

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCOMM MISC. APP. NO. E941 OF 2020

IN THE MATTER OF THE ADVOCATES ACT

-AND-

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER

-AND-

IN THE MATTER OF THE ADVOCATE-APPLICANT BILL OF COSTS

-BETWEEN-

WACIRA WAMBUGU & COMPANY

ADVOCATES LLP.....ADVOCATE/RESPONDENT

-VERSUS-

MUSIMBA INVESTMENTS LIMITED.....CLIENT/APPLICANT

(A Reference from the Ruling by Hon. Adisa, delivered on 18th December, 2024).

RULING

1. Before me is a Chamber Summons application dated 17th March 2025 filed by the client/applicant pursuant to the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act, Rule 11(2) of the Advocates (Remuneration) Order and all other enabling provisions of the law. The applicant prays for orders that this Court reviews and/or varies the entire decision of the Taxing Master, Hon. C.L. Adisa, as issued in the Ruling of 18th December 2024 regarding the Advocate's Advocate-client Bill of Costs dated 6th August 2020, that the Court re-assesses whether the Taxing Master, in re-taxing the said Bill of Costs, acted on her own motion and contrary to the Orders made by the Honourable Judge on 13th October 2023, and to make findings on this issue. In the alternative, the applicant prays for orders that the Court remits the Bill of Costs to another Taxing Master for reconsideration of the

costs payable to it, pursuant to the Ruling of this Court delivered on 13th October 2023.

2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Hon. Patrick Mweu Musimba, a Director of the applicant company. Hon Musimba averred that the Advocate/respondent herein, filed an Advocate's Advocate-Client Bill of Costs dated 6th August 2020 against the applicant for Kshs.7,940,400/=, arising from alleged professional services related to the purchase of a Bell Helicopter/Taxtron 407 GXP (Registration No. NS660M). That in a Ruling delivered on 28th October 2021 by Hon. S.A. Opande, the Taxing Master, she taxed the aforesaid Bill of costs and held that no Advocate-Applicant relationship existed for lack of instructions.
3. Hon. Musimba stated that the applicant then filed an application dated 26th September 2022 seeking leave to file a Reference out of time against the Taxing Master's decision and for the Court to review and re-assess the issue of costs. He further stated that in opposition to the applicant's application, the respondent filed a Preliminary Objection challenging the timeliness and procedural propriety of the application. He deposed that the aforesaid application and Preliminary Objection were determined by this Court in a Ruling delivered on 13th October 2023, wherein the Court dismissed the Preliminary Objection, granted leave to the applicant to file the Reference, and remitted the Bill of Costs to another Taxing Master for reconsideration of the issue of costs.
4. Hon. Musimba averred that following the Ruling of 13th October 2023, Hon. C.L. Adisa delivered a Ruling on 18th December 2024, wherein she held that an Advocate-Applicant relationship existed between the parties herein and proceeded to tax the Advocate's Advocate-Client Bill of Costs at Kshs.2,329,152.40.

5. He contended that the Taxing Master erred by re-taxing the entire Bill of Costs on her own motion by disregarding this Court's Ruling of 13th October 2023, failing to limit reconsideration to costs and failing to follow the directions issued by this Court in the Ruling of 28th October 2021, that no Advocate-Client relationship existed, and issuing an award without sufficient reasoning.
6. In opposition to the applicant's Reference, the respondent filed a Notice of Preliminary Objection dated 19th September 2025, raising the following grounds: -
 - i) The Chamber Summons Application filed by the Client/Applicant is incompetent, misconceived, bad in law and lacks merit;
 - ii) The Reference filed against the Respondent has been filed out of time without first seeking leave of the Honourable Court;
 - iii) The Client/Applicant Chamber summons Application offends Paragraph 11(1) & (2) of the Advocates Remuneration Order (2014), for the reasons that the Reference has been filed over eighty (80) days after the date Hon. Chembeni L. Adisa issued her Ruling on the Advocate/Client Bill of Costs dated 6th August, 2020;
 - iv) The Chamber Summons Application as filed by the Client/Applicant outrightly offends the doctrine of laches;
 - v) The Chamber Summons Application has been brought to Court in clear disregard of the laid down procedures and is further an abuse of Court process due to the habitual nature of the Applicant filing References in the present cause out of time; and
 - vi) In whole, the Client/Applicant is a frivolous litigant and the proceedings herein amount to an abuse of Court process.
7. The application herein was canvassed by way of written submissions. The respondent's submissions were filed on 3rd December 2025 by the law firm of Wacira Wambugu & Company Advocates LLP, whereas the applicant's

