



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

(ON Makau J on 12th March, 2026)

MISCELLANEOUS APPLICATION NO. E018 OF 2025

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 1st April 2025 and the subsequent Ruling of 6th May 2025 and the resultant Certificate of Taxation dated 22nd May 2025.

b) That this Honorable Court be pleased to grant leave to the Respondent to file his response to the Bill of Costs dated 28th January 2025 and restore the same for de novo taxation on merits by involving the participation of the Respondent.

c) That the costs 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.

Background

3. The Applicant/client instructed the law firm of CAROLYN K. MUUMBO & CO. ADVOCATES, to represent him in several cases including **Nairobi ELRC Miscellaneous Application No. 137 of 2017, DIRO & CO. ADVOCATES -VS- ENOCH NYAKUNDI ONCHWARI**, which involved an advocates Bill of Costs totaling Kshs. 1,638,392.50/= from the Respondent. The Respondent Applicant/Advocate herein successfully handled the matter, and thereafter sought recovery of her legal fees but the applicant failed to pay.
4. On 28th January 2025, the Respondent /Advocate filed an Advocate-Client Bill of Costs dated 28th January 2025, emanating from the said Misc. Application No. 137 of 2017, claiming a total of Kshs. 1,112,427.80/=. A Taxation Notice dated 11th March 2025 and a Mention Notice for Taxation Directions dated 12th March 2025 were served upon the Applicant/client.
5. The Applicant/Client failed to attend the mention on 1st April 2025 and the Bill of Costs proceeded for taxation ex parte.

On 6th May 2025, the Taxing Master (Hon. R. Thyaka, Assistant Deputy Registrar) delivered a ruling whereby she granted the sum of Kshs. 689,840 and taxed off Kshs. 422,586. Subsequently, she issued a Certificate of Costs on 22nd May 2025.

6. Six months after the taxation, the applicant/Client filed the instant motion alleging that he was never served with the Bill of Costs, the Taxation Notice, the Mention Notice, or the Ruling Notice. He contended 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.
7. He further contended that the Affidavits of Service sworn by the Process Server, James Mbuvi, are false contending that he was not at Kencom House on the alleged dates of service. He also contended that he has not been to that locality for over five years, and that on 14th March 2025 he was

conducting an online class from his home in Syokimau between 2.00pm and 4.00pm.

8. He further alleged that the Affidavit of Service sworn by the applicant on 22nd April 2025, was clear that a distorted email address "onchwari- enoch@gmail.com" was deliberately used to serve him with the Ruling Notice. The said wrong address was used despite the Advocate being well aware of his correct email address, "onchwari.enoch@gmail.com" which she had previously used to communicate with him. He annexes a sample of email correspondence marked "ENO1" to demonstrate the correct email address. He argued that this was a calculated stratagem to frustrate service and deny him participation in the taxation proceedings.

9. The Respondent also argues that he had a firm of advocates on record, Abidha & Company Advocates, who had formally requested a breakdown of fees through letters dated 14th August 2023 and 4th September 2023, and that the Applicant ought to have served the Bill of Costs upon those advocates. He contends that the Applicant had his email and WhatsApp

contacts which were not utilized for service, and that the improbable claim of repeated service "outside Kencom House", a public street and not his residence or place of business, renders the alleged service incredible.

10. The Respondent/Advocate vehemently opposes the Application and maintained that the Respondent was personally served with the Bill of Costs, Taxation Notice, and Mention Notice on 14th March 2025, and with the Ruling Notice on 23rd April 2025. She relied on the Affidavits of Service sworn by James Mbuvi on 14th March 2025 and 24th April 2025. These affidavits detail how the Process Server contacted the Respondent via his telephone number 0722527392 on 13th March 2025, arranged a meeting for 14th March 2025 at the Kencom Bus Stop, and personally handed him the documents. The second affidavit details a similar process on 23rd April 2025 for service of the Ruling Notice. In both instances, the Respondent allegedly took possession of the documents but declined to sign.

11. The Advocate further states that the Respondent's advocate, Abidha & Co, was never formally on record in this matter, and that service was properly done on him personally in line with Order 5 Rule 8(1) of the Civil Procedure Rules. She denied ever using a distorted email address and stated that the address used was the one on record. She also highlights that the Respondent, having become aware of the Certificate of Taxation on 3rd June 2025 (when her response was served on his advocates in the disciplinary matter), delayed for over five months before filing the instant application on 26th November 2025, which delay is inordinate and unexplained.
12. 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.

13. The Process Server, James Mbuvi, swore a further affidavit on 23rd January 2026, confirming that he is well known to the Respondent, having met him on several occasions at the Advocate's offices in 2021, 2022, and 2023, and that the Respondent even used to call him on his telephone number 0726150671. He clarified that his name is JAMES M. MBUVI, not Anthony James Mbuvi, and reiterated that he did in fact serve the Respondent as detailed in his earlier affidavits of service. He also stated his willingness to be cross-examined on the contents of his affidavits.
14. 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

15. 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.
16. 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.”

17. 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.
18. 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."

19. 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 ELRC Procedure Rules.
20. 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 opinion. 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.

21. 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.
22. In view of the foregoing conclusion, I see no need to consider the other issues for determination set out above. Accordingly, 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