

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**AT KILGORIS**  
**ELC JR(L) E002 OF 2024**

**REPUBLIC.....APPLICANT**

**AGAINST**

**THE INSPECTOR GENERAL OF POLICE.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS .....2<sup>ND</sup> RESPONDENT**

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

**THE CHIEF MAGISTRATE’S COURT AT KILGORIS.....5<sup>TH</sup> RESPONDENT**

**AND**

**ANGELINE NAISIANO NKOIMO and JOHN MAISONI NKOIMO (the legal Administrators of the Estate of Stanley LEMOIYO NKOIMA) ..... INTERESTED PARTIES**

**AND**

**GEOFFREY MAKANA ASANYO.....1<sup>ST</sup> EXPARTE APPLICANT**

**RULING**

1. This Ruling is in respect of a reference dated 12<sup>th</sup> November 2025, against the Ruling dated and delivered on 7<sup>th</sup> of August 2025 in respect of the Certificate of Costs in relation to the Party and Party Bill of costs dated 30.04.2025.
2. The Application seeks the following substantive orders
  - (i) That the Honourable court be pleased to set aside the decision of the Taxing master dated 7<sup>th</sup> August 2025 and direct that the Bill of costs dated 27<sup>th</sup> March 2025 be taxed by another taxing Master other than Hon. W.C Waswa.
  - (ii) That the Honourable court be pleased to stay the Execution of the said Ruling and certificate of costs issued on 7<sup>th</sup> August 2025 pending hearing and determination of this Application.
3. The grounds in support of the reference are *inter alia* that; -

- (i) The court allowed a Notice of Preliminary Objection dated 10<sup>th</sup> December 2024 and 13<sup>th</sup> December 2024 and dismissed the Notice of Motion Application dated 26<sup>th</sup> November 2024 with costs.
  - (ii) That the Interested Parties filed their party and Party Bill of Costs dated 30<sup>th</sup> April 2025 which Bill of costs was taxed at Kshs 611, 207.00 by the Learned Deputy Registrar on 7<sup>th</sup> August 2025 which sum was excessive as the matter was determined summarily by a notice of Preliminary Objection thus being aggrieved by the said Ruling the Exparte Applicants filed a Notice of Objection dated 12<sup>th</sup> August 2025 objecting the decision in relation to items 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,28,,29,30,31,32,33,34,35,36,37,40,41 and 43 and sought reasons for the said taxation.
  - (iii) That the taxing master in Taxing instructions fees at Kshs 300,000/= in a matter that was not complex erred in law and in fact.
  - (iv) That the interested parties equally filed a notice of objection on all the contested items and requested the Deputy Registrar to give reasons for the Ruling pursuant to paragraph 11(2) of the Advocates Remuneration Order to enable them lodge a taxation reference.
  - (v) That a certificate of costs was issued pending the issuance of the reasons for the taxation which reasons were not issued at all, necessitating the Filing of this Reference.
4. The court directed disposal of the reference by way of oral submissions.

### **Applicants Submissions**

5. Mr. Konosi Learned counsel appeared The Applicants submitted that the impugned ruling was delivered on 6<sup>th</sup> February 2025, and they

gave notice to the taxing officer to give reasons for the taxation on a number of items. No reasons were given at all.

6. The Applicant submits that the taxing master used the wrong principles in increasing instructions fees from Kshs.75,000 to Kshs.300,000 and no reasons were given for the increase hence the taxing Master reached a wrong conclusion. It was further submitted on behalf of the Applicants that the reference was not filed prematurely as no reasons had been given hence the reference was perfectly in court. Reliance was placed on the decision in the case of Kipkorir Kiptoo and Tiara Advocates vs Deposit Protection Fund Board (2005) KECA KLR thus the court was urged to allow the reference.

### **Respondents Submissions**

7. Mr. Njoroge learned counsel for the Respondent opposed the Application through a Replying Affidavit dated 17<sup>th</sup> November 2025 Respondent. It was his further submissions that the reference was filed out of time and not filed prematurely in that the impugned Ruling contained reasons and hence no other reasons ought to be sought in , that in accordance with rule 11(2) the latest date to have filed the reference was by 27/8/2025 being the 14<sup>th</sup> Day as the reasons were contained in the ruling, and a certificate of costs was thereafter issued paving the way for demand being made for the payment and thereafter motion was set for execution on the costs culminating to issuance of a NTSC on 12/11/2025 .
8. That no reference was filed, no letter was written seeking for the reasons on the merits of the reference, the Respondent submits that the taxing master enjoys discretion which can only be interfered with in Limited circumstances as stated in Outa Vs. Odotoo and 3 Others Petition 6 of 2014(2023) KLR. Mr Njoroge further placed reliance on the decision in the case of Republic Vs. Ministry of Finance Exparte Muchiri Njuguna and 6 Others 2006 eKLR. Where the court held that the discretion of a taxing master could be

interfered with when it is manifestly excessive, where the award diverges sharply so as to infer an error of principle.

