

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

MISC APPLICATION NO. E008 OF 2025

IN THE MATTER OF THE ADVOCATES ACT CHAPTER 16 LAWS OF

KENYA

AND

IN THE MATTER OF KSM ELCLMISC E025 OF 2023

AND IN THE MATTER OF A REFERENCE UNDER RULE 11 - THE

ADVOCATES (REMUNERATION) ORDER UPON TAXATION OF

ADVOCATES AND PARTY COSTS

BETWEEN

ROBERT OBARA OGONEAPPLICANT

VERSUS

JANET ADHIAMBO ODUOR (Suing on behalf of the Estate of

CHARLES EVANS OMONDI - DECEASEDRESPONDENT

RULING

The substantive relief sought in the Reference herein commenced vide the Chamber Summons application dated 20th February, 2025 are prayers 1 and 4 thereof. Prayer 4 seeks for an order that the court be pleased to re-tax or remit back to a different taxing officer, the Respondent's/Applicant's Party and Party Bill of Costs dated 20th

August, 2024 for assessment and/or award as by law required with specific reference to the objected items. Prayer 1 seeks for an order that the assessment and award of the taxing officer Hon. Maureen Nyigei (Principal Magistrate) made on 23rd January, 2025 with respect to item 1 of the Applicant's Party and Party Bill of costs dated 20th August, 2024 be set aside and/or varied. The application also seeks for an order that costs of the reference be provided for.

The grounds of the reference are that the taxing officer erred in law and in principle by failing to be guided by the provisions of Schedule 6 paragraph 1(j)(ii) (under sub heading 'other matters') of the Advocate Remuneration order, the taxing officer erred in law and fact by failing to appreciate the law and judicial precedents on the issue of instructions fees and that it is in the interest of justice to set aside the assessment of the taxing master and to re-tax or remit back the Respondent's Party and Party Bill of Costs dated 20th August, 2024 for assessment before a different taxing officer.

The application is supported with the averment in the Supporting Affidavit of the Applicant sworn on 20th February, 2025 and the annexures thereto.

In response to the reference, the Respondent filed grounds of opposition dated 12th June, 2025. It was the Respondent's case that

the application is misconceived, frivolous, fatally defective and constitutes an abuse of the honourable court's time as the Defendant/Applicant has failed to comply with the provisions of Rule 11(2) of the Advocates Remuneration Order, which require any party who objects to the decision of the taxing master to within fourteen (14) days after the decision file their reference application. That the Applicant has not demonstrated any sufficient ground to impugn exercise of judicial discretion by the Taxing Master to warrant the honourable court's interference. That the application is misconceived and ought to be dismissed.

The application was heard by way of written submissions. It was submitted on behalf of the Applicant vide the written submissions dated 11th August, 2025 that under Rule (11)(1) of the Advocates Remuneration Order a notice in writing to the taxing officer regarding the ruling dated 23rd January, 2025 was issued on 31st January, 2025.

That under the provisions of Rule 11(2) Advocate Remuneration Order the taxing officer issued a letter containing the reasons for the decision and thereafter the Applicant filed the Chamber Summons on 20th February, 2025 within 14 days period from the date the reasons were supplied.

That the reference is properly before court and the same is not time barred. That there is no evidence to suggest delay and that the Applicant complied with the prescribed procedural requirements.

That the taxing officer awarded Kshs.30,000/- under item 1 of the Party and Party Bill of Costs reasoning that the sum of Kshs.100,000 sought by the Applicant was inapplicable as it is the figure provided for in the schedule of Advocates Remuneration Order 2014 under the hearing “other matters”.

That the matter before this court, the subject matter of the taxation and the present reference was an application seeking extension of time to file an appeal out of time.

That there is no provision in the Remuneration order where instructions fees for commencing a suit by way of miscellaneous application is prescribed that it therefore falls under “other matters” in which it is clear that if the proceedings are undefended, the fees should not be less than 45,000/- and when defended, not less than Kshs.75,000. That where the Remuneration Order provided for the minimum, the taxing officer can only apply the discretion to adjust the amount upwards but not below the given figure.

That the award of Kshs.30,000/- as instruction fees in the present case amounts to undercutting which is prohibited.

Counsel relied on the case of PZ Cussons East Africa Limited -vs- Kenya Revenue Authority in which the Judge cited the decision of the Court of Appeal in Thomas James Arthur -vs- Nyeri Electricity Undertaking (1969) EA where it was held that;

“where there has been an error in principle the court will therefore interfere.”

Counsel submitted that the Taxing officer misapprehended the law by disregarding the mandatory minimum provided under schedule 6 paragraph 1 of the Advocates Remuneration Order 2014 under the sub-heading “other matter” and thereby committed an error in principle. That the error takes the matter beyond a mere question of quantum and justifies the court’s intervention.

Counsel urged the court to set the taxing officer’s decision dated 23rd January, 2025 aside and in its place award Kshs.100,000/- as the minimum prescribed amount of Kshs.75,000/- noting that the application was defended.

