

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

(ON Makau J on 12th March, 2026)

MISCELLANEOUS APPLICATION NO. E368 OF 2024

CAROLYN K. MUUMBO & CO.

ADVOCATES.....

APPLICANT/ADVOCATE

-VERSUS-

ENOCH NYAKUNDI

ONCHWARI.....RESPONDENT/CLIENT

RULING

Introduction

1. This Ruling relates to the Notice of Motion dated 26th November 2025 by the Respondent/client brought under Article 49 and 159 (2) (d) of the Constitution, Order 12 Rule 7, Order 51 Rule 1 of the Civil Procedure Rules, Rule 33 of

the Employment and Labour Relations Court Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act. The Application seeks the following orders:-

a) That this Honourable Court be pleased to set aside the proceedings of 13th February 2025 and the subsequent Ruling of 5th March 2025 and the resultant Certificate of Taxation dated 23rd May 2025.

b) That this Honorable Court be pleased grant leave to the Respondent to file his response to the Bill of Costs dated 14th December 2024 and restore the same for de novo taxation on merits by involving the participation of the Respondent.

c) That the cost of this application be provided for.

2. The Motion is supported by the applicant's Affidavit sworn on 26th November 2025 and it is opposed Respondent/Advocate vide Replying Affidavits sworn by her and her Process Server one JAMES MBUVI, on 23rd January 2026. The application was disposed by written submissions.

Facts

3. The background to this Application is that the Advocate, CAROLYN K. MUUMBO & COMPANY. ADVOCATES, represented the Respondent/Client, ENOCH NYAKUNDI ONCHWARI, in several matters, including **Nairobi Employment and Labour Relations Cause No. 1180 of 2012**. A dispute subsequently arose regarding the legal fees owed to the Advocate.
4. On 14th December 2024, the Advocate filed an Advocate-Client Bill of Costs dated 14th December 2024, emanating from the said **Cause No. 1180 of 2012**, claiming a total of Kshs. 1,478,852.10. A Taxation Notice dated 31st December 2024 was also issued, indicating that the Bill would be taxed on 13th February 2025.
5. The Client did not attend the taxation proceedings on 13th February 2025 and the Bill of Costs proceeded for taxation

an ex parte. On 5th March 2025, the Taxing Master (Hon. R. Thyaka, Assistant Deputy Registrar) delivered a ruling, taxing the Bill of Costs and allowing it in the sum of Kshs. 650,325. A Certificate of Taxation to that effect was subsequently issued on 23rd May 2025 and signed by Hon. Linnet M. Mwangangi.

6. The Client avers that he was never served with the Bill of Costs or the Taxation Notice. He states that he only became aware of the Certificate of Taxation when it was served upon his advocates as an annexure to the Advocate's response in a related disciplinary matter, (Disciplinary Tribunal Cause No. 96 of 2024). He contends that the Affidavit of Service sworn by the Process Server, James Mbuvi, is false, as he was out of Nairobi on the alleged date of service, 23rd January 2025. He further argues that his advocates, Abidha & Company Advocates, ought to have been served. Besides the Advocate had his email and WhatsApp contacts which were not utilized for service.

7. He also raises a defence on the merits, claiming that the Applicant has already been overpaid for her services; that the Bill of Costs includes items handled by previous advocates; that the Applicant came on record irregularly after the conclusion of the hearing; and that the Bill of Costs was filed prematurely without compliance with Section 46 of the Advocates Act, which requires delivery of a summarized bill.
8. The Advocate vehemently opposes the application and she maintained that the Respondent was personally and duly served with the Bill of Costs and Taxation Notice on 23rd January 2025 and with the Mention Notice on 20th February 2025. She relies on the Affidavits of Service sworn by James Mbuvi which detailed how the client was personally served with the court process.
9. She clarified that Abidha & Company Advocates, was never formally on record in this matter. She also highlights that the Respondent, having become aware of the Certificate of Taxation on 3rd June 2025 (the disciplinary matter), he

delayed for over five months before filing the instant application on 26th November 2025. She described the said delay as inordinate and unexplained.

