



Omar v Adarus & another (Environment and Land Miscellaneous Case E062 of 2025) [2026] KEELC 714 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEELC 714 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E062 OF 2025
YM ANGIMA, J
FEBRUARY 12, 2026**

BETWEEN

KHALITHUM ABDULLAH OMAR APPLICANT

AND

MUNA HUSSEIN ADARUS 1ST RESPONDENT

SHIFA HUSSEIN ADARUS 2ND RESPONDENT

RULING

1. By a chambers summons dated 19.05.2025 expressed to have been filed pursuant to paragraph 11 of the Advocates Remuneration Order (ADO), Section 3A of the [Civil Procedure Act](#) (Cap 21) and all enabling provisions of the law, the applicant sought the following orders;
 - a. That this Honourable court be pleased to set aside/vacate the ruling dated 2nd April 2025 delivered by Honorable Christopher Yalwala (Deputy Registrar) in ELC NO. 304 of 2010 in respect of item 1 and 2 being instruction and getting up fee respectively,
 - b. That the court be pleased to remit the bill of costs dated 11th August 2023 to a different taxing officer for taxation of the bill of costs with respect to Item 1 and 2 thereto.
 - c. That in the alternative to prayer above, the court be pleased to tax the bill of costs item I and 2 respectively.
 - d. Costs of the application,
 - e. Any other relief deemed just and fair to grant by this court.
2. The reference was based on the grounds set out on the face of the summons and the contents of the supporting affidavit sworn by the applicant on even date. The applicant contended that the taxing officer erred in law in awarding instruction fee of Kshs. 300,000/= which amount was expressly high



- as to amount to unjust enrichment of the respondents. He further contended that value of the subject matter of litigation was only Kshs. 700,000/= and that the taxing officer erred in law in failing to accept and apply that value.
3. The respondents filed a replying affidavit sworn 14.07.2025 by Qassim Abu Amo as their attorney. They stated that the taxing officer did not err in law in his assessment of instruction fee since he appreciated that the value of the subject matter could not be ascertained from either the pleadings or the judgment. It was their case that the taxing officer had correctly exercised his discretion in allowing the instruction fee of Kshs. 300,000/= and that there was no evidence of any error in principle to warrant interference with his judicial discretion.
 4. It would appear that the parties herein agreed to canvass the said reference through written submissions even before the court could give directions on the hearing thereof. The record shows that the applicant filed written submissions dated 06.08.2025 whereas the respondents' submissions were dated 02.09.2025.
 5. The applicant's reference was filed pursuant to paragraph 11 of the ADO which 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.”
 6. There is no indication on record to demonstrate the applicant's compliance with paragraphs 11 (4) and (2) of ADO. There is no indication in either the chamber summons or the supporting affidavit on when the applicant gave his notice of objection to Item Nos. 1 and 2 of their bill of costs. There is no indication if they requested for reasons for the assessment on instruction and getting up fee. There is also no indication if, and if so when, he received reasons for the assessment.
 7. 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 applicant's chamber summons dated on 03.03.2025 is incompetent.



8. 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.”

9. The court is thus of the view that the applicant's reference or purported reference is incompetent and fatally defective. It is for striking out in limine. As a result, the chamber summons dated 19.05.2025 is hereby struck out with no order as to costs.

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

No appearance for appearance

Ms. Kabole for 1st and 2nd respondents

