



**Macharia v Mutungi (Being and Administrator of the Estate of the Late Maina Koine)
(Environment and Land Appeal 6 of 2023) [2024] KEELC 6629 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 6629 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 6 OF 2023**

**MD MWANGI, J
JUNE 27, 2024**

BETWEEN

JOHN MACHARIA APPELLANT

AND

**MARGARET MBATHA MUTUNGI RESPONDENT
BEING AND ADMINISTRATOR OF THE ESTATE OF THE LATE MAINA
KOINE**

(In respect of the Chamber Summons Application dated 12th March 2024 brought under rule 11 sub rule 1 and 2 of the Advocates Remuneration Order seeking to set aside/ vary the determination on costs by the Taxing Master delivered on 5th March 2024)

RULING

Background

1. This Ruling is in respect of the reference filed by way of the Chamber Summons application dated March 12, 2024 which seeks to vary/set aside the ruling (and resultant certificate of taxation) delivered on March 5, 2024 by the Taxing Master taxing the Bill of Costs dated January 10, 2024 at Kshs. 2,269,783.33. The Application has wrongly been registered as an appeal. However, it is merely and application under Rule 11 of the *Advocates Remuneration Order*, commonly referred to as a 'reference'. The Applicant alleges that the instructions fees of Kshs 1,690,000/= allowed by the Taxing Master is extremely exorbitant and unjustified. He asserts that the Taxing Master did not consider the Advocates Remuneration Order and further erred in allowing items number 5, 6, 7 and 8 in the bill of costs because the said pleadings had been struck out in the judgment of the Court and expunged from the record of the Court.



2. The Applicant further states that the ruling by the Taxing Master is fundamentally flawed. He accuses the Taxing Master of failing to consider his written submissions despite his request to have his submissions admitted on record; thereby denying him a chance to be heard.
3. The Respondent replied to the Chamber Summons Application by way her replying affidavit sworn on March 21, 2024 and a Preliminary Objection dated March 21, 2024.
4. In the replying affidavit, the Respondent elucidates the events and circumstances culminating to the taxation of her Bill of Costs. It is her testimony that the Applicant approached the Lower Court and filed a suit against her late husband in relation to ownership of shade No. 28 situated at Jua Kali, Kamukunji being CMCC 4379/2012. The suit was determined in her husband's favour and the Court decided that the deceased was at liberty to levy distress for rent to recover the arrears of rent due and owing from the Applicant. The arrears were determined by the Business Premises Rent Tribunal to be Kshs 1,690,000/=. The appeal herein was from the judgment in that case.
5. The Appeal was dismissed with costs to the Respondent on November 9, 2023. It is the Respondent's position that this application lacks merit and should be dismissed with costs.
6. The Preliminary Objection on the other hand is to the effect that the reference by the Applicant violates the provisions of Rule 11(1) of the [Advocates Remuneration Order](#) and is therefore fatally defective, incompetent, unknown in Law and amounts to an abuse of the Court Process.

Court's Directions

7. The Court's directions were that the application be canvassed by way of written submissions. Both parties complied and filed their respective submissions. The Court has had an opportunity to read and consider the submissions.

Issues for determination:

8. One pertinent issue that this court must determine outrightly even before delving into the merits of the reference is whether the reference complies with the law. The Preliminary Objection (PO) by the Respondent asserts that it violates rule 11(1) of the [Advocates Remuneration Order](#) and is therefore fatally defective, incompetent and unknown in law. The PO is on a pure point of law and it was proper for the Respondent to raise it as such.

Analysis and Determination:

9. In his submissions, the Applicant dismisses the PO raised by the Respondent as a sham. He submits that a PO can only be raised on pure points of law and not on contested facts. He opines that the issue whether the notice of objection was given or not is a matter of fact. In any event, he avers that the reasons for the taxation were contained in the ruling of the Taxing Master.
10. The Applicant proceeds to submit that there was no need to invoke the provisions of rule 11(1) of the [Advocates Remuneration Order](#) as the Taxing Master confirmed that the reasons were contained in his ruling. He therefore asserts that he satisfied the requirements of rule 11(1) of the [Advocates Remuneration Order](#) and the PO is premised on the wrong understanding of the procedure.
11. The procedure for challenging a taxation is provided for under paragraph 11 of the [Advocates Remuneration Order](#) which provides as follows:



- i. Should any party object to the decision of the taxing Master, he may within fourteen days after the decision give notice in writing to the taxing Master of the items of taxation to which he objects.
 - ii. The Taxing Master shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within 14 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.
 - iii. Any person aggrieved by the decision of the Judge under subsection (2) may, with the leave of the Judge but not otherwise appeal to the Court of Appeal.
 - iv. The High Court shall have power in its discretion by order to enlarge 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.
12. In the case of *Machira & Co. Advocates -vs- Arthur Magugu* [2012] eKLR, it was held that the *Advocates Remuneration Order* is a complete code which does not provide for appeals from the Taxing Master's decision. Rule 11 of the *Advocates Remuneration Order* provides for ventilation of grievances from such decisions through references to a judge in Chambers.
 13. In *Kamau Kinga & Company Advocates -vs- Grace Wanjiku Kabiaru* [2017] eKLR, the Court expressed a similar opinion that the Law governing the matter (challenge of a decision of taxation) is the *Advocates Remuneration Order*. The court stated that:-

“...an aggrieved party writes to the Court asking for reasons for the taxation of certain items in a particular way. Once the reasons are given, the aggrieved party, then moves the Court by reference according to rule 11 of the *Order*.”
 14. The Court in *Matiri Mburu & Chepkemboi Advocates -vs- Occidental Insurance Company Ltd* [2017] eKLR, held that:

“The provisions of paragraph 11 serve several purposes. Firstly, the requirement that a party seeding reasons gives a notice of the items objected to, serves to narrow down the issues, and secondly give notice to the adverse party and the Taxing Master of his objection. Thus, the Taxing Master, adverse party and ultimately the reference Court in their respective roles can focus on the specific matter objected to rather than entire bills of costs, which often run into several pages. The objective is obvious, the expeditious disposal of taxing disputes. The compliances with the requirements of paragraph 11 of the *Remuneration Order* is not a mere technicality that can be pushed aside peremptorily as the Applicant appears to suggest. The provisions of Article 159(2)(d) of the *Constitution* were not intended to overthrow procedural or technical requirements but to guard against “undue regard” to procedural technicalities in the administration of Justice.”
 15. In this case, the Applicant challenges the decision of the Taxing Master delivered on March 5, 2024. I have keenly perused the Court record especially after the delivery of the ruling. I find no notice of objection as contemplated under paragraph 11 (1) of the *Advocates Remuneration Order*.



16. The arguments by the Applicant in his submissions are misinformed. The PO by the Respondent is on failure to issue a notice of objection; not failure to seek reasons for the ruling.
17. The Notice of Objection as explained in the case of *Matiri Mburu & Chepkemboi Advocates -vs- Occidental Insurance Company Ltd* (*supra*), serves to narrow down the issues and informs the adverse party, the Taxing Master and the reference Court of the specific items objected to.
18. The objection notice is the premises upon which a reference is grounded. Without a notice of objection, any reference filed is not only incompetent but also premature. That is the fate of this reference. I therefore proceed to strike it out with costs to the Respondent.
19. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JUNE, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Karwanda for the Applicant

Mr. Ayora for the Respondent

Yvette: Court Assistant

