

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**

**MISC. APPLN. NO. E558 OF 2021**

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA  
IN THE MATTER OF THE ADVOCATE/CLIENT BILL OF COSTS, UNDER  
SCHEDULE VII OF THE ADVOCATES RENUMERATION

IN THE MATTER OF THE PUBLIC PROCUREMENT AND DISPOSAL ACT,  
2015

AND

IN THE MATTER OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012

AND

**IRUNGU KANGATA**

**&**

**COMPANY**

**ADVOCATES**

.....**ADVOCATE/RESPONDENT**

**VERSUS**

**NAIROBI**

**CITY**

**COUNTY**

**GOVERNMENT.....CLIENT/APPLICANT**

**RULING**

**(on Chamber Summons Dated 28/07/2025)**

1. Nairobi City County Government the Applicant herein, by its chamber summons application seeks numerous reliefs, but of relevance here are paragraphs 3 and 5 that read as hereunder:

***The summon is grounded up provisions of Rule II (2) and (4) of the Advocates Remuneration Order (ARO) and other enabling provisions of the law, and supporting affidavit of Boniface Waweru director Legal Services in the Applicant's employment and on grounds stated on its face.***

### **Applicant's Case.**

2. The applicant in its numerous prayers and averments refer to an Advocate-Client Bill of Costs dated 15/11/2021 against the Respondent Advocates in respect to **Nairobi Milimani Hccc No. 212/2021 - Stephen Murai Mbugua & 917 Other V. Nairobi City County Government** seeking a sum of Kshs. 1,174,679,8000/- from the Applicant.
3. It posits that in response to the motion, it filed an application dated 1/10/2024 seeking inter alia an order for stay of the Taxation of the Bill of costs pending its application seeking a declaration that there existed no advocate-client relationship between the parties thereby ousting the Jurisdiction of the Taxing Officer, and an order striking out and or dismissal of the bill of costs for want of retainer.
4. The Respondent further posits that the Applicant being a public entity was bound by the **Public Finance Management Act, 2012 and the Public Procurement and Assets Disposal Act, 2015** which it did not hereto, and there being no any form of procurement renders the instructions given to the Respondent void for lack of a retainer agreement and/or Advocate-Client relationship.
5. In support of its averments, **Article 227 (1) of the Constitution 2010** was cited as well as **Section 121 of the Public Finance Management Act,** and **Sections 134 and 135 of the Public Procurement and Asset Disposal Act 2015** together with **Section 131(1) of the County Government Act.**

6. It further posits that the Taxing Officer, upon adjourning its ruling on the **motion dated 1/10/2024** and in absence of both parties and without notice delivered the ruling dismissing the same with costs, which is the subject of the instant chamber summons seeking reliefs as stated.
7. On the matter of delay in filing the instant motion, the Applicant in its paragraph 25 of the Supporting affidavit avers that the delay was due to the impugned ruling being delivered in absence of the parties and without notice being delivered on 2/05/2025, instead of the scheduled date 24/07/2025 and thus the delay is not unreasonable or deliberate.
8. The Applicant thus seeks that the relief sought be granted.

**Advocate/Respondent's case**

9. The opposing replying affidavit was sworn by one **Kosgey Sandra**, Advocate in the Respondents law firm on 19/09/2025, urging that the chamber summons is premature as the subject bill of costs is yet to be taxed and failure by the Applicant to strictly follow the laid procedure under **Rule II ARO** hence rendering the summons incompetent.
10. It is its case that instructions to the Respondent in the case was issued by a letter dated 1/09/2021 Ext. "Ks-1", and acknowledging that the guiding procedure by public entities adding that there was indeed procurement proceedings conducted between itself and the Applicant wherein a retainer agreement was entered into stating that courts have held that on proving pre-qualification and issuance of

an instruction letter by the Applicant is sufficient prove as is the case herein.

11. The Respondent questions the Applicants motive in bringing the motion yet it had proposed settlement of the bill of costs at a global figure of Kshs. 10 million in its replying affidavit dated 16/05/2022 as well as in its submissions against the bill of costs dated 31/05/2022 - Exh. "KS-3".
12. Further, it is the Respondent's case that the firm of Wambugu & Muriuki Advocates, who came on record in the same primary suit for the applicant after its exit was also instructed via a letter dated 22/09/2021 signed by the same legal officer Lydia Kwamboka marked Exhib. "KS-2". and further stating that it was prequalified and empaneled since 2018 by the Applicant, facts that have not been disputed.
13. On delay of filing the Chamber Summons, it is the Respondent's case that the impugned ruling was delivered on 2/05/2025 in presence of counsel for both parties, attaching screenshots of the CTS showing delivery of the said ruling.
14. On the issue of retainer, the Respondent further posits that the taxing Officer had Jurisdiction to determine existence or not of retainer, written or otherwise, citing the cases of **Wilfred or Konosi t/a Kenosi & Co. Advocates V. Flamco Ltd [2017] eKLR**, adding that the Taxing Officer considered the pleadings and submissions and decisions to arrive at the holding she did, citing the care of **Mugoye & Associates Advocates v. Kiambu County Assembly Speaker [2018] eKLR**.

