

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**

**CONSTITUTIONAL PETITION NO. 52 OF 2021**

**NOVA HOLDINGS LIMITED ..... 1<sup>ST</sup> PETITIONER**  
**ASHOK LABSHANKER DOSHI ..... 2<sup>ND</sup> PETITIONER**

**VERSUS**

**THE COUNTY GOVERNMENT OF MOMBASA ... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER, LAND, HOUSING AND PHYSICAL PLANNING ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Chamber Summons dated 19<sup>th</sup> December 2024, the County Government of Mombasa (the 1<sup>st</sup> Respondent) and its Executive Committee Member, Land Housing and Physical Planning (the 2<sup>nd</sup> Respondent) pray for the following:

- i. That this Honourable Court be pleased to allow this Reference against the decision on taxation of the Taxing Officer made on 10<sup>th</sup> September, 2024;**
- ii. That the Ruling on Taxation delivered on 10<sup>th</sup> September, 2024 with respect to item 1 on**

**instruction fees of the Applicant's Bill of Costs dated 7<sup>th</sup> June, 2024 be set aside;**

**iii. That item 1 of the Applicant's Bill of Costs dated 7<sup>th</sup> June, 2024 be assessed by this Honourable Court in such other sums as may appear to be reasonable;**

**iv. That in the alternative, this Honourable Court remits item 1 of the Applicant's Bill of Costs dated 7<sup>th</sup> June, 2024 to another Taxing Officer for re-taxation; and**

**v. That the costs of and occasioned by this Reference be provided for.**

2. The application is supported by an Affidavit sworn by the 1<sup>st</sup> Respondent's Deputy Director in-charge of Litigation Elizabeth Kisingo and a further Affidavit sworn by Mangaro O. Safari, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It is premised on the grounds that the Learned Taxing Officer misdirected himself in assessing item 1 of the Applicant's Bill of Costs and that the same was so exorbitantly high as to amount to an error in principle.

3. The two (2) Petitioners - Nova Holdings Limited and Ashok Labshanker Doshi are opposed to the application. In a Replying Affidavit sworn by their Counsel on record - Willis O. Oluga on 14<sup>th</sup> October 2025, the Petitioners aver that the application has been filed three (3) months outside the statutory time as required under Rule 11 (1) and (2) of the Advocates Remuneration Order, 2014. The Petitioners accuse the Respondents of using the letter dated 20<sup>th</sup> September 2024 as an excuse for filing the Reference late yet the reasons for the taxation was well laid out in the Ruling.
4. I have carefully perused and considered the Reference as well as the response thereto. I have similarly perused and considered the submissions placed before the Court by the Learned Counsels representing the Petitioners and the Respondents herein.
5. By their Reference dated 19<sup>th</sup> December 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have sought for orders that the Ruling of the Taxing Officer dated 10<sup>th</sup> September 2024 be set aside. In particular, the Respondents are opposed to the taxation of item No. 1 on instruction fees which they assert was taxed so exorbitantly as to amount to an error in Principle.

6. In response to the Reference, the Petitioners filed a “Notice of Preliminary Objection” dated 19<sup>th</sup> May 2025 in which they asserted that the Reference was filed three (3) months outside the statutory timelines as provided under Rule 11 (1) and (2) of the Advocate’s Remuneration Order, 2014. Those grounds of objection were reiterated by Mr. Oluga, Learned Counsel for the Petitioners in a Replying Affidavit sworn on 14<sup>th</sup> October 2025.
7. The Reference arises from a judgment delivered herein by the Honourable Justice L.L. Naikuni in which he awarded costs to the Petitioner on 20<sup>th</sup> March 2024. Subsequent to the judgment the Petitioners filed a Bill of Costs dated 7<sup>th</sup> June 2024. The Bill of costs was placed before Hon. Nyariki DR who delivered a Ruling thereon on 10<sup>th</sup> September 2024 allowing the Bill of Costs as prayed in the sum of Kshs. 37,734,736.66.
8. Some three (3) months later on 19<sup>th</sup> December 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed the present Reference challenging the decision of the Taxing Master in regard to the instruction fees which were taxed at Kshs. 28,250,000/=.

