

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

MISC. CIVIL APPLICATION NO. E876 OF 2025

OSORO & OSORO CO. ADVOCATES...ADVOCATE/RESPONDENT

-VERSUS-

FREIGHT IN TIME LTD.....CLIENT/APPLICANT

RULING

1. For determination is the application dated **02/09/2025** filed by **Freight In Time Ltd** (*hereafter called the Applicant*) as against **Osoro & Osoro Co. Advocates** pursuant to **Section 1A, 1B & 3A** of the **Civil Procedure Act (CPA)** and **Paragraph 11(2) & (4)** of the **Advocates Remuneration Order (ARO)** seeking orders: -

- a) *Spent.*
- b) *Spent.*
- c) *That this honorable court be pleased to set aside the Taxing Officer's decision delivered on 14/08/2025 to the extent that it relates to the reasoning and determination pertaining to Item No. 1 of the Advocate/Client Bill of Cost dated 24/07/2025.*
- d) *That this honorable court be pleased to review/re-assess the fees due to items No. 1 of the Advocates in respect of the said Bill of Costs on the ground that there was a mistake or an error apparent on the face of record and make a finding on the same.*
- e) *That in the alternative and without prejudice to the foregoing, this Honourable Court be pleased to remit item No. 1 of the Advocate/Client Bill of Costs dated*

24/07/2025 for review/re-assessment and reconsideration with direction on the Taxation.

f) That this Honourable Court be and is hereby pleased to make such further or other Orders as it may deem just and expedient in the circumstances of this case

g) That the costs of the application be provided for

2. The **motion is premised on grounds** found at the supporting affidavit sworn by **Duncan Cheruiyot on even date**.
3. **Osoro & Osoro Co. Advocates** (hereafter called the Respondent) oppose the Applicant's motion by way of **replying affidavit** and a **notice of preliminary objection (PO)** both **dated 06/10/2025**.
4. Directions were taken on disposal of the motion and preliminary objection by way of written submissions, the respective parties duly complied. Having considered the material on record, the Court postulates that the issue(s) for determination concern
 - a) Whether the Respondent's preliminary objection is merited?
 - b) Whether the Applicant's motion is merited?
 - c) Who ought to bear the costs of the application?

Whether the Respondent's preliminary objection is merited?

5. In urging the instant motion, the Applicant has relied on among others the provision **Section 3A of the CPA** which specifically reserves "the inherent power of the court ***to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court***", to wit, this Court's inherent powers was judiciously addressed by the Court

of Appeal in **Rose Njoki King'au & Another v Shaba Trustees Limited & Another [2018] eKLR** and requires no restatement.

6. Nevertheless, a cursory review of the Applicant's affidavit material, the instant proceedings appear to stem from taxation of an Advocate-Client Bill of Costs that was taxed on 14/08/2025.
7. In opposing the motion, vide his preliminary objection, the Respondent objects to the motion on grounds-; that the Application is incompetent, bad in law and fatally defective as it offends the express provisions of Paragraph 11 of the Advocates (Remuneration) Order; that the application is statute barred as it is filed out of time allowed by law and without any leave of this Court thus this Honourable Court lacks jurisdiction to entertain or determine the present Application on its merits; and that consequently, the Application is misconceived, frivolous, vexatious, and an abuse of the due process of this Honourable Court and ought to be struck out with costs to the Advocate/Applicant.
8. From the above objection, this Court garners that the Respondent's contention concerns this Court's jurisdiction to entertain the instant proceedings premised on the fact that the Applicant's application has been caught up by limitation of time, to wit, constitutes a preliminary query in limine.
9. It is trite that a question as to limitation of time, goes to the root of the Court's jurisdiction to entertain proceedings before it, as no Court has jurisdiction to hear a matter that is time barred. See the celebrated case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR** 1. The Court of Appeal

in **Thuranira Karauri v Agnes Ncheche [1997] KECA 77 (KLR)** observed that: -

“We do not understand how the Judge could proceed with the trial without finally determining such an important point of jurisdiction and it is pointed out that as a general rule, a point or issue of limitation of time goes to the root of jurisdiction which this Court should determine at the first instance. Subsequently, where a suit is time barred, the same is incompetent and consequently a court has no jurisdiction to entertain such suit”.

10. In determining the Respondent’s objection, this Court must first identify when time began to run. The relevant facets of **Paragraph 11** of the **ARO** provide 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.”