submissions were filed by the law firm of Andrew & Steve Advocates on 11th December 2025.

8. Mr. Kamau, learned Counsel for the respondent relied on the case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** [1969] EA 696, and submitted that the instant Reference was filed over 80 days after the Ruling of Hon. Chembeni L. Adisa delivered on 18th December 2024, in clear disregard of the provisions of Rules 11(1) & (2) of the Advocates Remuneration Order, which requires the filing of a Notice of Objection within 14 days of the Taxing Master's decision and allows 14 days from receipt of the reasons given, to file a Reference against a Taxing Master's decision. Counsel cited the case of **JA Guserwa & Company Advocates v Opiayo** [2025] KEELRC 2430 (KLR) and further submitted that the 14-day period starts from the date the Ruling is delivered, if the reasons are apparent.
9. Counsel argued that the applicant unnecessarily delayed by seeking reasons that were already apparent in the Ruling delivered on 18th December 2024 and failed to seek leave of the Court to file the instant Reference out of time, as required under Paragraph 11(4) of the Advocates Remuneration Order. He referred to the case of **Muri Mwaniki & Wamiti Advocates v African Banking Corporation Limited** [2020] KEHC 4794 (KLR), and emphasized that a Reference filed out of time without justification or leave is incompetent. Mr. Kamau asserted that the Reference herein is incompetent, fatally defective, and a waste of the Court's resources.
10. Ms Mabango, learned Counsel for the applicant cited the case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** (supra), and submitted that the Advocates Preliminary Objection does not meet the legal threshold for such objections. She referred to the cases of **Evans Thiga Gaturu, Advocate v**

Kenya Commercial Bank Limited [2012] KEHC 4274 (KLR) and **Wabuke & another v Elijit** [2025] KEHC 5399 (KLR), and contended that the Taxing Master's Ruling of 18th December 2024 did not address the issue of costs as directed by the Court in its Ruling of 13th October 2023, thus the reasons for re-taxing were not apparent, necessitating the applicant's request for reasons on 22nd January 2025.

11. Counsel submitted that the applicant followed the proper procedure under Paragraphs 11(1) & (2) of the Advocates Remuneration Order by giving Notice of the Objection within 14 days of the impugned decision and by filing the Reference within 14 days of receipt of the reasons for the decision, from the Deputy Registrar on 3rd March 2025, culminating in the filing of the reference herein on 17th March 2025. Ms Mabango also accounted for the time-stop period under Order 50 Rule 4 of the Civil Procedure Rules, 2010, in ensuring compliance within statutory timelines, contrary to the respondent's assertion of habitual delay.

ANALYSIS AND DETERMINATION.

12. Upon consideration of the instant Reference, the grounds on the face of it and the affidavit filed in support thereof, the Notice of Preliminary Objection by the Advocate and the written submissions by Counsel for the parties, the issues for determination are –

- i) Whether the Respondent's Notice of Preliminary Objection is merited; and**
- ii) Whether the applicant's Reference should be allowed as prayed.**

Whether the Respondent's Notice of Preliminary Objection is merited.

13. The Court in the case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** (supra), set out what constitutes a Preliminary Objection as hereunder –

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

14. In the said case, Sir Charles Newbold P., stated as follows: -

“... the first matter related to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop.”

