



**Wambugu Kariuki & Associates Advocates v Invesco Assurance Company Limited
(Civil Appeal 31 of 2019) [2025] KECA 1234 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KECA 1234 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 31 OF 2019
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
JUNE 27, 2025**

BETWEEN

WAMBUGU KARIUKI & ASSOCIATES ADVOCATES APPELLANT

AND

INVESCO ASSURANCE COMPANY LIMITED RESPONDENT

*(Being an Appeal against the Ruling and Order of the High Court of Kenya at Kerugoya
(L. Gitari, J.) delivered on 1st March 2018 in Miscellaneous Application No. 6 of 2017)*

JUDGMENT

1. This appeal originates from an Advocate-Client Bill of Costs that was filed in the High Court at Kerugoya on 25th April 2017 in Misc. Application No. 6 of 2017, by Wambugu Kariuki & Associates Advocates (the appellant). The bill of costs was in regard to services offered to Invesco Assurance Co. Ltd (the respondent) in defending it in Baricho PMCC No. 29 of 2012.
2. The Taxing Master (J.A. Kasam – Deputy Registrar) considered the bill of costs and in a ruling delivered on 14th July 2017 held that the Bill of Costs did not conform with the rules and she struck it out and directed the appellant to file a compliant fresh one.
3. Instead of acting as directed by the taxing master, the appellant wrote to the Deputy Registrar requesting to be supplied with certified copies of the proceedings and ruling to enable him file a reference to the High Court. The letter dated 24th July 2017 read in part as follows;

“In light of the ruling and provisions of Rule 11(1) of the Advocates Remuneration Order,
Kindly but urgently,

- a) Type and certify the proceedings in this matter.
- b) Type and certify the said ruling dated 14/7/2017.



With a and b above we shall be able to file reference before the High Court so as to be able to know which Rules the Bill of Costs offended and/or was deficient in because the said ruling of the learned taxing officer is silent on that despite having taken the draconian step to strike out the Bill on her own motion.”

4. Subsequently the appellant filed a reference before the High Court, vide a Chamber Summons dated 26th September 2017, seeking orders:
 - (i) That this Honourable Court be pleased to set aside the orders of the Taxing officer/Deputy Registrar dated 14/7/2017 which orders struck out the applicants Bill of Costs dated and filed in court on 25/4/2017;
 - (ii) That the applicant’s Bill of Costs dated and filed in court on 25/4/2017 be taxed afresh by the new deputy registrar on the basis of the parties written submissions that parties had been ordered to file by the same deputy registrar who struck out the Bill despite the filed written submissions on record.
5. Before the “reference” could be heard, the respondent filed a preliminary objection dated 5th October 2017 in which it complained that the reference did not comply with Rule 11 of the Advocates Remuneration Order, and that the only recourse open to the appellant was to file an appeal, and not a reference.
6. By consent of the parties, the court ordered that parties file submissions in regard to the Preliminary objection and gave a mention date to confirm whether submissions had been filed. On the mention date, the court confirmed that only the appellant had filed his submissions. Learned counsel for the appellant (applicant in the application) urged the High Court to deem the preliminary objection as having been abandoned and allow the reference as the same was, in the circumstances, not opposed.
7. The learned Judge, nonetheless decided to consider the preliminary objection in the absence of the submissions by the respondent. We need to reiterate here, that the fact that an application is not opposed does not, ipso facto, mean that it has to be allowed regardless of whether the same is competent or not. The court must still consider the said application on the material before it and the law and determine it on merit. In that regard, the cudgeling of the learned Judge by the appellant for not dismissing the preliminary objection in the absence of submissions by the respondent is totally misconceived and unfounded.
8. After considering the matter, the High Court (L.W. Gitari, J.) in a ruling dated 1st March 2018 held, inter alia, that;

“7. The applicant vide their letter dated 24th July, 2017 stated that he needed to file a reference so as to be able to know the Rules the Bill of Costs offended because the ruling was silent on that. He did not seek to know the Rules from the taxing master but only sought for typed proceedings and ruling in order to file the said reference. The taxing master would have then been able to respond under Rule 11

(2) which provide as follows:

“(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.”