9. In ***Kipkorir, Titoo & Kiara Advocates -vs- The Deposit Protection Fund Board (2005) eKLR***, the Court of Appeal restated the position that:

**“On a 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. In Arthur -vs- Nyeri Electricity Undertaking (1961) EA 497, the predecessor of this Court said at page 492 paragraph 1: -**

**“Where there has been an error in principle the Court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the Court will interfere only in exceptional cases.”**

10. As to the mode of approaching the Court when one is dissatisfied with a decision of the Taxing Officer, Paragraph 11(1) and (2) of the Advocates Remuneration Order provides 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 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.”**

11. In the matter herein, following the decision of the Taxing Officer on 10<sup>th</sup> September 2024, the Respondents lodged a Notice of Objection as required on 20<sup>th</sup> September 2024. In their said letter dated 20<sup>th</sup> September 2024 the Respondents stated as follows in the last paragraph:

**“Kindly therefore proceed to give us your reasons for taxing the instruction fee at Kshs. 37,734,736.66 within the next four (4) days failure to which, we shall assume that the reasons are those contained in the ruling dated 10<sup>th</sup> September 2024 and proceed to file our reference to the High Court.”**

12. As it turned out, the Learned Deputy Registrar did not respond to the objection by the Respondents. Rather than proceed to file a reference as they had threatened after the expiry of the four (4) days in their letter, the Respondents waited for more than two (2) months before instituting the Chamber Summons herein dated 19<sup>th</sup> December 2024.
13. From my perusal of the record herein, one could not fault the Learned Deputy Registrar. While I agree with the Respondents that the instruction fee appeared to have been taxed on the higher side, the reasons for the decision of the Taxing Officer were already given in the brief decision of the Taxing Officer in which he states as follows:

**“The instruction was given in 2021; this taxation shall be guided by Schedule 6 of the Advocates Remuneration (Amendment) Order of 2014. The Petitioner filed a Valuation Report which has not been challenged. I have perused the bill as drawn and filed I find that all the items are drawn to scale. I shall not offset them.**

**The Bill is taxed at Kshs 37,734,736.66”**

14. While I did not necessarily agree with the Taxing Officer that that Bill was drawn to scale, it was self - evident that he had given the reasons for his decision and that the Respondents had no reason to continue waiting for another 2 months to be furnished with the reasons behind the decision.

15. As Odunga J (as he then was) stated in ***Evans Thiga Gaturu - vs- Kenya Commercial Bank Limited (2012) KEHC 4274 (KLR)***:

**“where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference. Otherwise, mere adherence to the procedure may lead to absurd results if the advocate was to continue waiting for reasons, as it happened in the case of *Kerandi Manduku & Company vs. Gathecha Holdings Limited Nairobi (Milimani) HCMA No. 202 of 2005*, where the taxing officer had left the judiciary. Where reasons are contained in the decision, I share the view that to file the reference more than 14 days after the delivery of the same would render the reference incompetent.”**

16. Arising from the foregoing, I was persuaded that there was no apparent reason why the Respondents did not file the Reference to this Court within the prescribed time. If they had any valid reason to warrant the filing of the Reference out of time, the Respondents ought to have first sought for the enlargement of time before proceeding with the Reference.
17. In the premises, I am persuaded that the Chamber Summons dated 19<sup>th</sup> December 2024 is incompetent and misconceived. The same is hereby struck out.
18. I make no order as to costs.

**Ruling dated, signed and delivered in open court and virtually at Mombasa this 19<sup>th</sup> day of February, 2026**

.....  
**J.O. OLOLA**  
**JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Makadina Advocate for the Petitioners
- c) Mr. Ng'ang'a Advocate for the Respondents