15. A Preliminary Objection only consists of a pure point of law and not disputed facts.

The applicant submitted that the respondent's Preliminary Objection consists of disputed facts hence it should be dismissed with costs. On examination of the respondent's Notice of Preliminary Objection dated 19th September 2025, it is manifest that the main ground of objection is that the instant Reference was filed over eighty (80) days after the delivery of Hon. Chembeni L. Adisa's Ruling and without first seeking leave of the Court, contrary to the provisions of Paragraph 11(1) & (2) of the Advocates Remuneration Order.

16. From the above, it is evident that whether or not the applicant has complied with the provisions of Paragraph 11(1) & (2) of the Advocates Remuneration Order and whether or not it sought leave of the Court prior to filing of the Reference herein out of time is disputed. This Court is of the considered view that in order for it to determine these issues, parties will have to adduce evidence by way of affidavits and thereafter, the Court would have to go through the evidence adduced and the Court record, in order to ascertain the correct position. It is trite that facts that require to be analyzed and/or verified through evidence do not qualify as Preliminary Objections but can only be addressed by way of affidavits.

17. In the end, this Court finds that the respondent's Notice of Preliminary Objection dated 19th September 2025 does not fit within the confines of what constitutes a Preliminary Objection as set out by the Court in the case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** (supra). Consequently, the Notice of Preliminary Objection is hereby dismissed.

Whether the applicant's Reference should be allowed as prayed.

18. In this case, the applicant seeks review and/or variation of the Taxing Master's Ruling delivered on 18th December 2024, or in the alternative, remittance of the Advocate's Bill of Costs dated 6th August 2020 to another Taxing Master to reconsider the issue of costs in line with the Court's Ruling delivered on 13th October 2023. The application is premised on the sole ground that the Taxing Master acted beyond the scope of the remit by re-taxing the entire Bill of Costs on her own motion, and issued a Ruling without sufficient reasons.

19. The procedure for objecting to a Taxing Master's decision is provided for under Paragraph 11(1) & (2) of the Advocates Remuneration Order which states as hereunder: –

- 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.**

20. The record shows that the Taxing Master delivered her Ruling on 18th December 2024. Being dissatisfied with the said Ruling and in line with the provisions of Paragraph 11(1) of the Advocates Remuneration Order, the applicant in a letter dated 22nd January 2025 lodged a Notice of Objection, wherein he objected to the said decision and sought the Taxing Master's reasons for her decision, noting that she had proceeded to re-tax the entire Bill of Costs instead of limiting herself to reconsideration of the issue of costs as directed by this Court in its Ruling delivered on 13th October 2023.

21. It is noteworthy that the aforesaid Notice of Objection was filed approximately 36 days after delivery of the impugned Ruling. However, this Court is cognizant of the provisions of Order 50 Rule 4 of the Civil Procedure Rules, 2010, which provides that: -

Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:

Provided that this rule shall not apply to any application in respect of a temporary injunction.

22. In view of the above provisions and after computing time, this Court finds that the applicant's Notice of Objection was filed approximately eleven (11) days after delivery of the Taxing Master's Ruling. This Court is therefore satisfied that the applicant duly complied with the provisions of Paragraph 11(1) of the Advocates Remuneration Order. Upon issuance of the aforementioned Notice of Objection, the Taxing Master is required to record and forward to the objector the reasons for his/her decision on the items objected to. In this case, the applicant has demonstrated in its affidavit in support of the instant Reference that the Taxing Master in an email sent on 3rd March 2025, informed the applicant's Advocates that the reasons for her Ruling were contained in the said Ruling. Subsequently, the applicant filed the Reference herein on 17th March 2025, approximately fourteen (14) days later, as provided for under Paragraph 11(2) of the Advocates Remuneration Order.