8. The letter which the applicant wrote does not amount to an objection as envisaged under the above rule. It did not give the taxing officer, the required notice and an opportunity for her to give reasons for her decision. In this case since the taxing officer gave a generalized ruling that the bill of costs did not conform to the rules, it was expected that the applicant would have given notice to the taxing officer to list the rules which the bill of costs had not complied with. The letter written to the taxing master does not amount to a notice.
 9. Since the applicant wrote a letter to the taxing officer, it did not elicit a reply. He was supplied with proceeding and ruling;
 10. The letter to the taxing officer by the applicant was defective. No reasons were given by the Deputy Registrar who taxed the bill. The application by the applicant by way of Chamber Summons is not properly before this Court.”
9. Ultimately, the learned Judge upheld the preliminary objection and dismissed the reference, triggering the appeal now before us. In a memorandum of appeal dated 15th February 2019, the appellant raised four grounds of appeal as follows; that the learned Judge erred in law and in fact: in that she failed to appreciate that the respondent on 14th December 2017 had abandoned their preliminary objection dated 5th October 2017 because they had not filed their submissions in its support as had been ordered by consent on 9th November 2017 and they did not even attend court on 14th December 2017; by failing and/or not appreciating to strike out the respondents preliminary objection on 14th December 2017 as urged by the appellant but the court on its own motion chose to look at it and eventually upheld the same vide ruling dated 18th March 2018 thus striking out the appellant’s reference; in that notwithstanding grounds 1 and 2 above and assuming that the said preliminary objection was properly canvassed the same was not merited to be upheld as the court did by interpreting rules 11(1) and (2) of the Advocates Remuneration Order because: -
- a. there is no formally provided procedure through which a party as the appellant herein has to strictly adhere to or follow under Rule 11(1) neither does the section envisage objection must be indicated to be for some items in the bill of costs.
 - b. a party seeking to overturn the ruling of a taxing officer vide Rule 11(1) once the taxing officer supplies proceedings and ruling in question that suffices because ordinarily the reasons of the taxing officer are in the ruling under Rule 11(2);
 - c. any minor deviations in objecting under Rule 11(1) by a party and/or giving the reasons by the taxing officer under Rule 11(2) would not in itself be sufficient to warrant striking out of a reference as the learned judge did vide ruling dated 1st March 2018 when the appellant in his letter to the taxing officer dated 24th July 2017 was clear that the appellant needed proceedings and ruling under Rule 11(1); and
 - d. A party aggrieved by the decision of the taxing officer whether interlocutory or final and whether it be on quantum on the Bill awarded as a whole or any item thereof has recourse to the High Court by way of a reference under Rule 11 of the Advocates Remuneration Order which the appellant had complied with and the preliminary objection even if it was properly canvassed ought to be dismissed.



10. And finally, that the learned Judge erred in law and in fact for upholding the preliminary objection thereby failing to appreciate that by striking out the appellant's reference dated 26th September 2017 that was tantamount to upholding to the ruling/order of the taxing officer dated 14th July 2017 that struck out the appellant's Bill of Costs dated 25th April 2017 allegedly for not conforming with the rules (without stating the rules) and not appreciating that there is no known jurisdiction of striking out the bill of costs by a taxing officer at all beside the fact that there was no preliminary objection before the taxing officer for consideration which was a clear demonstration that the taxing officer was on her own motion yet she had previously ordered the filing of written submissions by parties to the bill.
11. We note that the memorandum of appeal cannot be said to be concise and fails to comply with the requirements of Rule 88(1) of the Court of Appeal Rules, but we say no more on the issue.
12. The appeal came up for hearing before us on a virtual platform on 10th June 2024 when learned counsel Mr. Wambugu appeared for the appellant. There was no appearance for the respondent and they did not file any submissions either. Mr. Wambugu informed the Court that he would rely on the submissions filed by the appellant dated 7th November 2022. There was no oral highlighting of the submissions.
13. We have considered the record before us along with the said submissions and the applicable law. We discern the complaints by the appellant to cover 2 broad areas. The first one is that the learned Judge erred in not finding the preliminary objection as having been abandoned because the respondent failed to file submissions and did not attend court on the hearing date.
14. We have dealt with this issue earlier and reiterated the correct position in law. We would, nonetheless, wish to add that the preliminary objection was purely on points of law and questioned the jurisdiction of the court to deal with the matter which was filed as a reference, but which was not a reference because the bill of costs had not been taxed; no reasons had been sought from the Deputy Registrar, and none had been given. The respondent's position was that the appellant should have moved the court by way of appeal and not a reference. As stated earlier, the court was enjoined to consider the preliminary objection on merit, whether it was opposed or not. We find that the learned Judge was in order to hear and determine the objection and render a ruling on the same. The grounds of appeal raised in that regard are without merit and they must fail.
15. The other prong of the appeal is the merit of the learned Judge's decision. It is not disputed that the appellant filed the bill of costs for taxation. It is not disputed either that the taxing master did not tax the bill because she said it had not complied with Rule 11 of the Advocates Remuneration Order. She struck out the bill but advised the appellant to file one that was compliant so that the same could be taxed. The appellant did not do so. Instead, the appellant wrote the letter to the Deputy Registrar which we adverted to earlier. The said letter is self-explanatory. It did not ask for any reasons from the taxing master. Indeed, it expressly stated that it was for purposes of filing a reference to the High Court for them to be told which rules they had not complied with.
16. With respect, that was the wrong procedure and the Rules are explicit on that. Counsel should have written to the taxing master and asked for the explanation. It was not the domain of the High Court to explain the rules that had been flouted. Before a party who is aggrieved with a decision of a taxing master moves to the High Court by way of reference, he/she should seek explanations from the taxing master on any issues arising from the taxed bill. It is only after such an explanation is given, or denied, that the aggrieved party can move to the High Court by way of reference. See Rule 11 (1) and (2) of the Advocates (Remuneration) Order.



17. As was rightly pointed out in the Preliminary objection and the Judge’s findings, it is clear that the appellant did not comply with the requirement under Rule 11(1) of the Advocates Remuneration Order. The law is very clear. When the appellant filed the reference under Rule 11 (1) and (2) of the Advocates (Remuneration) Order, he ought to have complied with the said Rules. In our view, what was filed before the learned Judge was not a reference as envisaged under the said Rules. There was no competent reference placed before the Judge for her to determine. Having said that, we find that the reference was improperly brought pursuant to a procedure unknown to law and was thus incompetent and the trial Judge did not err in upholding the preliminary objection and consequently dismissing the Chamber summons before her.
18. Accordingly, we find no merit in this appeal which we hereby dismiss with no order as to costs as the appeal was not defended. Dated and delivered at Nyeri this 27th day of June 2025.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed Deputy Registrar

