

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION

CIVIL CASE NO. 903 OF 2004

ROBERT MATHENGE NJUNIA.....PLAINTIFF/APPLICANT

-VERSUS-

CITY COUNCIL OF NAIROBI.....1ST DEFENDANT/RESPONDENT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT/RESPONDENT

THE HON ATTORNEY GENERAL....3RD DEFENDANT/RESPONDENT

SPERANZA NYAGUTHII KARIUKI

(sued as the legal representative of the estate of)

NICHOLAS HIUHU MURITHII.....4TH DEFENDANT/RESPONDENT

DOMINIC ICHUGU GACHANJA.....5TH DEFENDANT/RESPONDENT

RULING

1. For determination is the **chamber summons dated 12/08/2025** filed by Robert Mathenge Njunia (hereafter the Applicant) as against City Council of Nairobi, The Chief Land Registrar, The Attorney General, Speranza Nyaguthii Kariuki (suing as the legal Representative of the Estate of Nicholas Hiuhu Murithii) and Dominic Ichugu Gachanja brought saliently pursuant to Paragraph 11(2) of the Advocates Remuneration Order (ARO) seeking orders: -

a) *Spent.*

b) *Spent*

c) *That the orders made by the Taxing Master on 04/05/2025 be set aside.*

d) That the honourable Court do refer the 4th & 5th Respondent Party & party Bill of Costs dated 24/07/2023 for taxation before a different Taxing Master.

e) That the costs of the application be provided for.

2. The **motion is premised on grounds** found at the supporting affidavit sworn by George Mahugu on even date, who cites being counsel having conduct of the matter on behalf of the Applicant.
3. **Speranza Nyaguthii Kariuki (suing as the legal Representative of the Estate of Nicholas Hiuhu Murithii) and Dominic Ichugu Gachanja** (hereafter the 4th & 5th Respondent) oppose the Applicant's motion by way of **grounds of opposition dated 15/10/2025**.
4. Directions were taken on disposal of the chamber summons by way of written submissions, only the Applicant complied. That said, the Court has considered the rival material and postulates that the issue(s) for determination concern-
 - a) Whether the Applicant's reference is merited?*
 - b) Who ought to bear the costs of the application?*

Whether the Applicant's reference is merited?

5. At the outset, in opposition to the motion, the 4th & 5th Respondent preferred to file grounds of opposition. This Court has repletely observed that **Order 51 Rule 14 (1) of**

the CPR recognizes the modus, to wit, a party may oppose an application.

6. Recently, the **Court of Appeal in Blue Thaitian SRL (Owners of the Motor Yacht ‘Sea Jaguar’) v Alpha Logistics Services (EPZ) Limited [2022] KECA 1240 (KLR)** observed that the effect of filing grounds of opposition in response to an application confines a party to issues of law and legal arguments only.
7. As concerns the issue at fore, concerning set aside of the decision by a Taxing Officer, this Court has time without number drawn guidance from the dicta in **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd [1972] EA 162, Spry, V-P.** stated at p.164 that:
“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”

See also **Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others [2006] eKLR.**

8. The Court of Appeal in the above case proceeded to lay down some principles to undergird the exercise of discretion by a taxing officers in the assessment of costs, as follows:-

“(a) that costs be not allowed to rise to such a level as to limit access to the courts to the wealthy only;

b) that a successful litigant ought to be fairly reimbursed for the costs he has had to incur;

c) that the general level of remuneration of advocates must be such as to attract recruits to the profession; and

d) that so far as practicable there should be consistency in the awards made.”

See also **Rodgers Mwema Nzioka v The Attorney General & 9 Others [2007] eKLR** and **Rogan Kamper v Grosvenor (1978)**.

9. Similarly, **Ringera, J (as he then was) in First American Bank of Kenya v. Shah & Others [2002] 1 E.A. 64 at p.69**, stated; -

“First, I find that on the authorities, this Court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.... Of course it would be an error of principle to take into account irrelevant

factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge. Needless to state not all the above factors may exist in any given case, and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him. If the Court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment."

10. Keeping in mind the above principles, by the Applicant's affidavit material, he deposes that on 04/08/2025, the Taxing Officer rendered a ruling on the 4th & 5th Respondent's bill of costs taxing it at Kshs. 1,950,432/-. That this Court is therefore entitled to interfere with the wrongful exercise of the Taxing Officer's powers whereas the instant reference has been filed timeously. He goes on to depose that the matter is fit for the Court to exercise its unfettered discretion in the interest of justice to set aside the decision

of the Taxing Officer and subsequently place the 4th & 5th Respondent's bill of costs before a different Taxing Master.

