



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA

COUNTY COURT NAME: MOMBASA ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCLMISC/E098/2025

HANIF SHAGI MUSENI AND SHEELA HASSAN MUSENI VS JOHN BWIRE &  
ASSOCIATES ADVOCATES

### RULING

#### The Application

Hanif Shaji Museni and Sheila Hassan Museni hereinafter referred to as the applicants have come to this court under Section 89 of the Civil Procedure Act, Rule 11 of the Advocates (Remuneration) Order, and Schedule 6 of the Advocates Remuneration Order 2014 seeking orders that the Ruling of the Deputy Registrar, Hon. Christopher Yalwala (DR) delivered on the 24th of September 2025 in Mombasa ELCLMISC/E082/2024 John Bwire & Associates Advocates Vs Hanif Shagi Museni And Sheila Hassan Museni be dismissed, varied and/or set aside and that the Advocates-Client Bill of Costs dated 27th of August 2024 and amended on the 8th of April 2025 be placed before another Taxing Officer for taxation. THAT costs of the application to be provided for. The grounds of the application are that on the 11th of March 2025, the Hon Deputy Registrar sitting in in Mombasa ELCLMISC/E082/2024 John Bwire & Associates Advocates Vs Hanif Shaji Museni and Sheila Hassan Museni delivered a ruling in respect of a bill of costs dated 27th of August 2024 and amended on the 8th of April 2025.

The said advocate client bill of costs arose from proceedings in Mombasa ELC Case No. 287 of 2016, Hanif Shaji Museni & another versus Mirai Mganyi Salim & 5 others.

The taxing master taxed the advocate clients bill of costs at Kshs. 973,540/= a decision which was wrong for the reasons that the taxing master did not exercise his judicial discretion judiciously, hence arriving at a decision that is incorrect and unjust.

According to the applicants, the taxing master failed to take into account the evidence presented before him and did not provide reasons to justify his decision. The taxing master in taxing the bill at Kshs. 973,540/= erred in



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principle, resulting in an award that is manifestly excessive and oppressive. The applicants contend that the taxing master failed to consider evidence of fees agreed and previously paid to the advocate in respect of the matter. The respondent has commenced execution proceedings against the applicant. Unless this application is heard and determined on a priority



basis, the applicant stands to suffer harm and loss. It is in the interest of and justice demands that this Motion be heard expeditiously and without delay, and the orders sought be granted accordingly. The application is supported by the affidavit of Amina Hassan Museni, a duly authorized legal attorney of the Applicants who states that on the 11th of March 2025, the Hon Deputy Registrar sitting in Mombasa ELCLMISC/E082/2024 John Bwire & Associates Advocates Vs Hanif Shagi Museni And Sheela Hassan Museni delivered a ruling in respect of a bill of costs dated 27th of August 2024 and amended on the 8th of April 2025. The said advocate client bill of costs arose from proceedings in Mombasa ELC Case No. 287 of 2016, Hanif Shagi Museni & another versus Miraj Mganyi Salim & 5 others.

The deponent deposes that the taxing master taxed the advocate client's bill of costs at Kshs. 973,540/= a decision which was wrong for the following reasons. The taxing master did not exercise his judicial discretion judiciously, hence arriving at a decision that is incorrect and unjust. The deponent reiterates the grounds of the application.

#### Grounds of Opposition

The Respondent opposes the Chamber Summons Application dated 29th September, 2025 on the grounds that the Reference application is premature, incompetent and bad in law as it offends the mandatory provisions of Paragraph 11 of The Advocates Remuneration Order which states as follows:-

"(1) Should any party object to the decision of the taxing officer he may within 14 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.

The respondent contends that in this case, despite having filed a notice of objection dated 29th September, 2025, the Applicant did not give any time to the taxing master to discharge his duty under Rule 11 (2). The applicant acted prematurely and pre-empted the giving of the reasons by the Deputy Registrar as taxing officer thus rendering this reference application null and void ab initio. Therefore, the jurisdiction of this court to consider any decision on any objected item(s) has not been properly invoked by the Applicant.

According to the respondent, the Applicant has not demonstrated sufficient cause or grounds upon which the Court should interfere with the discretion of the Taxing Officer and grant the orders sought in the Application. As such it would be unjust to do so. The Applicant has not laid out the exact manner in which the Taxing Officer unjustly exercised his discretion while taxing the Respondent's Bill of Costs. No sufficient grounds have been laid out to warrant the setting aside of the decision of the Taxing Officer.

The taxing master took into consideration all relevant factors & evidence before him including the relevant provisions of the law, the supporting documents, in the form of receipts and/or a breakdown which were availed by both parties. The respondent contends that the applicant wants the court to remit the subject



Advocate-Client Bill for re-taxation before a different taxing officer, which not only amounts to forum shopping for courts but also impliedly casts aspersion on the taxing officer without any justification. It is trite law that a court will not interfere with the award of a Taxing Officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat was too high or too low; it will only interfere if it thinks the award was based on an error of principle or the award was so high or so low as to amount to an injustice to one party or the other.

The Taxing Officer applied the relevant law and principles of taxation and was properly guided when

taxing the costs herein.

In light of the foregoing, it is clear that the Application herein is wholly unwarranted and a waste of precious judicial time. It is intended to delay the settlement of costs as properly taxed by the taxing master.

The Application is not merited and has not met the threshold for grant of the orders sought. In the circumstances, it is in the interest of justice that the application be dismissed with costs. The Respondent prays that the Application dated 29th September, 2025 be struck out and/or dismissed with costs.

#### Analysis and Determination

The first issue to be considered is whether the application is properly before court. The manner and the procedure of objecting to taxed costs are provided under the Advocates Remuneration Order and Section 51 (2) of the Advocates Act. It is only after the court has been moved in the appropriate manner, that it can interfere with the decision of the taxing master. See *Nchebere -vs- M'Akwalu & 3 others (Environment and Land Appeal 96 of 2019) [2022] KEELC 15131 (KLR) (30 November 2022) (Ruling)*.

Paragraph 11 of The Advocates Remuneration Order states as follows:-

"(1) Should any party object to the decision of the taxing officer he may within 14 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.

I have considered the application, grounds of opposition and the submissions on record and do find and do find that the applicant gave the notice within the 14 days required by law but did not wait for the lapse of 14 days to file the reference.

This court finds that the applicant did not comply with the procedure and timelines set out in Rule 11 of the Advocates Remuneration Order, 2009 which makes provision for the procedure an aggrieved party must adopt prior to filing a reference. It provides:

(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.  
The above provision of law is coached in mandatory terms. This Court notes that the Applicant did not comply with all the requirements outlined in rule 11 above prior to lodging the instant reference. Precisely, he did not wait for the reasons of the taxing officer as required by law, as a result, the reference herein is accordingly dismissed with no order as to costs.

SIGNED BY/FOR:  
HON. JUSTICE ANTONY O. OMBWAYO



THE JUDICIARY OF KENYA. MOMBASA  
ENVIRONMENT AND LAND COURT  
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