15. The Respondent disputing that the public would suffer prejudice should the Respondent's costs be paid, states that the same resulted from a judgment and decree of the court citing the case of **National Bank of Kenya V. Rachuonyo & Rachuonyo Advocates [2021] eKLR**, for the holding that *Instruction fees is earned at the time of instruction*.
16. In conclusion, the Respondent reiterates the procedural impropriety of the Applicant in filing the motion as paragraph 11 of the ARO can only be invoked after taxation or assessment of costs, reiterating that no taxation took place.
17. Parties were directed to file submissions.

### **Applicant's Submissions**

18. In its very lengthy submissions dated 21/10/2025, the Applicant flags 3 main issues for the court to determine;
- i. Whether the reference is premature, defective and or incompetent***
  - ii. Whether the Applicant has met the threshold for enlargement of time to file objection to the taxing officer's decision.***
  - iii. Whether the Taxing Officer committed errors of Principle in dismissing it's the motion dated 1/10/2024.***

***Whether the reference is premature, defective and/or incompetent.***

19. The Applicant submits on the import of **Rule II of the Advocates Remuneration Order, 2014** by submitting

that the rule does not bar filing of interlocutory reference before taxation, arguing that restricting the filing of a reference application only to post-taxation decisions would lead to absurd outcomes.

20. It further submits that the order also applies **Mutatis Mutandi's** to any decision of a taxing master during or in the cause of taxing a bill of costs including Interlocutory matters on issues including whether or not there exists an advocate client relationship and questions of jurisdiction of the taxing officer.
21. Citing in support is the case of **Peter Julius Njoroge v. Fidelity Commercial Bank Ltd & Another [2018] KLR** where the court (Tuiyot J) rendered that:-
- "..... a challenge or objection to a decision of the Taxing Master from a Taxation under the Advocates Act to the High Court should be by way of a Reference. It matters not whether the objection is in respect of some items of the Bill, the whole Bill or on an order disallowing or striking out the entire Bill or a decision in respect of preliminary objection...."*
22. While admitting that Rule II ARO can well be construed to mean that a reference is only on items of Taxation post taxation the applicant states that such is a narrow construction of the provision if the entire ARO is taken into account.
23. The Applicant also cited the case of **Otieno Ragot & Co. Advocates v. Kenya Airports Authority [2015] eKLR** wherein Ringera J (as he then was) rendered that a party

aggrieved by the decision of a taxing officer on any item in the bill or even validity of the whole bill has recourse to the high court by way of a reference under Rule II of the ARO. See also the case of **Macharia & Co. Advocates v. Mugugu [2002] EA 248.**

24. The Applicant further submits that a reference should not be restricted to objection of the decision of a taxing officer, but upon any other objection, on interlocutory applications.

***Whether the Applicant has met threshold for enlargement of time to file objection to a taxing officer's decision.***

25. It is submitted that **Rule II (2) ARO** empowers a court to enlarge time for making/filing a reference under **Rule II(4)** thereof; that the power is discretionary upon sufficient reasons for the delay being provided citing the case of **Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 others [2014] eKLR**, on the parameters that guide the court to an exercise of its discretion.

26. ***Whether the Taxing Officer committed errors of Principle in dismissing its motion dated 1/10/2024.***

It is submitted that the Taxing Officer failed and erred principally to appreciate, consider and take into account that the Applicant is a public entity bound by the procurement processes by the various statutes as stated in its supporting affidavit.

27. That before a county government can be bound to pay legal fees of an advocate; it must be shown that some

procurement process - rather than an event, was undertaken prior to instructions being given to the Advocate.