10. The Advocate faulted the procedure adopted by the applicant to challenge the decision of the Taxing Office and averred that the proper procedure should have been through filing a Reference to a Judge as provided under Paragraph 11 of the Advocates Remuneration Order (ARO). Therefore, she urged the court to dismiss the motion with costs for lack of merits.
11. The Process Server, James Mbuvi, swore that the client was well known to him, having met him on several occasions at the Advocate's offices in 2021, 2022, and 2023. Besides, the client used to call him on his telephone number 0726150671. He clarified that his name is JAMES M. MBUVI, not Anthony James Mbuvi, referred to by the client. He maintained that he served the client as detailed in his earlier affidavits of service and indicated his willingness to be cross-examined on the contents of his affidavits.

12. Having considered the instant Motion, the Replying Affidavit, the Further Affidavits of the Process Server, and the parties' respective submissions the main issues for determination are as follows: -
- i. Whether the jurisdiction of this Court was properly invoked through the applicant's motion herein.
 - ii. Whether the Respondent has demonstrated sufficient cause to warrant the setting aside of the *ex parte* proceedings and the resultant Certificate of Costs.
 - iii. Whether the orders sought by applicant/client should be granted.

Analysis

Jurisdiction

13. The advocate contended that the court was not properly moved since the applicant did not challenge the decision of the Taxing officer by a Reference under Paragraph 11 of the ARO. The applicant did not respond to that legal challenge even in its written submissions.

14. Paragraph 11 (1) of the Advocates Remuneration Order provides that:-

“(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.”

15. The above procedure is mandatory and it cannot be ignored. There is a legion of decisions by our courts that where the Constitution or a statute prescribes a procedure for seeking redress, that procedure ought to be strictly followed. Where

parties ignore the procedure prescribed by the law, the court have not hesitated to correct the blunder.

16. In the case of **Hezekiel Oira T/A Oira Advocate v Kenya Broadcasting Corporation [2015] KEHC 1352 (KLR)** Aburili J made the following conclusion after analyzing several decisions of the High Court and the Court of Appeal:-

“From the above enunciations, I am inclined to find the application herein as filed under section 80 of the Civil Procedure Act and its hand maiden section 45 of the Civil Procedure Rules is incurably incompetent, [sic] not for want of form but statutorily, the applicant has deliberately overlooked the established procedure under the relevant statute for challenging decisions of the taxing officer and instead imported the civil procedure Act and the Rules, which is a totally different legal regime. A merger thereof would in my view breed confusion. That, in my view, cannot be said to be a mere technicality which

Article 159 of the Constitution was meant to cure.”

17. The above case is on all fours with the instant case. It was a Notice of Motion challenging a decision of a taxing officer like in this case. In both cases, the Applicant did not file a reference under paragraph 11 of the ARO but imported the Constitution, statutes Civil Procedure Rules and the Employment and Labour Relations Court Procedure Rules.
18. Having carefully considered the law, and the above decision which cited with approval several decisions both persuasive and binding decisions, I see no basis for holding a different view. The legal principle emerging from our courts is that the any challenge against a decision of a taxing officer, on an item in the bill of costs or any other matter in relation to taxation of an Advocates-Client bill of costs, can only be by a reference under Paragraph 11 of the ARO. Therefore, a party cannot seek review of the taxing officer’s decision by invoking the general rules of procedure.

19. It follows that the applicant's notice of motion date 26th November 2025 is an alien procedure in the whole regime that regulate taxation of costs as between Advocates and their clients. It is fatally and incurably incompetent by dint of Paragraph 11 of the ARO for wrongfully invoking this court's general power of review to an area regulated by a special regime.
20. In view of the foregoing conclusion, I will not consider the other issues for determination set out above. Instead, I strike out the Notice of Motion dated 26th November 2025 with costs to the Respondent/Advocate.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 12TH DAY OF MARCH, 2026.

ONESMUS MAKAU

JUDGE

Appearance:

Opini for the Client

Muumbo for the Advocate