- 11.** Pertinent to the Respondent's objection, it would be remiss not to mention that the Applicant offered no deflection to the Respondent's objection by way of a further affidavit in an attempt to assail the said contestation however only canvassed the same through its submissions. Therefore, the Court must satisfy itself of the Respondent's contestation on the premise of the material on record before it.
- 12.** From the record before the Court, it can be gathered or rather it is not in dispute that the taxing officer delivered his ruling on 14/08/2025. There was no activity in the matter up until 05/09/2024 when the Applicant lodged the instant reference without seeking any leave and or enlargement of time within which to lodge a reference, to wit, the Respondent takes issue with.
- 13.** This Court's understanding of relevant provision of the **ARO**, is that, time begins running after delivery of the taxing officer's ruling. Thus, upon delivery, it is incumbent on the Applicant to comply with **Paragraph 11(1) & (2)** of the ARO. *Ex facie*, the taxing officer's decision was substantive, complete and contained reasons for the decision thus obviating need for compliance with **Paragraph 11(1)** as read alongside the first limb of **sub-paragraph (2) of 11** of the **ARO. See-; Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited [2012] KEHC 4274 (KLR)** and **Chege v Muiruri [2024] KEHC 8181 (KLR)**. Therefore, given that the Applicant

was alive to the aggrieving items, they ought to have, within fourteen (14) days of the taxation decision, applied to this Court by way of a reference setting out their grounds.

- 14.** By its submission that Applicant acknowledges that the application was filed five (5) days out of time, the last day of filing being the 28/08/2025. Despite the applicant advocate's mistake of not seeking leave of the Court to enlarge time before filing of the application and the fact that the time lapse is not too big, the Court ought to look at the basis for the application for reassessment and exercise its discretion and not delve into technicalities. That the mistakes of an advocate ought not to be visited upon the client. Citing **Article 159** of the **Constitution** the Applicant contends that the Court has the discretion to allow such an application despite the technicality in place.
- 15.** On the part of the Respondent, its argument is resolute. That the jurisdictional nature of the timelines set out under **Paragraph 11** of the **ARO** has been underscored by the Courts within our jurisdiction. Therefore, the Applicant's motion dated 02/09/2025 is time barred, fatally defective, incompetent and without merit, to wit, it ought to be struck out with costs. The decisions in **Kenya Ports Authority v Livingstone Wanjohi [2022] KEHC 1101 (KLR)**, **Kemboy Law Advocates v Narok County Government [2024] eKLR**, **Attorney General v Chege Kariuki [2019] eKLR** and **J.M. Njenga & Co. Advocates LLP v Kimuri Housing Company Limited [2025] KEELC 4577 (KLR)** were called to aid in the forestated regard.
- 16.** Undoubtedly, the Applicant herein, in his application has failed to seek enlargement of time within which to file the reference or

admission of the reference out of time. Further, he eschewed filing a further affidavit to explain the palpable delay but rather opted to deflect the objection through submissions arguing that the Court ought to exercise its discretion and apply itself to **Article 159** of the **Constitution**, and overlook the imprudence.

17. The Court of Appeal in **Pereira v Nation Media Group & 2 Others [2021] KECA 135 (KLR)** while discussing the import of **Article 159 (2) (d)** of the Constitution had this to say-;

“Case law on the invocation and application of the above principle now forms a well-trodden path. We take it from the cases of Jaldesa Tuke Dabelo vs. IEBC & Another [2015] eKLR; Raila Odinga and 5 Others vs. IEBC & 3 Others [2013] eKLR; Lemanken Arata vs. Harum Meita Mei Lempaka & 2 Others [2014]eKLR; Patricia Cherotich Sawe vs. IEBC & 4 Others [2015]eKLR. The principles enunciated therein and which we find prudent to highlight are as follows: Rules of procedure are handmaidens of justice; a court of law should not allow the prescriptions of procedure and form to trump the primary object of dispensing substantive justice to the parties depending on the appreciation of the relevant circumstances and the requirements of a particular case; the exercise of the jurisdiction under Article 159 of the Constitution is unfettered especially where procedural technicalities pose an impediment to the administration of justice also that Article 159 (2)(d) of the Constitution is not a panacea for all procedural ills.”

18. Lastly, while the Court is alive to the emphasis in **Vishva Stone Suppliers Company Limited v RSR Stone (2006)**

Limited [2020] eKLR concerning the importance of the right of appeal – *a reference by design being a form of an appeal* – the right is not absolute and must be exercised within the confines of set out rules of procedure. As observed in **Thuranira Karauri** (supra), limitation of time goes to the root of jurisdiction, to wit, the Court is constrained to down tools in light of the Applicant’s infraction to lodge his reference within the stipulated duration and without leave.

19. I believe I have reasonably addressed myself to the Respondent’s objection. The upshot is that the reference is incompetently before this Court. The application is therefore struck out with attendant costs in favour of the Respondent capped at Kshs. 5,000/-.

Orders accordingly.

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

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JANET MULWA.

JUDGE