



**Imarika Sacco v Katana (Miscellaneous Reference Application E015 of 2024) [2025] KEELRC 1135 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1135 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
MISCELLANEOUS REFERENCE APPLICATION E015 OF 2024**

**K OCHARO, J**

**MARCH 6, 2025**

**IN THE MATTER OF: THE ADVOCATES ACT**

**AND**

**IN THE MATTER OF: TAXATION OF PARTY AND PARTY BILL OF COSTS**

**AND**

**IN THE MATTER OF: REFERENCE FROM THE RULING OF  
THE TAXING OFFICER OF THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT MALINDI ERLC NO. 10 OF 2019**

**BETWEEN**

**IMARIKA SACCO ..... APPLICANT**

**AND**

**GEORGE KATANA ..... RESPONDENT**

**RULING**

1. The applicant herein, through its Chamber Summons application dated 16<sup>th</sup> October 2024, seeks that; this court be pleased to set aside the decision of the Taxing Officer delivered on 8<sup>th</sup> October 2024; this Court be pleased to tax the Applicant’s Party and Party Bill of Costs dated 8<sup>th</sup> May, 2024 afresh; in the alternative the Court be pleased to order that the Applicant’s Party and Party Bill of Costs dated 8<sup>th</sup> May, 2024 be taxed afresh by another Taxing Officer with appropriate directions or the Court makes such orders as are just and fair in the circumstances; and costs of and occasioned by this reference be awarded to the Applicant.
2. The Respondent resisted the application by his replying affidavit sworn on the 4<sup>th</sup> of November, 2024. In the affidavit, he raised a jurisdictional issue, anchored on the following grounds:



- i. The reference is fatally defective for failure to comply with the provisions of rule 11[2] of the [Advocates Remuneration Order](#).
  - ii. The application herein has been filed out of time, and the delay has not been explained.
  - iii. The Applicant has not sought leave to file the reference out of time.
3. On 9<sup>th</sup> December 2024, when this matter came up for the hearing of the Chamber Summons application, this Court directed that the jurisdictional issue be canvassed first. It directed the parties to file their respective submissions for and against the preliminary point. The Respondent did file his dated 16<sup>th</sup> January 2025, while the Applicant hasn't any, to date.
  4. The Respondent submitted that the Taxing Officer carefully considered the Party and Party Bill of Costs and rendered herself on the same through the ruling dated 8<sup>th</sup> October 2024, taxing the entire bill at KShs. 276, 178. 33 The Taxing Officer gave reasons for taxing each item in the manner she did.
  5. Dissatisfied with the ruling, the Applicant lodged the reference herein. The Reference was filed on 16<sup>th</sup> October 2024, out of time, without leave of the Court. Hence, the preliminary objection.
  6. The filing of the reference was not in conformity with the stipulations of Paragraph 11 of the [Advocates \[Remuneration\] Order](#), which provides timelines for the undertaking of specific actions post-taxation of Party and Party costs by any party aggrieved by the decision of the Taxing Officer.
  7. A reference filed out of time without an extension of time to so file, cannot succeed. To buttress this submission, reliance was placed on the decision in [M/S Lubuleliab & Associates Advocates v NK Brothers Limited](#) [2014] KEHC 7393[KLR].

### **Determination**

8. I have carefully considered the preliminary objection and the submissions by the Respondent and distilled a sole issue for determination: whether the reference herein was filed out of time and, therefore, fit for dismissal.
9. Paragraph 11 of the [Advocate's \[Remuneration\] Order](#) compressively provides for a procedure to be conformed with by a party desiring to impugn a Taxing Officer's decision on a Party and Party bill of costs. It bears repeating that the procedure is mandatory. The section provides;
  - “ 1. Should any party object to the decision of the taxing officer, he may, within 14 days after the decision, give notice in writing to the 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 parties concerned, setting out the grounds for objection”
10. In my view, there are situations in which the process contemplated in subparagraph [1] mentioned above becomes superfluous, and insistence on it, unaligned with the Constitutional demand for expeditious disposal of matters under Article 159 of the [Constitution of Kenya, 2010](#), and an unnecessary cost on the parties and the Court[s], timewise.



11. The step contemplated thereunder is aimed at enabling the Party intending to challenge the decision of the Taxing Officer to pick material to aid him in preparing the application contemplated under subparagraph [2], with sufficiency. Therefore, where the Taxing Officer gives a detailed ruling, giving reasons for his or her decision on all the taxed items of the bill of costs, and avails the written decision to the parties, it shall not be necessary to engage the process provided for under subparagraph [1]. At no point then shall the fact that the process was bypassed be a sword to slay the applicant's application by the adversary or a failure to get reasons on a document separate from the ruling, a shield against an attack that the reference was filed out of time.
12. Consequently, where a ruling is detailed as hereinabove mentioned, like the one, the subject matter of the instant reference, the date when the ruling was availed to the parties, becomes pivotal in computing the time contemplated under subparagraph [2]. The Learned Taxing Officer's ruling was availed to the parties on 8<sup>th</sup> October 2024 at 10:05 am when it was uploaded into the system. As such, the 14 days for filing a reference against the Taxing Officer's decision was to lapse and indeed did, on 22<sup>nd</sup> October 2022.
13. The reference was filed on 23<sup>rd</sup> October 2022, therefore, out of time.
14. This Court has no jurisdiction to entertain a reference filed out of time without the leave of the Court. As a result, the Applicant's reference is hereby dismissed with costs to the Respondent.
15. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 6<sup>TH</sup> DAY OF MARCH, 2025.**

**OCHARO KEBIRA**

**JUDGE**