Counsel submitted that the Respondent should bear the costs of the application.

On behalf of the Respondent, written submissions dated 14th August, 2025 were filed by Owiti Otieno & Ragot Advocates. Counsel submitted that from a reading of the Reference the grounds of opposition filed by the Respondent the issues that arise for determination are;

- (a) Whether the Reference was filed out of time
- (b) Whether the learned taxing master erred in law and fact by assessing item No.1 of the Bill (instructions fees) in line with paragraph 1 of schedule 7 of the 2024 Remuneration Order.

On whether the Reference was filed out of time, Counsel submitted that the requirement for reasons for the taxing master's ruling under paragraph 11 of the Advocates Remuneration Order had been fully satisfied at the point of delivery of the ruling rendering any further request for reasons unnecessary. That the reference therefore ought to have been filed within 14 days from the date of delivery of the ruling being 5th February, 2025. That the instant reference having been filed on 20th February, 2025 was therefore lodged out of time.

Counsel submitted that where the taxing master's ruling contains the reason for the taxation there is no requirement in law to again request for such reasons before filing the reference under paragraph 11 of the Advocates Remuneration Order.

Counsel relied on the decision in KCB Limited & Another -vs- Yaswa Antonny Joseph [2022] KEHC 2868 (KLR) and Ms Advocates LLP (Formerly Tripple A Law LLP/Tripple A Advocate) -vs- China Wu Yi (Kenya) Company Limited [2023] KEEL 18075 (KLR) to support the submissions.

Counsel submitted further that the fourteen days period within which to file the reference runs from the date of delivery of the ruling. That the reference herein was filed out of time.

On whether the taxing master erred in taxing item No.1 on the Bill of Costs, Counsel relied on the Court of Appeal decision of Joreth Ltd -vs- Kigano & Associates, Civil Appeal No.66 of 1999 [2002]eKLR where it was held that unless the taxing officer has misdirected himself on a matter of principle, the judge sitting on a Reference against the assessment ought not to interfere with the findings.

Counsel submitted that the miscellaneous application herein seeking leave to appeal does not fall within the category of 'other

matters' under schedule 6 of the Advocates Remuneration Order, 2014. That the other matters provision applies to substantive proceedings which constitute a complete cause in themselves and not to interlocutory, procedural steps taken within the framework of an existing appeal.

Counsel relied on the case of *Premchard Raichard Ltd & Another-v-s Quarry Services of East Africa Ltd & Another [1972] EA 162 (HCK)*

where the court established the principle that costs should not be allowed to raise to such a level as to confine access to the courts to the wealthy and the successful litigant ought to be fairly reimbursed for the costs he has had to incur. That the instructions fees as taxed was fair in the circumstance.

I have considered the application, the grounds of opposition and the written submissions. Two issues for determination namely;

a) Whether the Reference was filed out of time.

I have read the provisions of Rule 11 of the Advocates Remuneration Order. I find nothing in that provision prohibits a party who is dissatisfied with the taxation from requesting for reason for the taxation from the taxing master. There is no express provision in that law that where reasons are contained in the ruling,

the Reference should be filed within 14 days from the date of the ruling.

I find that a reference filed within 14 days from the date of the taxing master's letter informing the dissatisfied party that the reasons for the decision are contained in the ruling, to have been filed within time.

The second issue is whether or not the taxing master erred in the taxation. The key to determining this question is to establish whether miscellaneous applications fall under "applications" or under "other matters."

Unlike applications filed in actions commenced vide some other modes for instance by way of plaint, Originating Summons or Petitions, a miscellaneous application is a complete action in itself and in my view the same cannot be charged as an interlocutory application in an existing action.

Miscellaneous application is one of those actions not provided for expressly in the Remuneration Order and which therefore falls under "Other matters" for which the minimum fee provided for defended actions is Kshs 75, 000/=

I find that the amount of Kshs 30,000/= awarded by the taxing master was not supported by the Remuneration Order and that in making the said award the taxing master erred in principle. In *Kipkorir, Titoo & Kiara Advocate -vs- Deposit Protection Fund Board Nairobi Court of Appeal Civil Appeal No.220 of 2004 [2005] eKLR* relied on by the respondent, the court held that on reference to a Judge from the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer erred in principle in assessing the costs.

For the foregoing reasons, the court hereby sets aside the taxation in respect of item 1 of the Bill of Costs and since it is only one item contested, the court hereby substitutes the taxation of item 1 of the Party and Party Bill of Costs with an award of Kshs 75,000/= provided by the Remuneration Order. The rest of the Bill remains as taxed by the taxing master.

The Reference is allowed. Each party to bear own costs thereof.

Orders accordingly.

Ruling dated and signed at Kisumu and delivered virtually this 22nd day of January, 2026.

**E. ASATI,
JUDGE.**

In the presence of:

Maureen: Court Assistant.

Raburu h/b for M. M. Omondi for the Advocate/Applicant.

Omondi h/b for Oduor for the Client/Respondent.