



**V. Chokaa & Co. Advocates v County Government of Mombasa (Environment and Land Miscellaneous Application E079 of 2022) [2025] KEELC 5494 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5494 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E079 OF 2022**

**YM ANGIMA, J**

**JULY 24, 2025**

**BETWEEN**

**V. CHOKAA & CO. ADVOCATES ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... RESPONDENT**

**RULING**

**A. Introduction**

1. The material on record shows that the applicant filed a bill of costs dated 10.11.222 which was scheduled for taxation before the taxing officer on 0.3.05.2023. It would appear that the respondent raised an objection to the bill on the ground that the applicant's claim for professional fees was time barred under the *Limitation of Actions Act* (Cap 22).
2. The material on record shows that the respondent filed an affidavit indicating that the applicant's services were rendered in 2013 and that the bill of costs was thus time barred under Section 4(1) (a) of the *Limitation of Actions Act*. The taxing master considered the material on record and decided that the applicant's bill of costs was filed 9 years after the services were rendered and consequently struck out the bill of costs on 23.08.2023.

**B. Applicant's Reference**

3. By a notice of motion dated 30.08.2023 filed pursuant to Rule 11(1) of the *Advocates (Remuneration) Order* (ADO) and Section 3A of the *Civil Procedure Act* (Cap 21) the applicant sought an order setting aside the taxing officer's striking out order made on 23.08.2023. The reference was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Vincent Chokaa on even date.



4. The applicant pleaded that a bill of costs filed under Section 51(1) of the *Advocates Act* was not a suit or action to which the *Limitation of Actions Act* applied and that the taxing officer had erred in law in failing to refer the objection raised to a Judge for determination since he had no jurisdiction to deal with it.

### C. Directions on Submissions

5. When the reference was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently given timelines within which to file and exchange their respective submissions. The record shows that the applicant filed his submissions dated 21.02.2025 but the respondent did not file any submissions.

### D. Issues for Determination

6. The court has perused the notice of motion dated 30.08.2023 and the material on record. The court is of the view that the following are the main issues which arise from determination herein;
  - a. Whether there is merit in the applicant's reference.
  - b. Who shall bear costs of the application.

### E. Analysis and Determination

#### a. Whether there is Merit in the Applicant's Reference

7. The court has considered the material and submissions on record on this issue. The applicant submitted that the taxing officer had no jurisdiction to determine whether or not his bill of costs was time-barred and that the taxing officer ought to have referred the issue to a Judge for determination first under Paragraph 12 (1) of *ADO*.
8. Paragraph 12 of *ADO* on a reference by the taxing officer stipulates as follows;

“With the consent of both parties, the taxing officer may refer any matter in dispute arising out of the taxation of a bill for the opinion of the High Court. The procedure for such reference shall follow that of a case stated but shall be to a Judge in chambers”
9. It is clear from a reading of the said provision that the taxing officer has no authority to refer a matter to a Judge suo motu and without the consent of the parties. There is no indication on record to show that the parties actually consented to such a reference but the taxing officer refused to oblige them. There is even no indication that the applicant ever made a request for such referral before the taxing officer.
10. The court has perused the proceedings before the taxing officer and finds no evidence of objection to the jurisdiction of the taxing officer to determine the question of limitation. It was held in the case of the *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR that the issue of jurisdiction is fundamental and ought to be raised at the earliest possible opportunity and that a party who fails to raise it timeously may be precluded from raising it belatedly.
11. In the said appeal Nyarangi JA, after underscoring the importance of jurisdiction held, inter alia, that;

“It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion ought to be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence



before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard as decided.”

12. The court is thus unable to find any merit in the applicant’s reference. There is no evidence of violation Paragraph 12 of *ADO* by the taxing officer and there is no evidence to show that the applicant objected to the jurisdiction of the taxing officer at the material time. Moreover, the court is not satisfied that a taxing officer has no jurisdiction to determine the issue of limitation of actions as contended by the applicant.
13. The interpretation given to paragraph 12 by the applicant cannot be sustained without doing violence to the plain language of the paragraph. Although the applicant relied upon the authority of *Abincha & Co Advocates v Trident Insurance Co Ltd* [2013] eKLR the court notes that the decision was rendered by a court of coordinate jurisdiction hence not binding upon this court. As a consequence, this court is unable to follow the interpretation of paragraph 12 as rendered in the Abincha & Co Advocates case.

### **Who Shall Bear Costs of the Application**

14. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. It is evident from the material on record that the respondent did not participate in the reference. As such, the court is of the view that the appropriate order to make on costs is that there shall be no order as to costs.

### **F. Conclusion and Disposal Orders**

15. The upshot of the foregoing is that the court finds no merit in the applicant’s reference hence there is no basis for setting aside the taxing officer’s decision dated 23.08.2023. Consequently, the applicant’s notice of motion dated 30.08.2023 is hereby dismissed with no order as to costs.

Orders accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

.....  
**Y. M. ANGIMA**

**JUDGE**

In the presence

Gillian – Court Assistant

Ms. Khadija holding brief for Dr. Chokaa for the applicant

Mr. Otieno for the respondent

