

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMM MISC NO. E487 OF 2023

JOHN OGADA AND

COMPANY

ADVOCATES.....

APPLICANT/RESPONDENT

VERSUS

SUPERCLEAN

SHINE

LIMITED.....

RESPONDENT/APPLICANT

RULING

1. The decision of this court will resolve the Respondent/
Applicant’s Chamber Summons dated 15th May 2025 brought
under Sections 1A, 1B and 3A of the Civil Procedure Act and
Paragraph 11 of the Advocates Remuneration Order.
2. The Applicant seeks, inter alia:
 - i. A stay of execution of the ruling of the Taxing
Master delivered on 9th April 2024 concerning the
Respondent’s Advocate-Client Bill of Costs dated
19th June 2023.*
 - ii. An order that the decision of the Taxing Master on
items 1-7 be set aside and/or varied.*
 - iii. In the alternative, that the said Bill of Costs be
taxed afresh before a different taxing officer.*
 - iv. Costs of the application.*

3. The application is supported by the affidavit of Leonard Kimani, the Applicant's Managing Director, sworn on 15th May 2025.
4. The Applicant contends that the Respondent filed an Advocate-Client Bill of Costs dated 19th June 2023, claiming an aggregate sum of Kshs. 3,804,720.17 for legal services rendered. The Taxing Master delivered a ruling on 9th April 2024, taxing the bill but allegedly doing so on wrong principles and without a reasoned basis for the assessment of instruction fees.
5. The Applicant contends that the underlying matter giving rise to the costs *Nairobi CMCC No. 7887 of 2015* was a straightforward contractual claim and did not involve complexity or novelty that would justify enhancement of instruction fees. According to the Applicant, the Taxing Master erred in principle by, increasing the instruction fees by 50% without justification, failing to demonstrate the complexity or novelty of the matter, awarding sums that were excessive and not commensurate with the work done, and failing to give a clear reasoning for the assessment of the instruction fees.
6. The Applicant therefore urges the Court to intervene and set aside the taxation on the ground that the Taxing Master improperly exercised her discretion.
7. The application is opposed through the Replying Affidavit of Beth Njeru, advocate for the Respondent, sworn on 30th May

2025, and the written submissions dated 18th July 2025. The Respondent contends that the reference is incompetent and fatally defective for having been filed more than one year after the ruling of the Taxing Master delivered on 9th April 2024, contrary to Paragraph 11 of the Advocates Remuneration Order, and without leave of the Court. It is further averred that the Applicant failed to annex the taxing master's ruling and reasons, thereby depriving the Court of the basis upon which to interrogate the taxation.

8. The Respondent maintains that it lawfully acted for the Applicant in *Milimani CMCC No. 7887 of 2015, Superclean Shine Limited v Kenya Medical Research Institute (KEMRI)* and subsequent appellate proceedings, but its services were terminated without payment of fees, necessitating the filing of the Advocate-Client Bill of Costs dated 19th June 2023, which was taxed on 9th April 2024 at Kshs. 3,804,720.17. The Respondent asserts that the taxation was conducted in accordance with the Advocates Remuneration Order, that the Applicant failed to participate in the taxation proceedings, and that no error of principle has been demonstrated to justify interference with the taxing master's decision. The Respondent further opposes the prayer for stay of execution on the basis that the Applicant has not satisfied the requirements under Order 42 Rule 6 of the Civil Procedure Rules.

Analysis and determination

9. I have considered the Chamber Summons, the affidavit in support thereof, the Replying Affidavit filed in opposition, and the written submissions placed before the Court. The procedure for challenging a decision of a taxing officer is provided under **Paragraph 11** of the **Advocates Remuneration Order** which provides 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 the 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.”

10. The timelines provided under Paragraph 11 are not mere procedural technicalities but are mandatory provisions governing the filing of references against taxation. In the present case, the ruling of the Taxing Master was delivered on 9th April 2024, whereas the present application was filed on 15th May 2025, approximately one year after the delivery of the ruling.

