

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

MISC. APPLICATION NO. E141 OF 2025

OPOLO & OPOLO ASSOCIATES ADVOCATES APPLICANT

VERSUS

MEGA CARMENTS INDUSTRIES KENYA LIMITED RESPONDENT

RULING

The applicant filed the reference herein dated 8 December 2025. The applicant is seeking to vary the ruling delivered regarding Misc. Application No. E096, E097, E098, E099, E100, E101, E102, E103, E104, and E107 OF 2025 on the Bill of Costs at Ksh. 1,575,950 or there be a set off.

The respondent filed a Notice of Preliminary Objections to the applicant's application dated 8 December 2025. The objections are that:

1. The application is incompetent in law, having been brought as a reference under Rule 11 of the Advocates Remuneration Order against a taxation conducted by a subordinate court to which the said Rule does not apply.
2. Rule 11 of the Advocates Remuneration Order is applicable only to taxation undertaken by tax officers exercising the jurisdiction of the High Court and does not confer any right or reference from decisions of subordinate courts.
3. The court lacks jurisdiction to entertain a reference arising from a taxation by a subordinate court, jurisdiction not having been properly invoked.
4. The decision of the subordinate court on taxation is challenged only by way of an appeal, and not through a reference under the Advocates Remuneration Order.

The respondent is thus seeking that the applicant's application dated 8 December 2025 be struck out with costs.

On the objections by the respondent, it submitted that the wording of Rule 11 of the Advocates Remuneration Order (ARO) makes a special and limited procedure intended to challenge decisions of a taxing officer. Paragraph 11(1) of ARO contemplates a party objecting to the decision of the taxing officer, while paragraph 11(2) requires the objector to move a judge upon receipt of the taxing officer's reasons. The rule presupposes the existence of a tax officer acting within the statute's meaning of paragraph 10 of the ARO. A determination of costs made by a magistrate does not constitute a reference within the framework of Rule 11 of ARO.

The decisions challenged herein arose from proceedings before the Chief Magistrate's Court. The resulting ruling on costs was determined by a subordinate court exercising civil jurisdiction, rather than by a taxing officer conducting taxation as required under ARO. Such

determination constitutes assessments or awards of costs within the trial process and does not fall within the specialised jurisdiction for a reference. Invoking Rule 11 of ARO is a fundamental procedural misdirection that cannot be cured.

Where a party is dissatisfied with a determination on costs by a subordinate court, it is to pursue an appeal. A reference cannot be used to cure the lapse of failing to file an appeal as held in **Dalmas Okach Randa v Peter Lolwe Ombo [2013] eKLR**, and **Benerard Gichobi Njira v Kanin Njira Kathendu & another [2015] eKLR** that in assessing costs, the magistrate was not acting as the taxing officer under paragraph 10 of ARO. In that case, if dissatisfied, recourse was a review or appeal.

The situation is similar in this case. The decisions on the costs were rendered by the magistrate. The application herein should be dismissed for want of jurisdiction.

The applicant, in response, submitted that an Advocate/Client bill of costs in the court was taxed by the Deputy Registrar. This arose from the ruling delivered on 4 December 2025. Dissatisfied with the ruling, the applicant filed this reference in line with Rule 11 of ARO.

Article 162(2) of the Constitution establishes the court as having equal status with the High Court, with jurisdiction over employment and labour relations matters. This extends to taxation references over employment disputes. While the Advocates Act generally places taxation of advocate-client bills before the High Court, the courts are of the view that where the substantive matter is heard in the court or its subordinate, such as the magistrates' court, the proper forum for taxation is before the court.

In **Kenya Airports Authority v Otieno Ragot & Co. Advocates Petition No. E011 of 2023**, the court held that jurisdiction follows the subject matter of the original dispute. In **Kinyua Muyaa & Co. Advocates v Kenya Ports Authority Pension Scheme & 8 others [2015] eKLR**, the court held that where a substantive matter is employment-related, the reference must be filed with the court.

Section 12(4) of the Employment and Labour Relations Court Act confers jurisdiction on the court to hear and determine employment disputes, including costs. Rule 11(2) of the ARO allows a party aggrieved by the decision of the taxing officer to move the court through a reference as herein done. Objections by the respondent should be dismissed with costs.

Determination

The respondent challenges the reference herein on the basis that under Rule 11 of ARO, only allows taxations undertaken by a tax officer exercising jurisdiction of the High Court and hence does not confer any right of reference from decisions of subordinate courts. The challenge is that the instant reference is incompetent and denies the court jurisdiction to address.

On 4 December 2025, the Hon. Sindani delivered a ruling regarding the Advocate-Client Bill of Costs against the respondent herein, as the client.

The reference herein by the applicant relates to the Taxing officer/master ruling with regard to the Advocacy-Client Bill of Costs. It is undisputed that the same arose out of proceedings in

Mombasa ELRC Misc. Application No. E096, E097, E098, E099, E100, E101, E102, E103, E104, and E107 OF 2025. The applicant raised the Advocate-Client Bill of Costs dated 11 September 2025, and a ruling was delivered on 4 December 2025.

This is not a party and party bill of costs, which ordinarily should be addressed under the subject file. The taxation process arose from the miscellaneous applications cited above. The applicant filed the Advocate/Client Bill of Costs through a miscellaneous application. The taxing master or officer responsible for the court should conduct the taxation of a bill of costs. In this regard, under the ARO, an Advocate/Client Bill of Costs should be taxed by the taxing officer of the court, as held in **Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] KECA 587 (KLR)**.

Indeed, the formula for taxing an advocate and client bill of costs for work done in the High Court is provided for in Part B of Schedule VI of the Order. But the phrase “fees prescribed in A above increased by one-half” in part B of Schedule VI, does not necessarily mean the fees as taxed in a Party and Party Bill. ...

This would have been different if the matter concerned a party and that party's bill of costs.

The Employment and Labour Relations Court, being a distinct and separate court from other superior courts as defined under Article 162(2)(a) of the Constitution and constituted under the Employment and Labour Relations Court Act, has the exclusive jurisdiction to hear and determine employment and labour relations disputes and for connected purposes. This applies to magistrates conferred with jurisdiction to hear employment disputes.

Equally, under the Employment and Labour Relations Court Act, the court is administratively resourced with a Registrar who is separate and distinct from other registrars of the superior court. The Registrar of the court is required under section 11(2) of the Act to,

(2) The Registrar, the Senior Deputy Registrars, the Deputy Registrars, the Assistant Registrars and other officers of the Court shall exercise such powers and perform such duties as may be conferred upon them by this Act, the rule of the Court or any other written law.

Under the office, designated deputy registrars have the power to perform such duties as are conferred under the Act, including taxing bills of costs.

In this regard, the subject Advocate-Client Bill of Costs resulting from the Advocate's Remuneration Order for Advocate/Client was addressed by a competent Deputy Registrar/Taxing Officer. The Deputy Registrar has the requisite jurisdiction to hear the taxation and exercise judicial discretion.

Hence, an aggrieved party to the ruling of the Taxing Officer, such as herein done following the ruling delivered on 4 December 2025, should file a reference to the court under paragraph 11 of ARO.

Accordingly, the respondent's objections dated 15 January 2026 are without merit and are hereby dismissed. The reference shall be heard on merit. Costs to abide by the reference's outcome.

Delivered in open court at Mombasa, this 19th day of March 2026.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Omar

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