

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT KISUMU**

**MISCELLANEOUS NO. E076 OF 2025**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**NYANZA**

**CLUB.....APPLICANT**

**VERSUS**

**KENYA HOTELS AND ALLIED WORKERS  
UNION.....RESPONDE  
NT**

**RULING**

Before the court for determination is the Applicant's Chamber Summons dated 7<sup>th</sup> October 2025 seeking Orders that:-

- 1. The Taxing Masters decision delivered on 23<sup>rd</sup> June 2025 on item No 1-47 of the Bill of Costs dated 27<sup>th</sup> November 2024 be set aside.*
- 2. The Honourable Court be pleased to refer the matter back for taxing off of Items 1-47 of the Bill of costs dated 27<sup>th</sup> November 2024 and with proper directions thereof.*

- 3. In the alternative to prayer 2 above the court exercises its inherent jurisdiction and be pleased to tax the fees due to the respondent in respect of items No. 48-66 of the Bill of Costs dated 27<sup>th</sup> November 2024 to Kshs.4,800 for disbursements.*
- 4. Costs of this application borne by the respondent.*

The Chamber Summons was expressed under Rules 11(1) and 11(2) of the Advocates (Remuneration) Order and based on the grounds set out on its face and the Supporting Affidavit of Laura Awuor Odipo sworn on 7<sup>th</sup> October 2025.

The applicant contended that the respondent did not instruct an advocate to represent it and the Advocates (Remuneration) Order did not apply as per Rule 2 and the respondent was not entitled to instruction fees perusal, drafting fees, court attendance fees exclusive to advocates and it was only entitled to disbursements of Kshs.4,800, the actual cost incurred.

It is the applicant's case that it sought reasons from the taxing officer vide letter dated 2<sup>nd</sup> July 2025 and the reasons were provided vide notice dated 2<sup>nd</sup> October 2025 and filed the instant suit thereafter.

The respondent filed a Notice of Preliminary Objection dated 27<sup>th</sup> October 2025 contending that the reference offended the powers of the taxing officer as provided in the Employment and Labour Relations Court Act and the Employment and Labour Relations Court Rules.

The respondent prayed dismissal of the reference.

By a Replying Affidavit sworn by Mr. Erick Ngame on 29<sup>th</sup> December 2025, the affiant deposed that the applicant failed to observe the taxing officer's directive to file and serve the instant reference and as consequence, the reference was overtaken by events as the respondent proceeded to execute the decree and the reference lacked merit and was for dismissal with costs as the applicant had not purged the disobedience of the taxing officer's orders.

That should the court entertain the reference, without the applicant purging the contempt the taxing officers orders would become a mockery.

The affiant deponed that the Advocates (Remuneration) Order was inapplicable to non-advocates and to taxation

outcome leading to costs as awarded in favour of the respondent.

That reimbursement of costs to litigants who were non-advocates was provided for by the Employment and Labour Relations Court Act read together with the Employment and Labour Relations Court (Procedure) Rules and since trade unions act on instructions of their members, they qualify for reimbursement.

Finally, the affiant deposed that the taxing officer's ruling dated 23<sup>rd</sup> June 2025 was reasonable as it was based on the court's practice and urged the court to dismiss the reference.

### **Applicant's submissions**

As to whether the claimant is entitled to costs as awarded by the taxing officer, counsel noted that the respondent did not instruct an advocate to act for them and as consequence, the Advocates (Remuneration) Order was inapplicable as regards instruction fees.

Reliance was placed on Rule 2 of the Advocates (Remuneration) Order.

According to counsel, the claimant could not charge perusing fees drafting fees and court attendance and items 1-47 of the bill of costs had no legal basis.

Reliance was placed on the sentiments of the court in **Charles Lutta Kasamani t/a Kasamani & Co. Advocates V Patrick Johhson Okwaro & another** [2015] KEHC 5350 (KLR) and **Mwangi Keng'ara & Co. Advocates V Invesco Assurance Co. Ltd** [2016] eKLR, to submit that a self-representing party was only entitled to disbursements and not professional fees including instruction fees.

Counsel submitted that since the respondent was a legal entity capable of suing and being sued in its name it acted on its behalf and thus did not qualify for professional fees and was only entitled to Kshs.4,820.00 as disbursements.

Counsel urged that items to 47 of the Bill of Costs ought to be taxed off because the claimant was not an advocate.

### **Respondent's submissions**

Mr. Ngame submitted that employment statutes empowered taxing masters to award costs within the

scales as drafted by the respondent in its party and party bill of costs and the taxing master did not err.

Mr. Ngame cited no statute or Act of Parliament to reinforce the contention.

That the reference herein was a blatant violation of the taxing officers directive and had been taken by costly events was misconceived and unmerited.

Mr. Ngame submitted that although the taxing officer permitted the applicant to file and serve the reference within 21 days, it did not and warrants were obtained against it and the applicant was indolent.