11. The Applicant has neither demonstrated that a notice of objection was issued within fourteen days as required under Paragraph 11(1) of the Advocates Remuneration Order nor shown that the reasons of the taxing officer were sought pursuant to Paragraph 11(2). Further, the Applicant has not sought leave of this Court to enlarge time for filing the reference as contemplated under Paragraph 11(4) of the Advocates Remuneration Order.
12. The procedure set out under Paragraph 11 is mandatory, and failure to comply with it renders a reference incompetent. Where a reference is filed outside the prescribed timelines without leave of the Court, the same cannot be sustained.
13. This position has been affirmed in **Musyoka & Wambua Advocates v Rustam Hira Advocate [2006] eKLR**, where the Court held that it is only upon the filing of a competent reference under Paragraph 11 that a Judge is clothed with jurisdiction to interrogate and determine objections arising from the decision of a taxing officer.
14. Similarly, in **Machira & Co. Advocates v Arthur K. Magugu & Another, Nairobi HCCC Misc. Application No. 358 of 2011**, the Court reiterated that compliance with the procedure prescribed under Paragraph 11 of the Advocates Remuneration Order is mandatory, and failure to adhere to the timelines renders the reference incompetent.
15. In the circumstances of this case, the Applicant having failed to comply with the mandatory timelines and having

not sought leave to enlarge time, there is no competent reference before this Court upon which the decision of the taxing master can be interrogated.

16. Accordingly, I find that the chamber summons is incompetent and cannot be entertained by this Court.

Whether the Court should interfere with the taxation

17. Even assuming that the reference was properly before this Court, the principles governing interference with the decision of a taxing officer are well settled. The Taxing Master exercises judicial discretion, and that discretion will only be interfered with where it is shown that the taxing officer committed an error of principle. See **Joreth Ltd vs Kigano & associates (2002) eKLR**.

18. Similarly, in **First American Bank of Kenya v Shah and Others [2002] EA LR 64**, the court held that;

“First, I find that on the authorities, this court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.”

19. The law is therefore clear that the High Court will not ordinarily interfere with the decision of a taxing officer unless it is shown that the taxing officer acted on wrong

principles, considered irrelevant factors, failed to consider relevant factors, or that the amount awarded is so manifestly excessive or low as to justify an inference of error in principle.

20. In the absence of the taxing master's ruling and reasons, this Court lacks the necessary material upon which it can evaluate the alleged errors of principle or determine whether the taxation was undertaken in accordance with the law.

Whether the Applicant is entitled to a stay of execution

21. The Applicant also seeks an order for a stay of execution of the taxation ruling. Such relief is governed by Order 42 Rule 6 of the Civil Procedure Rules which sets out the conditions under which a court may grant a stay, namely: a). That substantial loss may result unless the order is granted; b). That the application has been made without unreasonable delay; and, c). That security for the due performance of the decree has been provided.

22. These principles were reiterated by the Court of Appeal in **Butt v Rent Restriction Tribunal [1982] KLR 417**, where the Court held that the discretion to grant a stay must be exercised judiciously and upon satisfaction of the prescribed conditions.

23. In the present case, the Applicant has not demonstrated any substantial loss that it stands to suffer if a stay is not granted. Additionally, the application was brought

more than one year after the ruling sought to be stayed and no security has been offered for the due performance of the decree.

24. The Applicant has therefore failed to satisfy the threshold for grant of stay of execution.

25. Consequently, the Chamber Summons dated 15th May 2025 is hereby dismissed with costs to the Respondent.

26. The taxation of the Advocate-Client Bill of Costs delivered on 9th April 2024 is hereby upheld.

RULING delivered virtually, dated and signed at **NAIROBI**

This **12th** day of **March** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Njeru for Applicant/Respondent

Mr. Amimo for Respondent/Applicant

Court Assistant: *Carlos*