

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**MISCELLANEOUS CIVIL APPLICATION NO. E054 OF 2025**

**FRANCIS OMONDI**

**t/a OMONDI & COMPANY, ADVOCATES.....**  
**APPLICANT**

**VERSUS**

**AMOS SIMIYU MAKOKHA,**

**NOBERT SIMIYU WATTANGA**

**LYDIA IRAKO LUYALI**

**t/a MAKOKHA WATTANGA LUYALI**

**& \_\_\_\_\_ COMPANY,**

**ADVOCATES.....**

**.....RESPONDENTS**

**RULING**

1. The Deputy Registrar of the High Court, as taxing master, taxed an Advocate-Client Bill of Costs, dated 28<sup>th</sup> April 2025, arising from proceedings that were conducted in Busia HC Insolvency Cause No. E001 of 2022. That taxation was through a ruling that was delivered on 18<sup>th</sup> September 2025.
2. The applicant was aggrieved by the outcome, and approached this court, by a reference, under paragraph 11(2) of the Advocates Remuneration Order, seeking the setting aside of specified items of that taxation, on the basis that the same was either manifestly low, or was based on a wrong principle of the law.
3. The respondents replied to the application, through an affidavit sworn by the 1<sup>st</sup> respondent, on 16<sup>th</sup> February 2026. He states that the reference was filed out of time, for the ruling in question was delivered on 7<sup>th</sup> October 2025, and was uploaded the same day on the CTS. He avers that the respondents shall raise that as a preliminary objection at the hearing of the Motion.

4. A notice of preliminary objection was filed, dated 16<sup>th</sup> February 2026. It argues that the Motion, of 16<sup>th</sup> December 2025, was incompetent, for it was filed without leave of the court.
5. The preliminary objection has been conversed by way of written submissions.
6. The respondents filed their skeletal submissions contemporaneously with the notice of preliminary objection. They submit that the reference was filed outside the 14 days allowed under paragraph 11 of the Advocates Remuneration Order. It is asserted that the reasons were given on 7<sup>th</sup> October 2025, and the reference should have been filed within 14 days of that date.
7. In its submissions, the applicant argues that reference to the Judge, by way of chamber summons, under paragraph 11(2) of the Advocates Remuneration Order, ought to be filed after receipt of the reasons by the taxing officer. It is submitted that there was no evidence that the said reasons were forwarded on 7<sup>th</sup> October 2025. It is argued that uploading the reasons in the CTS did not consist forwarding of the reasons. It is asserted that the time of filing the reference began to run after receipt of the reasons. It is argued that the assertion, that the reasons were received on 11<sup>th</sup> December 2025, has not been controverted.
8. On settlement of the taxed fees, it is argued that settlement does not oust jurisdiction of the Judge to handle a reference on those taxed costs, neither does it extinguish the right of a party to pursue the objection.
9. Before I get into the business of determining the preliminary objection, let me set out, verbatim, paragraph 11 of the Advocates Remuneration Order, it reads as follows:

*“11. Objection to decision on taxation and appeal to Court of Appeal*

*(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.”*

10. According to paragraph 11, an objection to a taxation starts with a written objection, addressed to the taxing officer, done within 14 days of the taxation. Upon receipt of the written objection, the taxing officer should, forthwith, record the reasons for the taxation, and forward the same to the person objecting, who, upon receipt of the reasons, would have 14 days, from the date of receipt of the reasons, to move the Judge, by way of a chamber summons. That is the procedure for raising challenges to a taxation.

