



A.O. Bayusuf & Sons Limited & another v Athman & another (Environment and Land Miscellaneous Case E016 of 2025) [2026] KEELC 713 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEELC 713 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E016 OF 2025
YM ANGIMA, J
FEBRUARY 12, 2026**

BETWEEN

A.O. BAYUSUF & SONS LIMITED 1ST APPLICANT

HASSAN BAYUSUF 2ND APPLICANT

AND

BITIMA KOMBO ATHMAN 1ST RESPONDENT

BIMA ABDALLA JAFU 2ND RESPONDENT

RULING

1. This is a reference against the decision of the Hon. G. Sogomo (PM) dated 14.02.2025 whereby he assessed the applicants party and party costs at kshs. 71,300/= exclusive of VAT. The applicants were aggrieved by the award of Kshs.40,000/= for instruction fee. It was the applicants' contention that they were entitled to a higher award on account of instruction fee and that the honourable magistrate erred in principle in his assessment of the fee.
2. The 1st respondent filed a replying affidavit sworn on 25.11.2025 in opposition to the reference. It was contended that the value of the subject matter was not ascertainable from the pleadings and that the suit before the subordinate court was withdrawn before it could be heard. The 1st respondent therefore supported the assessment of the instruction fee by the trial court.
3. When the reference was listed for directions on 26.11.2025 each side was granted 30 days within which to file written submissions. The record, however, shows that none of the parties had filed submissions by the time of preparation of the ruling.



4. The applicants' reference was filed pursuant to paragraphs 11, 49 & 51 of the Advocates Remuneration Order (ADO) and Sections 1A, 1B and 3A of the Civil Procedure Act (Cap 21). Paragraph 11 of ADO stipulates as follows;

- “(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.”

5. There is no indication on record to demonstrate the applicants' compliance with paragraphs 11 (1) and (2) of ADO. There is no indication in either the chamber summons or the supporting affidavit on when the applicants gave their notice of objection to Item No.1 of their bill of costs. There is no indication if they requested for reasons for the assessment on instruction fee. There is also no indication if, and if so when, they received reasons for the assessment.

6. The court is of the opinion that the jurisdiction of the court has not been invoked or properly invoked in the circumstances. The court is thus of the view that the applicants' chamber summons dated on 3.03.2025 is incompetent.

7. The legal effect of the failure to issue a notice or valid notice of objection was considered by the Court of Appeal in the case of *Macharia & Co Advocates vs Arthur K Magugu & Another* [2012] eKLR as follows;

“12. Sub-rule (1) requires the party objecting to give notice in writing within 14 days "of the items of taxation to which he objects". As the trial judge correctly found, the Respondents notice of August, 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.

13. As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeal or review was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for



their taxation the Respondents notice of 1st August, 2001 was fatally defective. It follows that the Respondents' reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out

14 Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master's decision was received is immaterial and does not avail the Respondents. Under sub-rule (22, time stops running from the date proper notice is filed which of course must be within 14 days of taxation, until receipt of the taxing master's reasons for his decision.”

8. The court is thus of the view that the applicants' reference or purported reference is incompetent and fatally defective. It is for striking out in limine. As a result, the chamber summons dated 03.0.3.2025 is hereby struck out with no order as to costs.

9. Ruling dated and signed at Mombasa and delivered virtually via Microsoft Teams on this 12th day of February, 2026.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Ms. Julu for 1st and 2nd applicants

No appearance for respondents