23. In the premise, this Court is satisfied that there was no delay whatsoever in the filing of the instant Reference as the applicant duly complied with the procedural timelines of objecting to the Taxing Master's decision.

24. The applicant's Reference is anchored on the ground that the Taxing Master erred by re-taxing the entire Advocate's Advocate – Client Bill of Costs dated 6th August 2020, instead of just addressing the issue of costs of the Bill of Costs since Hon. S.A. Opande in her Ruling delivered on 28th October 2021 found that there existed no Advocate-Client relationship between the parties herein, but did not address the issue of who between the respondent and the applicant was entitled to costs of the Advocate's Advocate-Client Bill of Costs.

25. On perusal of this Court's Ruling delivered on 13th October 2023, I found in favour of the applicant and remitted the Advocate's Advocate-Client Bill of Costs dated 6th August 2020 to another Taxing Officer for reconsideration of the issue of costs

of the said Bill of Costs. In the circumstances, this Court agrees with the applicant that Hon. C.L Adisa in re-taxing the entire Advocate's Advocate-Client Bill of Costs not only erred but acted outside the confines of the Orders made by this Court on 13th October 2023, and arrived at a decision that was irregular and outside the scope of this Court's Orders

26. The High Court can only interfere with the Taxing Master's decision where there has been an error in principle and not solely on questions of quantum as that is an area where the Taxing Officer is more experienced and therefore more apt to the job. That was the Court of Appeal's decision in the case of **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board** [2005] KECA 325 (KLR), where the Court made the following observation-

“On Reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”

27. This Court therefore finds that the applicant's Reference is merited, noting that the Taxing Master in reconsideration of the issue of costs of the Advocate's Bill of Costs misinterpreted this Court's Ruling delivered on 13th October 2023 and acted outside the confines of the Orders made by this Court by re-taxing the entire Advocate's Advocate – Client Bill of Costs.

28. In the Ruling delivered by this Court on 13th October 2023, I stated that having perused the applicant's submissions before the Taxing Master, the applicant indeed sought for the Advocate's Advocate-Client Bill of Costs to be struck out with costs to the applicant.

29. The record shows that both Taxing Masters, in their Rulings delivered on 28th October 2021 and 18th December 2024, respectively, were silent on the issue of costs, meaning that the learned Taxing Masters did not exercise their discretion

and address themselves on the said issue. Consequently, this Court cannot proceed and make a determination on whether or not Hon. Adisa, Taxing Master exercised her discretion correctly on the issues of costs.

30. The upshot is that the applicant's Reference dated 17th March 2025 is merited, whereas the respondent's Notice of Preliminary Objection dated 19th September 2025 is devoid of merits. Accordingly, this Court makes the following orders -

- i) The Advocate's Notice of Preliminary Objection dated 19th September 2025 is hereby dismissed with costs;**
- ii) This Court hereby sets aside the Taxing Master's Ruling delivered on 18th December 2024 regarding the Advocate's Advocate-Client Bill of Costs dated 6th August 2020 in its entirety;**
- iii) The Bill of Costs dated 6th August, 2020 is hereby remitted to another Taxing Master other than Hon. C.L Adisa and Hon. S.A. Opande for determination, of who between the Advocate (respondent) and the Client (applicant) herein, is entitled to the costs arising from the Advocate's Advocate-Client Bill of Costs dated 6th August 2020, the said Bill having previously been found to be unmerited; and**
- iv) Costs of the instant Reference shall be borne by the Advocate.**

It is so ordered.

DATED, SIGNED and DELIVERED at KIAMBU on this 10TH day of APRIL, 2026. Ruling delivered through Microsoft Teams Online Platform.

**NJOKI MWANGI
JUDGE**

In the presence of

Mr Kisala h/b for Mr. Kimathi for the client/applicant

HCCOMM MISC. APP. NO. E941 OF 2020

Mr. Kamau for the Advocate/respondent

Ms Julia Court Assistant.

ORIGINAL