Reliance was placed on **Said Swellem Gheithan V Commissioner of Lands & 5 others** [2015] eKLR on delay to urge that the applicant failed to comply with a mandatory procedural requirement rendering the reference defective and without merit.

Mr. Ngame submitted that Section 12(4) of the Employment and Labour Relations Court Act empowered the court to make Orders as to costs subject to the rules and Rule 70 of the Employment and Labour Relations

Court (Procedure) Rules, 2024, provided for reasonable reimbursements of monies spent by individual litigants and those represented by trade unions.

That allowing the reference as framed would undermine the mandate of the taxing officer.

Mr. Ngame submitted that the taxing officer did not err by taxing items 2 to 47 citing **Kipkorir Titoo and another V Deposit Protection Fund and Arthur V Nyeri Electricity undertaking** [1961] EA 497 on circumstances in which a court may interfere with the discretion of the taxing officer.

Reliance was also placed on the decisions in **D'Ssouza V Ferrao** [1960] EA 602 and **Deushi Dhanji V Kanji Naran Patel (No.2)** [1978] KLR 243 on how a court may dispose of a reference before it.

Finally, Mr. Ngame submitted that the instant reference was time barred as it was filed contrary to the directions of the taxing officer.

I will dispose of the Preliminary Objection first on account of its potential to terminate the application at this stage.

It requires no belabouring that the *locus classicus* rendition of what constitutes a Preliminary Objection are the sentiments of Law JA and Sir Charles Newbold P in **Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd** [1969] EA 696

Law JA stated

*“...A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a Preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound the contract giving rise to the suit to refer the dispute to arbitration”.*

Sir Charles Newbold P added

*“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”*

The test applicable was explained in **Attorney General & another V Githinji & another** [2016] KECA 817 (KLR) namely;

- (i) *Whether the respondent's Preliminary Objection raises a pure point of law.*
- (ii) *All the facts pleaded by the other side are correct.*
- (iii) *No fact that needs to be ascertained.*

Significantly, what is before the court is a reference application seeking the setting aside or re-taxation of the Bill of Costs dated 27<sup>th</sup> November 2024, which the Taxing Master taxed at Kshs.118,925 on 23<sup>rd</sup> June 2025.

In **Samuel Muthia Mague V American Life Insurance Co. (K) Ltd** [2008] KEHC 2450 KLR Waweru ] stated:

*"The only procedure available to challenge a taxation of bills of costs is that provided for in paragraph 11 of the Advocates (Remuneration) Order. Once taxation has been done even ex parte, it can be challenged only on merit upon a reference under the said provision. The Advocates (Remuneration) Order is a complete code of law pertaining to taxation of bill of costs".*

Juxtaposing the respondent's Notice of Preliminary Objection against the foregoing principles, it is clear that the notice does not meet the threshold of a Preliminary Objection on account that it does not raise a pure point of law.

The applicant is challenging a ruling by the Taxing Master.

Needless to belabour, a reference is analogous to an appeal and as adverted to above, it is the only mechanism of challenging a ruling by a taxing master on a Bill of Costs.

See **Mwandoe Righa V Braimoh Joseph Mburu** [2014] eKLR **Sharma V Uhuru Highway Development CO** [2001] 2EA 530 and **Donholm Rahisi Stores V East Africa Portland Cement Ltd** [2005].

More significantly, the respondent's Notice of Preliminary Objection lacked specificity and clarity. It is amorphous in that it cites the Employment and Labour Relations Court Act and the Employment and Labour Relations Court Rules, and while the Employment and Labour Relations Court Act exists, no provisions was of law cited and the so

called “Employment and Labour Relations Court Rules” do not exist. What exists are the Employment and Labour Relations Court (Procedure) Rules, 2024 and Rule 70(4) provides that

*“The court may Order reasonable reimbursements of money spent in the course of litigation by a litigant acting in person or represented by a trade union or an employers’ organization”.*

Thus, the respondent’s Notice of Preliminary Objection does not meet the threshold of a Preliminary Objection and it is accordingly dismissed.

It is common ground that the respondent filed a Party and Party bill of costs dated 27<sup>th</sup> November 2024 arising from the Judgment of Baari J dated 19<sup>th</sup> January 2023 where the court awarded costs to the claimant union against the respondent, together with interest from 10<sup>th</sup> February 2022 and the Bill was taxed at Kshs.118,925 which included instruction fees of Kshs.30,000.00

The respondent did not denied that it had not instructed an advocate as submitted by the applicant. It had no advocate on record.

The applicant is challenging all the items on the bill of Costs recommending disbursements at Kshs.4,800.

Regrettably, none of the parties attached the contentious Party and Party bill of costs for the court's perusal.

On the alleged late filing of the instant reference, it is evident that it was filed on 14<sup>th</sup> October 2025 and the respondent filed its Notice of Preliminary objection on 17<sup>th</sup> November 2025.

The applicant's advocate sought reasons for the decision vide letter dated 2<sup>nd</sup> July 2025 and the response was sent on 2<sup>nd</sup> October 2025 at 12:38pm.

