

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO. E134 OF 2025

OKATCH AND PARTNERS ADVOCATES.....APPLICANT

VERSUS

MAUREEN KOLENYO.....RESPONDENT

RULING

1. The Applicant moved this court by way of a Notice of Motion dated 7th November 2025 seeking the following orders:

- 1) Spent.
- 2) **THAT** this Honourable Court be pleased to extend the time within which the Applicant may file a Notice of Appeal against the Ruling delivered on the 23rd day of October 2025.
- 3) **THAT** the Notice of Appeal annexed hereto be deemed as duly filed and served upon payment of the requisite filing fees.
- 4) **THAT** the costs of this application do abide the outcome of the intended appeal.

2. The Application is premised on the grounds appearing on its face and the annexed Affidavit of **Diamond Amutavy**, counsel on record for the Applicant herein.
3. Ms. Amutavy deposes that on 23rd October 2025, this Honourable Court delivered a ruling in respect of the Advocate-Client Bill of Costs dated 12th May 2025. In the said ruling, the Court upheld a Preliminary Objection dated 29th July 2025 raised by the Respondent, which challenged the jurisdiction of this Court to tax the said Bill.
4. She avers that the Applicant is aggrieved by the said ruling and intends to appeal against the whole of it.
5. Ms. Amutavy further avers that shortly after the delivery of the ruling, she fell ill and was away from the office for a period of eight (8) days. She resumed duty on 6th November 2025, which was exactly fourteen (14) days from the date the ruling was delivered. Upon resuming duty, she attempted to file the Notice of Appeal, but the e-filing system was experiencing downtime, rendering it impossible to effect the filing within the prescribed time. Consequently, the Notice of Appeal was not filed within the statutory fourteen (14) day period.

6. According to Ms. Amutavy, the Applicant remains desirous of pursuing the intended appeal and therefore seeks the Court's indulgence to extend the time within which to file and serve the Notice of Appeal.
7. Upon being served with the Motion dated 7th November 2025, the Respondent filed a Notice of Preliminary Objection dated 25th November 2025 premised on the following grounds:

- 1) ***THAT this Honourable Court lacks jurisdiction to admit a Notice of Appeal whether out of time or at all against the decision of a taxing officer, the Honourable Aziza Ajwang as the decision is not a decision of a Judge as contemplated under Article 164(3) of the Constitution of Kenya 2010 and Section 17 of the Employment and Labour Relations Act.***
- 2) ***THAT the Application being one in which the Applicant seeks to challenge the decision of a taxing officer, ought to have complied with paragraph 11 of the Advocates Remuneration Order 2009.***
- 3) ***THAT the Court therefore lacks jurisdiction to grant the orders sought and the Notice of Motion application dated 7th November 2025 should be dismissed with costs.***

Submissions

8. On 28th November 2025, the Court directed that the Respondent's Preliminary Objection be canvassed by way of written submissions. Only the Respondent filed submissions, as the Applicant's submissions were not traceable in the Court's physical file or on the online portal. This was notwithstanding that the Applicant had been granted three (3) days on 28th January 2026 to file the same. The Court has nevertheless considered the Respondent's submissions.
9. In support of the Preliminary Objection, the Respondent submitted that a decision of a Deputy Registrar sitting as a taxing officer is not appealable to the Court of Appeal. Instead, any challenge to such a decision must strictly comply with paragraph 11 of the Advocates Remuneration Order, 2009. In support of this position, reliance was placed on the decision in ***Joreth Limited v Kigano & Associates, Nairobi Court of Appeal Civil Appeal No. 66 of 1999.***
10. The Respondent further submitted that the Applicant has not demonstrated any legal provision conferring jurisdiction upon this Court in the manner sought in the present application. In that regard, it was contended by the Respondent that no Notice of Appeal can lie against the decision of a taxing officer (a magistrate) on the basis that such a decision constitutes a substantive determination of a superior court judge capable of being challenged before the

Court of Appeal. To buttress this argument, the Respondent relied on the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR*.

Analysis and Determination

11. The crux of the Respondent's Objection is that this Court lacks jurisdiction to admit a Notice of Appeal, whether filed out of time or otherwise, against a decision of a taxing officer.
12. From the Notice of Motion dated 7th November 2025, it is evident that the Applicant seeks leave to file a Notice of Appeal in the Court of Appeal against the ruling delivered on 23rd October 2025 by the taxing officer with respect to the Advocate-Client Bill of Costs dated 12th May 2025.
13. In essence, the Applicant is dissatisfied with the decision of the taxing officer.
14. It is well settled that in matters relating to the taxation of Bills of Costs, any challenge to a decision of the taxing officer, whether on a point of law arising from the taxation or on any grievance concerning the taxation is to be pursued by way of a Reference to a Judge in accordance with paragraph 11 of the Advocates (Remuneration) Order, which I will reproduce verbatim:

(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.

15. Applying the provisions of paragraph 11(2) aforesaid to the instant case, it follows that in the event the Applicant was aggrieved by the decision of the Taxing Officer, it ought first to have moved this Court before seeking leave to appeal to the Court of Appeal.

16. Thereafter, pursuant to paragraph 11(3) of the Advocates (Remuneration) Order, any party dissatisfied with the decision of the Judge under subparagraph (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.

17. In the present instance, the only decision on record is that of the Taxing Officer. There is no decision of this Court as contemplated under paragraph 11(2) upon which an appeal to the Court of Appeal may properly lie, as the Applicant seeks to do. It is therefore evident that the Applicant has prematurely sought to appeal to the Court of Appeal from the decision of the Taxing Officer.

18. In the circumstances, the Applicant's Motion dated 7th November 2025 is incompetent and cannot be granted as prayed.

19. Consequently, the Court upholds the Respondent's Preliminary Objection dated 25th November 2025 and strikes out the Applicant's Notice of Motion dated 7th November 2025 with costs to the Respondent.

DATED, SIGNED and DELIVERED at NYERI this 24th day of March 2026.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Ang'ielia for the Applicant

Mr. Migele for the Respondent

Ndati Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email.

They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court.

In permitting this course, this court had been guided by Article 159(2)(d) of the

Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO
JUDGE