11. So, what happened here? Taxation was done, vide a ruling that was delivered, by the taxing officer, on 18<sup>th</sup> September 2025. Then, the applicant herein raised a notice of objection, which he dated 26<sup>th</sup> September 2025. It is not clear, on the face of the application, as to when the same was filed in court, or was received by the taxing officer, but the taxing officer did act on it, vide a ruling that he delivered on 7<sup>th</sup> October 2025, giving reasons for the manner of the taxation of the bill. Thereafter, the applicant lodged the application herein, dated 16<sup>th</sup> December 2025, challenging the taxation of 18<sup>th</sup> September 2025.
12. Jurisdiction of the High Court, to handle a reference brought under paragraph 11 of the Advocates Remuneration Order, is exercisable only where the said reference is filed within the timelines given, or there is extension of that period. The first relates to time within which the reasons were sought. That issue does not arise here. The second timeline relates to the filing of the reference itself. It ought to be filed within 14 days of receipt of the reasons for the taxation, by the applicant, from the taxing officer. This is where the contest between the parties hereto is. The respondents argue that the reference was filed outside of the 14 days of receipt of the reasons, while the applicant argues that it was filed within the 14 days.
13. The reasons for the taxation were given, in a ruling that was delivered on 7<sup>th</sup> October 2025, and uploaded on the CTS on the same day. The respondents argue that the uploading of that ruling, on 7<sup>th</sup> October 2025, constituted forwarding of the reasons to the applicant, and the effective date of receipt of the reasons was the date of the uploading, that is 7<sup>th</sup> October 2025, and that the 14 days began to run from that date, and 14 days had expired as at the time the application was filed on or after 16<sup>th</sup> December 2025.

14. The applicant counters that, by arguing the the mere uploading of the reasons on CTS, does not constitute forwarding of the reasons to the party, and, therefore, the uploading, on 7<sup>th</sup> October 2025, did not mean the reasons were forwarded to him, and that that date was not the effective date of receipt of the reasons. He argues that the 14 days did not begin to count, until after he got the reasons, which he claims he received on 11<sup>th</sup> December 2025. He has, however, not provided proof that he received the same on 11<sup>th</sup> December 2025, neither has he given indication of how he received them.
15. What do I make of all this? Well, the courts have gone digital. Court process is now being filed online, and orders are equally being given online. Advocates have CTS accounts, and have real time access to whatever orders a court makes, in processes that are being handled online. After the ruling of 18<sup>th</sup> September 2025, the applicant raised his objection online, by filing his notice of objection, online, on 26<sup>th</sup> September 2025. The court acted on it, online, and uploaded its reasons, contained in a ruling, on 7<sup>th</sup> October 2025.
16. The matter was being handled online, and the applicant should not have expected to have the reasons forwarded to him in any other way, apart from the uploading of the reasons on the CTS. That uploading constituted the forwarding of the reasons to him, and the date of the uploading, 7<sup>th</sup> October 2025, was the effective date when the 14 days began to run. The 14 days, had, no doubt, lapsed, by 16<sup>th</sup> December 2025, when the application, of that date, was filed online.
17. The reference, before me, was filed out of time, and the High Court would have no jurisdiction to entertain it. I note that the applicant did not obtain an order to have the time for filing it extended, and has not sought such extension, once the respondents raised the issue of time.

18. On whether the payment of the taxed costs has any effect on the reference, I believe that that is now academic, for the answer to that question, either way, would not give legitimacy to a reference filed out of time. Anyhow, settlement of taxed costs should have no impact on a reference properly filed. Receipt of the money, by the applicant, should not amount to acquiescence, or compromise of the reference, unless the parties reach agreement. It does not extinguish the right of the applicant to prosecute its reference, and it does not oust the jurisdiction of the court to entertain it.
19. In the end, I find and hold that the reference was filed out of time. It is incompetent, and the High Court has no jurisdiction to entertain it. I, accordingly, uphold the objection. The result is that the reference is hereby struck out. There shall be no order on costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN  
CHAMBERS, AT MILIMANI, NAIROBI, ON THIS 10<sup>TH</sup> DAY  
OF APRIL 2026.**

**WM MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.**

**Advocates**

**Mr. Francis Omondi, t/a Omondi & Company, Advocates, the applicant.**

**Mr. Omundi Bwo'Onchiri, Advocate for the respondents.**