11. The 4th & 5th Respondent by their grounds of opposition take issue with the application on grounds that-; the application is incompetent, fatally defective, frivolous and an abuse of Court process; the application offends the mandatory provisions of **Rule 11 of the ARO**, by failing to evince notice to the taxing officer specifying the particular items of taxation to which he objects and seeking reasons thereof; the Applicant has failed to demonstrate any error of principle, fact, or law committed by the Taxing Master to justify interference by this Honourable Court and referral of the Bill of Costs to fresh taxation; the Applicant has in his Reference Application failed to set out any specific item of the taxed Bill of Costs to which he is objecting or to disclose the grounds for such objection; and the Reference Application is fatally defective as the Supporting Affidavit thereto has been sworn by Counsel rather than the proper party thereby rendering the entire Application irregular.

12. At the outset, it necessitates addressing the competency of the chamber summons, as assailed by 4th & 5th Respondents. Paragraph 11 of the ARO provides 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)

(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."

13. As to the intent of Paragraph 11(1), the latter ought to be read alongside sub-paragraph (2) of the ARO. The former provides that where a party objects to the decision of a Taxing Officer, he/she may within fourteen (14) days after the decision, give notice to the Taxing Officer, in writing, of the items of taxation to which he/she objects. It is on the premise of the latter that sets in motion sub-paragraph (2)

where the Taxing Officer, is to record and forward to the objector the reasons for the decision on the objected items.

14. An axiomatic review of impugned ruling of the Taxing Officer rendered on 04/08/2025, it would appear that ex facie it gave reasons, though in brief, for on taxation of the various items in the 4th & 5th Respondent's bill of Costs. Therefore, where reasons have been advanced for taxation, is it really necessary to adhere to the procedural requirement of Paragraph 11(1)? I believe not.
15. To contextualize the above conclusion, Odunga, J. (as he then was) in **Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited [2012] KEHC 4274 (KLR)** observed that-;

".....where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference. Otherwise mere adherence to the procedure may lead to absurd results if the advocate was to continue waiting for reasons, as it happened in the case of Kerandi Manduku & Company vs. Gathecha Holdings Limited Nairobi (Milimani) HCMA No. 202 of 2005, where the taxing officer had left the judiciary. Where reasons are contained in the decision, I share the view that to file the reference more than 14

days after the delivery of the same would render the reference incompetent.”

16. Recently, Meoli, J. in **Chege v Muiruri [2024] KEHC 8181 (KLR)** rightly noted-:

“It has become a routine practice that taxing officers deliver written taxation rulings containing their reasons for such taxation, therefore obviating the need for requests for such reasons and curbing delay.

17. Thus, where reasons are provided in the Taxing Officer decision, it averts the necessity of Paragraph 11(1) and the first limb of sub-paragraph (2) of Paragraph 11. The Objector can proceed to lodge his chamber summons reference within fourteen (14) days of the decision. Consequently, the 4th and 5th Respondent’s contention on competency of the reference premised on failure to comply with the mandatory provisions of **Rule 11(1) & (2)** of the ARO and failure to evince notice to the Taxing Officer specifying the particular items of taxation, to which he objects and seeking reasons thereof, cannot obtain.

18. However, as to whether the chamber summons reference can sustain in the absence of demonstration of any error of principle, fact, or law committed by the Taxing Master to justify interference by this Honourable Court and referral of the Bill of Costs to fresh taxation; and or failure to set out a specific challenge of the taxed item (s) in the Bill of Costs; or failure to disclose the grounds for such objection? Here

the Court draws some reverence from the authors in Bullen and Leake (12th edition), Pg 3 under the rubric Nature of Pleadings:-

“The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which the parties can prepare and present their respective cases and upon which the Court will be called upon to adjudicate between them. It thus serves the two fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the same time informing the court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial.”

19. In **Galaxy Paints Co. Limited v Falcon Guards Limited [2000] 2 EA 385**, it was observed that the issues for determination in a suit generally flowed from the pleadings and a trial Court can only pronounce judgement on the issues arising from the pleadings or such issues as the parties framed for determination.
20. Indubitably, by the Applicant’s chamber summons reference, he has failed to clearly identify which of the taxed Items he objects, to wit, the Court can interfere with the wrongful exercise of the Taxing Officer’s discretion. As I garner, the Applicant presents an omnibus challenge to the entire

Taxing Officer's decision without specificity. Thus in my view, failure to identify the items objected to, materially renders the chamber summons defective, in light of the reasons advanced in the impugned taxation decision and obviating of Paragraph 11(1) and the first limb of sub-paragraph (2) of Paragraph 11.

21. Notably, in determining merits of the chamber summons and or whether the judge ought to re-tax the challenged items, as matter of expediency, or revert the entire bill for re-taxation before a different Taxing Officer, the specific Items challenged and reason for the challenge have to be set out in the chamber summons application. Here, the Applicant patently failed to do so, to wit, the Court cannot apply itself to the rendition in First American Bank of Kenya (supra) as juxtaposed against the impugned taxation decision.

22. In the circumstance, the commending order would be to strike out the Applicant's chamber summons application dated 12/08/2025, which I hereby do with costs to the 4th and 5th Defendant capped at Kshs. 5,000/-.

Orders Accordingly.

Delivered Dated and Signed at Nairobi this 12th March, 2026.

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**JANET MULWA.
JUDGE**

ORIGINAL