28. Additionally, the Applicant submits that an instruction letter to an Advocate is not in itself a pre-qualification to tender but rather a document that might be submitted after a tenderer has successfully won a tender rather than a step in the prequalification process itself citing **Section 92 of the Public Procurement and Asset Disposal Act, 2015 and Section 93 of the Public Procurement Act.**
29. For the above, the Applicant submits that there were no instructions given to the Respondent to act for the Applicant, citing the holding of Majanja J, in **Grana Limited v. national Social Security Fund [2022] eKLR** to the holding that Article 227 of the Constitution provides, inter alia, that procurement must be done in a system that is fair equitable, transparent and cost effective
30. It is further submitted that from **Section 135 of the Public Procurement and Asset Disposal Act**, a legally binding contract retaining the services of an Advocate to exist between themselves and a public entity, there must be a written contract signed by the parties, the person submitting a successful tender and to whom an award has been made.
31. Lastly, the Applicant submits that the Respondent has failed to show that they were retained or employed by the Applicant to offer legal services to the client in the case in the issue.

32. For the foregoing, the Applicant submits that the Taxing Officers decision of 2/05/2025 be set aside vacated or reviewed in its entirety for being principally erroneous.

**Respondent/Advocate's submissions**

33. Dated 28/07/2025, the Respondent submits on what it flags as the issues for Court's determination in the instant application thus;

a) *Whether the Applicant should be granted leave to file notice of objection to taxation decision delivered on 2/05/2025.*

b) *What reliefs should issue*

***Whether the Applicant should be granted leave to file notice of objection to taxation decision delivered on 2/05/2025.*** The Respondent reiterates its averments in its replying affidavit that the motion under review is premature and defective citing paragraph II of the ARO that allows 14 days to an aggrieved party to file a reference.

34. The Respondent cites the case of **Abicha & Co Advocates v. Trident Insurance Co. Ltd [2013] eKLR** wherein it was held that "*As there was no taxation, there was nothing to challenge under paragraph II of the Advocates Remuneration Order. The decision challenged in the present application was not a decision on taxation. The application is thus incompetent*" adding that the proper way to challenge the decision was by way of review under **Order 45 CPR.**

35. Further, the Respondent cited for guidance the decision in **Kamau 13 Others V. Muga Developers Ltd & 7 Others**

**[2022] KEHC (KLR)** wherein the court held that failure to follow the clearly laid down procedure under paragraph 11 renders the summons incompetent.

36. It further submitted that the Bill of Costs dated 15/11/2021 was not taxed, that the Applicant ought to have interpreted the statute in a clear and plain language citing case of **Republic V. National Employment Authority & 3 Others Exparte Middle East Consultancy Services Ltd [2018] eKLR**; arguing further that it is not its duty to guide the court towards speculation on the intention of the drafters of the ARO at paragraph 11 when the same is clear and plain.

37. Additionally, the Applicant cited other authorities wherein the thread across board was that all the bills of costs thereof had been taxed whereas in this motion no taxation had taken place from which decision a reference could be filed.

***Whether the Applicant should be granted leave to file Reference out of time.***

38. It is submitted that the motion does not meet the threshold for enlargement of time, that it is a discretionary remedy accorded to parties rather than a right; that it is a discretionary remedy accorded to parties rather than a right; that the applicant must explain to the satisfaction of the court reasons for the delay as held in the case of **Concorde Savings and Credit Co-Operative Sought Ltd v. Musyoka Murambi & Assocides Advocates [2025]. KEHCV 9641 (KLR)**; and **Nicholas Kiptoo Arap Korir Salat V. IEBC & & Others [2014] eKLR** which in

the principles for courts exercise of its discretions were stated. I need not enumerate them here.

39. On the matter of delay, the Respondent submits that the remedy can only be in favour of the Applicant if it is not inordinate, is excusable and where enlargement of time is not detrimental to the Respondent.
40. It is the Respondent's firm submission that contrary to the Applicant's submissions, the impugned ruling was delivered in presence of both parties urging the court to peruse the days proceedings before Hon. Motari to confirm to itself and therefore the Applicant was aware of the delivery of the ruling and an enlargement of time would be prejudicial to the Respondent.
41. The Respondent brings to the courts attention that two similar objections were filed by the Applicant dated 13/04/2023 which raised similar issue and both were dismissed with an order that the Bill of Costs be taxed on a date to be taken, adding that litigation must end, citing the case of **Gerald Kithu Muchanje vs. Catherine Muthoni Ngare & Another [2020] eKLR**; and the inordinate delay of 86 days at this instance has not been explained sufficiently.
42. For the foregoing the Respondent has urged that the court do direct its Bill of costs dated 15/11/2021 proceed for taxation to bring the matter to a close.

