

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC APPEAL NO. E030 OF 2023

**MILLICENT ZIGHE MWACHALA.....
.....APPELLANT**

VERSUS

**1. JEREMIAH MGHANGA MSAFARI
2. CRISPED MWACHALA PAKA
3. LAND REGISTRAR (WUNDANYI)
4. TRUSTEE OF THE ASSOCIATION OF
JEHOVAH WITNESS.....
RESPONDENTS**

RULING

1. This is a reference against the decision of the Hon. J. Nyariki (SRM) dated 02.03.2024 whereby he assessed the 1st respondent's party and party costs dated 22.11.2023 at Kshs. 125,875/= exclusive of VAT. The appellant was aggrieved by the taxation of items Nos. 3 to 45 in the bill of costs and prayed that they be set aside and taxed afresh by this court. The appellant contended that the taxing master did not access Items Nos. 3 to 45 on the scale, as there were no supporting documents for the award. The court was urged to find that the award was excessive.

2. The 1st respondent filed grounds of opposition dated 06.11.2025 in opposition to the reference. It was contended that the appellant had failed to seek reasons for the taxing officer's decision as set out in Rule 11 (1) which was couched in mandatory terms. It was argued that the appellant ought to have filed a notice of objection setting out the grounds for the taxation, and only thereafter proceed to file a reference within 14 days of the reasons being given. The 1st respondent maintained that the award for Items Nos. 3 to 45 was taxed on the scale and urged the court to dismiss the reference with costs.
3. When the reference was listed for directions on 28.10.2025 each side was granted 30 days within which to file written submissions. The record shows that only the appellant filed submissions dated 22.01.2026 by the time of preparation of the ruling.
4. The appellant's reference was filed pursuant to paragraph 11 of the *Advocates Remuneration Order*. Paragraph 11 stipulates as follows;

“(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."

5. There is no indication on record to demonstrate the appellant's compliance with paragraphs 11 (1) and (2) of ADO. There is no indication in either the chamber summons or the supporting affidavit on when the appellant gave her notice of objection to Items Nos 3 to 45 of the bill of costs. There is no indication whether she requested the reasons for the

assessment on these items. There is also no indication if, and if so when they received reasons for the assessment.

6. The court is of the opinion that the jurisdiction of the court has not been invoked or properly invoked in the circumstances. The court is thus of the view that the appellant's chamber summons dated 02.04.2025 is incompetent.
7. The legal effect of the failure to issue a notice or valid notice of objection was considered by the Court of Appeal in the case of *Macharia & Co Advocates vs Arthur K Magugu & Another [2012] eKLR* as follows;

"12. *Sub-rule (1) requires the party objecting to give notice in writing within 14 days "of the items of taxation to which he objects". As the trial judge correctly found, the Respondents notice of August, 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.*

13. *As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeal or review was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items*

objected to and sought reasons for their taxation the Respondents notice of 1st August, 2001 was fatally defective. It follows that the Respondents' reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out

14 Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master's decision was received is immaterial and does not avail the Respondents. Under sub-rule (22, time stops running from the date proper notice is filed which of course must be within 14 days of taxation, until receipt of the taxing master's reasons for his decision."

8. The court is thus of the view that the appellant's reference or purported reference is incompetent and fatally defective. It is for striking out *in limine*. As a result, the chamber summons dated 02.04.2025 is hereby struck out with no order as to costs.

Ruling dated and signed at Mombasa and delivered virtually via Microsoft Teams on this **12th day of March, 2026.**

.....
Y. M. ANGIMA
JUDGE

In the presence of:

Gillian - Court assistant

Mrs. Nyange for the appellant

Mr. Muriithi for the 1st respondent

N/A for the 2nd, 3rd & 4th respondents

ORIGINAL