objects. Failure to file a notice of objection is fatal to the application filed herein. That the respondent/applicant having not requested and/or obtained the reasons for taxation of the bill of costs on the contested items, could not file the present application as the same cannot be considered without the reasons given by the taxing officer on assessment of costs on the contested items. The respondent/applicant is in breach of the provisions of section 11 (1) and 11 (2) of the advocates remuneration order. c) That the respondent/applicant having breached the provisions of section 11 (1) and 11 (2) of the advocates remuneration order, the



application filed herein is not sustainable and should therefore be struck out. d) That a reference by way of the chamber summons application filed herein cannot lie when the limitation period for issuing a notice of objection has since lapsed but was not extended, the ruling on taxation having been delivered on 2nd October 2025. e) That the respondent/applicant has never paid the claimant/respondent even the decretal sum as awarded by this Honorable Court on 20th February 2025 even when the only contest in the matter

5. The application was opposed by the objector by way of a replying affidavit of Samuel Obondo, sworn on the 24th November 2025, who stated in a nutshell that there was no need to comply with rule 11 of the Advocates' Remuneration Order as the Taxing Master gave reasons in the ruling.

Decision

6. The application dated 4th November 2025 was canvassed orally before the court on the 25th November 2011 with Sumba Advocate for the claimant and Ms Ochola for the Objector.
7. The applicant aggrieved with the decision of the Taxing Master of 2nd October 2025 filed reference to this Court without compliance with provisions of part 1 of the Rule. It is the applicant's position that Rule 1(1) requiring the filing of a notice of objection is not mandatory as the rule used the word "may". To buttress its position, the applicant relied on the decision of the Court of Appeal in Kipkorir Titoo & Kiara Advocates v Deposit Protection Fund (Court of Appeal Civil Appeal No. 220 of 2004) to submit that where the Taxing Master fails to give a reason, the reference is competent. The Claimant was of the contrary position that the decision was to effect that the objection had to precede the reference. Further the applicant sought shelter in decision of Evans Gaturu v Kenya Commercial Bank to effect that rule 11(1) was not mandatory. Again, the claimant contended in the said decision that Rule 11(1) was held as mandatory. The court then had to read the said two decisions and decide on the position of the law.
8. The Advocates (Remuneration) Order, Legal Notice 64 Of 1962, Rule 11 states- '(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.'" v The court finds that the purposive interpretation of the rule would be that the intention of Rule 11 was for the court to establish the veracity of the reasons given by the Taxing Master. The mere use of the word 'may ' is not a conclusive legal position that compliance with Rule 1 is optional, as Rule 1(2) states that it is on receipt of the reasons that the objector may approach the court. The applicant/objector submitted before the court that the objection was not necessary as the reasons were in the decision. In the said decision, the Taxing Master simply stated that " I find no sufficient cause to upset all the other items, all circumstances considered. The court asked itself, ' What are the circumstances the taxing master considered'? The Taxing Master then invoked article 159(2)d of the [Constitution](#) which provides for administration of justice without due regard to procedural technicalities. What were the procedural technicalities in the taxation? The ruling was opaque on the basis of the taxation taking into account the submissions by the objector specifically on the preliminary objection by the 2nd respondent which was allowed with no order as to costs. The objector in submissions had stated costs regarding to the 2nd respondent could not be attributed to it. There was no decision in the ruling on the same and it is the gist of the instant reference. The taxation decision had gaps which only the taxing master could explain for the court to consider under rule 11(2). The foregoing position is supported by the decision in Lubulleh & Associates v Gilbi Construction Company Limited (2024)KEELC 5234(KLR) Where the court was of the opinion that where there are reasons on the face of the decision, it would be futile



to expect the Taxing Master to furnish further reasons. In the said case of Lubulleh the objector had filed a notice of objection and the reference was struck out for lack of response by the taxing master. The court then finds that the observation by the Judge on the compliance with rule 1(1) in the decision was obiter.

9. The objector further relied on the decision in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] KECA 325 (KLR) where as relates to the compliance with rule 11 the Court of Appeal observed-“It is true that the taxing officer did not record the reasons for the decision on the items objected to after receipt of the respondent’s notice. It seems that the taxing officer decided to rely on the reasons in the ruling on taxation dated 23rd February, 2004. That ruling at least indicated the formula that the taxing officer applied to assess the instructions fees. Although there was no strict compliance with Rule 11 (2) of the Order, we are nevertheless, satisfied that there was substantial compliance.”(emphasis given. The compliance related to an objection notice having been issued in the first instance). Further I was pursued by the decision of Mohammed J (as he then was) in *Paul Gicheru T/A Gicheru & Company Advocates v Kargua(K) Construction Co. Ltd* who elaborately considered the question as to whether compliance with rule 11 was mandatory or not and concluded it was mandatory to lodge an objection notice in the first instance as follows-“While the taxing master did not give specific reasons even by reiteration and referred to the entire body of his ruling, I think that he complied with the requirement at least by way of procedure, if nothing else. In such a case, if the ruling is detailed and answers the inquiry, it is arguable that it would be superfluous for the taxing master to give any other reasons or repeat himself/herself.

With respect I do not agree with his Lordship Justice T. Mbaluto when he held that:-

..... The advocate for the Client completely misunderstood what is meant by the above words in paragraph 11 of the Advocates Remuneration Order. What is referred to as reasons for the taxing officer’s decision is no more than his ruling on the matter. Since such a ruling had been made, signed and delivered by the taxing officer on 2/10/2001, there was obviously no need to request for such reasons”.

If his was the correct interpretation, then there would be no need for the Rules Committee to set out an elaborate and long procedure as set out in the Rules. All an aggrieved person would have been required to do is give notice of Objection within 14 days of the decision being made and thereafter file the application / reference within another 14 days. The words in Rule 11 (2) are certain and clear. The taxing master must give the reasons for the decisions within 14 days of the Notice of Objection being filed.

In my view, he could thereafter do either of the following:-

- 1). If he is satisfied that the Ruling is so elaborate, detailed and sufficient to express clearly all the reasons for decision on each item, then he could state as in the *Gathenji & Co. Advocates Case* that the reasons are in the body of the Ruling; or
- 2). He could summarize the specific reasons for decision on each item; or
- 3). If the ruling / decision given earlier is not detailed enough to enable the Objector lodge an effective and proper reference, then the taxing master would be obliged to give reasonably explanatory reasons for the decision on each of the items complained of.

I am not quite sure of the intention of the draftsman and the Rules Committee, but it would appear that the requirement for the reasons to be given was to ensure that an Objector fully knows the basis



for the decision. Such a requirement appears reasonable since it is quite common and usual that the rulings or assessment of taxation are brief, precise and to the point. It is only where there is serious contentions and arguments that the taxing master would go into in-depth reasoning.

In any event, this Court must apply the law as it is, as I see no room for any other interpretation or need to use any other method of interpretation than the “Golden Rule” to meet the ends of justice.”(Long quote for clarity and emphasis). I adopt the foregoing Court of Appeal decision to apply in the instant case and hold the application dated 4th November 2025 as merited.

10. Consequently, I hold that the reference by way of Chamber Summons dated 21st October 2025, filed devoid of compliance with Rule 11 of the Advocates Remuneration Order, is incompetent and is struck off with costs to the claimant. The claimant is awarded costs of his application and in the reference.

11. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF JANUARY, 2026.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Claimant/Respondent: Ms. Ochola

Applicant /Respondent: Otieno h/b Sumba