### **Analysis and Determination**

43. The court has distilled what it deems as the issue for determination in the motion dated 28/07/2025 thus;-

- a) *Whether the Applicants motion is premature and incompetent.*
- b) *Whether the Applicant should be granted leave to file a reference, challenging the Deputy Registrars Ruling dated 2/05/2025.*
- c) *Who bears costs of the motion.*

**44. *Whether the Applicants motion is premature and incompetent.***

In the first instance, the court notes that prior to the impugned ruling delivered on 2/05/2025 in respect of the **motion dated 1/10/2024** on the matter of the Respondents Bill of Costs dated 15/11/2021, two objections to its taxation were raised by way of preliminary objections dated 13/04/2023 and another dated 25/10/2023, which both were dismissed by the court.

45. I agree with the Respondent that the instant motion is yet another attempt to scuttle its rights to be paid its professional fees for services it rendered, the issue of retainer having been determined by orders/rulings of the Deputy Registrar dated 22/03/2024 and an earlier one dated 12/10/2023 by the Hon. Majanja, which to the best of my knowledge, were not set aside.

46. It is not on record that either of the two rulings have been appealed from or subjected to review process under **Order 45 of the Civil Procedure Rules.**

47. On the ruling on motion dated 1/10/2024 on 2/05/2025 by the Hon. Motari, being the subject of this motion by chamber Summons dated 28/07/2025, I have perused the hand

written proceedings. It is the courts finding that the said ruling was delivered on the day it was scheduled thus on 2/05/2025 in presence of both parties advocates, Miss Kosgei for the Applicant and Mr. Oginga for the Respondent.

48. The proceedings before the Deputy Registrar, Hon. Motari on 25/04/2025 confirm that the ruling date was taken for 2/05/2025 and on the 2/05/2025 the ruling was delivered in presence of Ms. Kosgey for the Respondent and in absence of the Respondents advocate; and a date for taxation of the bill of costs taken for 24/07/2025.
49. As to whether the motion dated 28/07/2025 is premature, I will approach the matter in two fronts; the first being in respect of the Bill of Costs taxation; and the other, on any other matter thereof that challenges a taxing officer's decision.
50. On the first issue, there is no issue as to whether the Bill of Costs dated 15/11/2021 was taxed or not. It was not taxed upon which a reference or challenge could be mounted. Having perused the DR's ruling rendered on 5/02/2025, the Respondent's Bill of Costs was to be taxed on 24/07/2025 but the bill is yet to be taxed.
51. The 2<sup>nd</sup> front is whether a reference against the impugned ruling of 2/05/2025 dismissing the Applicant's motion dated 1/10/21024 could be filed, by leave of court or otherwise. The DR dismissed the Applicant's motion dated 1/10//2024 in which the Applicant had sought orders of stay of taxation of the Client- Advocate Bill of Costs dated 15<sup>th</sup> November 2021. A temporary stay of taxation was thus granted. It is in force.

52. Further, the Applicant had sought an order that court do find and hold that there exists no advocate client relationship between the Applicant and the Respondent to warrant the taxation sought, and lastly, that the Respondents Bill of Costs dated 15/11/2021 be struck out and or dismissed for want of retainer and jurisdiction.

53. I have perused the entire chronology of proceedings and orders issued on the twin questions on the client Bill of Costs and retainer of the Respondent by the Applicant.

54. The Deputy Registrar in her ruling dated 2/05/2025 dismissed the prayers sought by the Applicant, calling to aid previous ruling in this matter thus:-

***By a ruling dated 13/04/2023 and 2/05/2025 upon a preliminary objection dated 25/10/2023 on the question of jurisdiction of the DR to entertain a motion where issue of retainer is contested the court, Majanja J made a finding that the DR is clothed with jurisdiction to determine the issue of retainer by a ruling dated 22/03/2024.***

55. It is instructive to note that the above rulings of the court issued over four years ago are intact, having not been appealed from, reviewed, or set aside.

56. In my considered opinion, the instant motion is yet another application coached in similar language, and intentions.

57. **At prayer No. 2**, the applicant seeks an order striking out the bill of costs dated 15/11/2021 on basis that there exists no advocate-client relationship and or retainer between the advocate and the applicant; and that there was no valid

procurement process or at all leading to the advocates engagement or purported instructions to render the legal services by the Respondent.

58. Without a doubt, this is yet another motion similar to the one dated 1/10/2024, which has been interrogated and dismissed by the curt DR Hon. Motari on 2/05/2025.

It cannot be that the Applicant, without regard to court orders will continue to burden the court with unnecessary applications whose issues, being similar have not been challenged. It is an abuse of court process and must be stopped, as held in the case of **Gerald Kithu Muchanje v. Catherine Muthone Ngare & another (supra)**.