The Party and Party bill of costs was taxed on 23<sup>rd</sup> June 2025.

Rule 11 of the Advocates (Remuneration) Order provides:

**(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.**

The foregoing provisions encapsulate the timelines within which an objector to a ruling by a taxing officer ought to act.

Notably, the provisions of Rule 11 of the Advocates (Remuneration) Order are not couched in mandatory tone as regards the actions to be taken by the Objector. The Order uses the term “may” as opposed to “shall” and the court has discretion to enlarge the time fixed by sub-paragraph (1) or sub-paragraph (2) for the taking of any step pursuant to an application by Chamber Summons [Rule 11 (4)].

Applying the foregoing provisions to the facts of the instant case it is clear that since the Party and Party bill of costs was taxed on 23<sup>rd</sup> June 2025, counsel sought

reasons for the decision vide letter dated 2<sup>nd</sup> July 2025 less than 14 days thereafter, the taxing officer responded vide letter dated 2<sup>nd</sup> October 2025 served upon counsel on the same day, and the applicant's counsel filed the instant reference on 14<sup>th</sup> October 2025, thus counsel acted within the prescribed timelines and the Chamber Summons was filed in accordance with the applicable law.

It is not lost to the court that the respondent was relying on directions allegedly made by the taxing officer which he did not avail for perusal by the court.

Be that as it may, having complied with the applicable rules, the applicant's reference was properly before the court.

As regards the applicability of the Advocates (Remuneration) Order, Section 44 of the Advocates Act provides:

- 1. The council of the society may make recommendations to the Chief Justice on all matters relating to the remuneration of advocates, and the Chief Justice, having considered the same, may by Order,**

**prescribe and regulate in such manner as he thinks fit the remuneration of Advocates in respect of all professional business, whether contentious or non-contentious.**

As deposed by the applicant, the Advocate (Remuneration) Order 1962 as amended applies to advocates only.

Rule 2 of the Remuneration Order provides:

This Order shall apply to the remuneration of an advocate of the High Court by his client in contentious and non-contentious matters, the taxation thereof and the taxation of costs between party and party in contention matters in the High Court, in subordinate court (other than muslim courts), in a Tribunal appointed under the landlord and tenant (Shops, Hotels and Catering Establishments) Act (Cap 301) and in a Tribunal established under the Rent Restriction Act.

Finally Section 2 of the Advocates Act defines advocate to mean:

“Any person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank

of senior counsel for purposes of part IX, includes any person mentioned in Section 10”.

The foregoing three provisions demonstrate beyond peradventure that the Advocates (Remuneration) Order applies to Advocates exclusively.

A panoramic view of the applicant’s reference questions, the role of the taxing master in the taxation of a bill of costs in cases where an advocate-client relationship did not exist.

In **Wilfred N. Konosi t/a Konosi & Co. Advocates V Flamco Ltd** [2017] KECA 431 (KLR), the Court of Appeal expressed itself as follows:-

*“The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the **Advocates Act** and the **Advocates Remuneration Order**. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in **Taparn V***

**Roitei [1968] EA 618** that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The **Advocates Act** and the **Advocates Remuneration Order** confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered.

The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.

As a Judicial Officer sitting to tax a bill of costs between an advocate and his or her client, a taxing officer must determine the question whether he/she has jurisdiction to tax a Bill if the issue of want of advocate/client relationship is raised. An allegation that the advocate/client relationship does not obtain in taxation of an advocate/client Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question. A decision in taxation where an advocate/client relationship does not exist is a nullity for want of jurisdiction..."

As correctly submitted by Mr. Ngame, in **Kipkorir, Tito, Kiara Advocates V Deposit Protection Fund Board** [2005] eKLR the Court of Appeal held:

*“On reference to a Judge from the Taxation by 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”*

See also **Arthur V Nyeri Electricity Undertaking** (supra) and **Premchand Raichand Ltd & another V Quarry Services East Africa Ltd & another** [1972] EA 162.

Turning to the instant reference, the Taxing Officer appear to have taxed the Bill of Costs dated 27<sup>th</sup> November 2024 in the same manner the Taxing Officer would have taxed any other Bill of Costs without appreciating the fact that the applicant was a trade union and it had not instructed an advocate to represent it and ought to have taxed off all items germane to professional services but leaving out disbursements as direct costs incurred by the applicant in consonance with Rule 70(4) of the Employment and Labour Relations Court (Procedure) Rules, 2024, reproduced elsewhere in this ruling.

In the circumstances, the Taxing Officer committed an error of principle necessitating the courts interference with the taxing officer's exercise of discretion.

The upshot of the foregoing is that the ruling of the Taxing Officer delivered on 23<sup>rd</sup> June 2025 is set aside and the Bill of Costs dated 27<sup>th</sup> November 2024 be and is hereby remitted to a Taxing Officer, other than F. M. Rashid for taxation.

Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT  
KISUMU ON THIS 3<sup>RD</sup> DAY OF FEBRUARY 2026.**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil**

**Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**  
**JUDGE**