9. On error of principle the Respondent submits that it occurs when the taxing Master takes into consideration irrelevant factors or fails to take into consideration relevant facts. that the award given is comparable or a similar award issued in Kilgoris ELC JR No. E005 of 2022.
10. In a brief rejoinder Mr. Konosi submitted that that the reference was not filed out of time as a notice of objection was filed within 14 days of delivery of the Ruling, and that the error of Principle related to the instructions fees where the minimum was Kshs 100,000 in a judicial review or Constitutional Petition. That the DR applied 2<sup>nd</sup> Schedule, the taxing master awarded getting up fees where there was no trial and that the ruling did not give any reason.
11. It is common ground between the Applicant and the Respondent that the impugned ruling was delivered on 7<sup>th</sup> of August 2025 and objections to the ruling was filed on 7<sup>th</sup> of August 2025 and further that this Application was filed on 12<sup>th</sup> November 2025. What is contested is whether the Ruling contained Reasons thereof a position taken by the Respondents or did not a position taken by the Applicant so as to necessitate a request for Reasons to be made.

### **Issues for Determination**

12. Having analysed the Reference, the certificate of costs, the Bill of Costs as well as the impugned Ruling thereof, the submissions of the parties, the court frames the following as issues for determination.
  - (a) Whether there is a proper and competent reference before court.
  - (b) Whether or not the Bill of costs was taxed under the correct principles.
  - (c) Whether the reference is merited.
  - (d) Who bears the costs of the Reference?

### **Analysis and Determination**

13. On issue number 1, in order to determine whether there is a competent reference, the court shall look at what Rule 11 of the Advocates Remuneration order provides. Subrule 1, 2 and 4 of Rule 11 are relevant, noting that subrule 3 deals with an appeal from the decision of the Judge to the Court of Appeal.

a. Rule 11 provides: -

**1) “Should any part object to the decision of the taxing master, 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 reason for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to Judge by chamber summons which shall be served on all the parties concerned, setting out the grounds of his objection.**

**3) .....**

**4) The High Court shall have power in its discretion to enlarge 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 parties 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 expired...”**

14. The impugned ruling herein was delivered on 7<sup>th</sup> of August 2025. That ruling contained the reasons for the taxation and the Applicant did not need to ask for the reasons under subrule 1 but ought to have filed the reference within 14 days in accordance with subrule 2.

15. In arriving at the said finding, I am guided by the decisions Ahmed Nassir Vs. National Bank of Kenya 2006 E.A, where the court

held as follows ***“Although Rule 11(1) of the Advocates Renumeration Order stipulates that any party who wishes to object to the decision of the Hon. Taxing officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed items in the Bill are already contained in the considered Ruling, there is no need to seek for further reason simply because of the unfortunate wording of subrule 2 of Rule 11 of Advocates Renumeration. Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in formal and considered ruling”***

16. Similarly, in Evans Thiga Gaturu Advocate Vs. Kenya Commercial Bank Limited 2012 eKLR, as well as Court of Appeal in Kipkorir, Titoo and Kiara Advocates Vs. Deposit Protection Fund Board (2005) IKLR 528.
17. It follows from the above decisions, that when a ruling gives the reasons for taxation as in the case herein, where the reasons are to be found at paragraphs 6 to 8 of the Ruling, it follows therefrom that the Applicant ought to have filed his reference within 14 days of the said ruling which contained the reasons.
18. The Ruling was delivered on 7<sup>th</sup> August 2025 and the last date to file a reference was 21<sup>st</sup> August 2025 which was the fourteen day. This reference application herein was filed on 12<sup>st</sup> November 2025, no leave for extension of time was sought by the Applicant under subrule (4) of Rule 11 as required.
19. It follows therefrom that there is no competent reference before court, the same having been filed out of time without leave.
20. The Applicant’s Advocate were well aware of these provisions and the case law as they cited the case of Kipkorir, Titoo and Kiara Advocates Vs. Deposit Protection Fund Board (2005) IKLR 528 where the court held *inter alia* “it is true that the taxing officer did

not record the reasons for the decision on the items objected to after receipt of the respondent's notice. It seems that the taxing officer decided to rely on the reasons in the ruling on taxation dated 23rd February, 2004. That ruling at least indicated the formula that the taxing officer applied to assess the instructions fees. Although there was no strict compliance with *Rule 11 (2)* of the Order, we are nevertheless, satisfied that there was substantial compliance. The adequacy or otherwise of the reasons in the ruling is another matter. Indeed, we are of the view, that if a taxing officer totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference”\_

21. In Imarika Sacco Vs. Katana Miscellaneous Reference E015/2024 (2025) Ruling KEELRC 1135 (KLR) K. Ocharo J. faced with a similar situation, where a reference was filed out of time held that the court had no jurisdiction to entertain a reference filed out of time and dismissed the same. A similar finding was made by the High Court in the decision in the case of Ms. Lubuleliah and Associates Advocates Vs. N.K Brothers Limited Miscellaneous Civil case 52/2012 (2014 (KEHC 7393) where the court held at paragraphs 41 and 42, as follows: -

***“41. Bearing all the facts the court finds itself more persuaded by the Respondents submissions that the present application was filed out of time and without orders of the court to enlarge time to allow its filing, 42 On this ground the court finds that the Applicant would not succeed on the reference...”***

22. Having espoused the position of the law as stated in the above decisions, the inevitable conclusion is that the Reference

having been filed out of time, is hereby struck out and the court shall not dwell on the other issues which are issues of its merits.

23. Accordingly, the reference is struck out with costs to the Respondent and the Stay orders are hereby vacated.

Dated at Kilgoris this 19<sup>th</sup> day of February, 2026.

Hon. M.N Mwanyale  
Judge

**In the presence of**

CA -Sylvia/Sandra/Clara

Mr. Konosi for the Exparte Applicant/ Respondent

Mr. Njoroge for the interested Party /Applicant.