59. These motions are also in my view Resjudicata, (italized) the issues thereof having been decided by a competent court as stated at Section 7 of the Civil Procedure thus:-

*“No court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”*

60. In my view, the Applicant in filing numerous application seeking similar orders before different courts is but forum shopping, seeking for favorable rulings. This will not help because all rulings and order in any matter are easily accessible in the CTS. To that end, I would urge the Applicants to read and consider the import of the rulings and

orders issued by the different courts and Judicial Officers over time for their full purpose and import, before coming back court with for similar motions, for similar reliefs.

61. Abuse of court process has been defined in numerous decisions, among them **JWK v. IKE (civil Appeal N. E056/202(2024) KEHC 11647 (KLR)** when a party files multiple applications or actions on same subject matter, against same opponents on same issue or instituting different actions between same parties simultaneously in different courts, among others.

62. The only issue I find worthy of interrogating and making a finding on is ***“Whether the Applicant should be granted leave to file notice of objection to taxation or reference against the taxing officers ruling/decision rendered on 21/05/2025”***.

It is important to make a decision on this issue as the courts finding will determine the rest of the issues raised by the Applicant.

63. The **Advocates Remuneration Order (ARO) 2014, Rule II(2)** empowers the court to enlarge time to file a reference under **Rule II(4)** thereof, but upon the Applicant providing tacit reasons for the delay as held in the **Nicholas Kiptoo Arap Korir (supra)**.

However, a more pressing issue to determine is whether there is any decision of the Taxing Officer that is capable of being challenged, in view of the courts finding, that no taxation of the Respondents bill of costs was taxed.

64. The court in the case of **Abincha & Co. Advocates v. Trident Insurance Co. Ltd (supra)** held that:-

*“As there was nothing to challenge under paragraph 11 the Advocate Remuneration Order, the decision challenged in the present application was not a decision on the taxation, and thus incompetent, adding that the proper way to challenge the decision was by way of review under **Order 45 CPR**”*

Here, indeed, there is no decision taxation of any Bill of Costs that the Taxing Officer taxed see also **Kamau & 13 Others V Muga Developers Ltd & 7 others (supra)** wherein, the court held that failure by the Applicant to follow the clearly laid down procedure under paragraph II renders the summons to be incompetent.

65. Additionally, while I appreciate the Applicant's submissions that, in terms of the ruling of the DR, dated 2/05/2025, that it was not only on the Bill of Costs that was at issue, but other issues as far as the DR's competence to entertain a question of the DR's jurisdiction to handle retainer issue, I am minded of the previous court orders that held that the Taxing Master (DR) has jurisdiction to handle questions arising from any Bills of Costs. These are the rulings rendered on the preliminary objections raised by the Applicant on the very issues of jurisdiction and retainer dated 13/04/2023 and 25/10/2023 vide ruling of Majanja J on 31/01/2026.

66. I note that despite the court dismissing the said objections, the Applicant never took the next step to either lodge an Appeal against the rejections or apply for review orders. The

Applicant has not provided any reason for its failure to appeal by way of reference or appeal or review.

In the same breath, the applicant has not shown any plausible reasons why it ought to be granted leave to file a reference out of time, for a period of 86 days, against the impugned ruling rendered on 2/05/2025, in presence of counsel for both parties.

67. The power to enlarge time to file a reference or appeal out of time is a discretionary remedy, it is not a right. The party must tacitly explain and give reasons for the delay as held in the case of **Concorde Savings & Credit Co-Operative Society Ltd (supra)** and **Nicholeas Kptoo Arap Korir Salat (Supra)** these include.

68. Upon careful consideration of the Applicant's conduct by its failure to take any relevant actions in view of the dismissal of its preliminary objections as aforesaid, for over 4 years and again not filed reference on the ruling dated 2/05/2025, I am persuaded that the Applicant's conduct shows deliberate disobedience and non-compliance with court orders which the court floun upon, and will not condone as it tends to lower the court's authority and dignity.

69. Grant of the orders sought by the Applicant in the chamber summons application dated 28/07/2025 will no doubt cause more prejudice and suffering to the Respondent whose Bill of Costs dated 15/11/2021 has not been taxed due to the numerous motions raised by the Applicant.

70. **For the foregoing, the court comes to the conclusion that the Applicants motion dated 28/07/2025 lacks merit. It is dismissed with costs to the Respondent.**

**It is directed that the Respondent's Bill of Costs dated 15/11/2024 be listed for Taxation before the Deputy Registrar as soon as is practical and in any event, within 60 days of this ruling.**

**Orders accordingly.**

**Delivered Dated and Signed at Nairobi this 26<sup>th</sup> day of February, 2026.**

.....  
**JANET MULWA.**  
**JUDGE**