



**Onyango t/a Oscar & Associate Advocates v Kyengo (Miscellaneous Application  
E181 of 2022) [2025] KEELRC 1291 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1291 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E181 OF 2022**

**CN BAARI, J**

**MAY 8, 2025**

**BETWEEN**

**OSCAR ONYANGO T/A OSCAR & ASSOCIATE ADVOCATES ..... APPLICANT**

**AND**

**JENNIFER MULEE KYENGO ..... RESPONDENT**

**RULING**

1. This ruling relates to a Chamber Summons application dated 26<sup>th</sup> July, 2024, brought pursuant to Rule 11(1) of the Advocates Remuneration (Amendment) Order and a Motion application dated 16<sup>th</sup> May, 2024, brought under Order 21 Rule 13 (1) (a) of the Civil Procedure Rules, Sections 1A and Section 51 of the *Civil Procedure Act*. In the Chamber Summon, the Applicant seeks orders That:
  - i. Spent
  - ii. If need be, the time for lodging and filing a Reference against the decision of the Taxing Master/ Deputy Registrar of the Advocate's Bill of Costs dated 28/10/2022 delivered vide his Ruling of 29-04-2024 and certified on 15-07-2024 be enlarged and/or extended, to have the Reference herein dated 26-07-2024 deemed as properly on record.
  - iii. There be temporary stay of execution of the Certificate of Taxation dated 03-05-2024 in ELRCMISC/E181/2022 Oscar Onyango T/ A Oscar & Associate Advocates - Vs- Jeniffer Mulee Kyengo by the Deputy Registrar of the Respondent's Bill of Costs dated 28/10/2022 vide his Ruling of 29-04-2024 and certified on 15-07-2024 pending the hearing and determination of this Reference.
  - iv. The taxation by the Deputy Registrar in ELRCMISC/E181/2022 Oscar Onyango T/ A Oscar & Associate Advocates -Vs- Jeniffer Mulee Kyengo of the Respondent's Bill of Costs dated 28/10/2022 vide his Ruling of 29-04-2024, be set aside.



- v. The Advocate's Bill of Costs dated 28/10/2022 in ELRCMISC/E181/2022 Oscar Onyango T/ A Oscar & Associate Advocates -Vs- Jeniffer Mulee Kyengo be taxed De-Novo before another Deputy Registrar.
  - vi. That the costs of this reference be borne by the Respondent/Advocate.
2. In the Notice of Motion, the Applicant seeks That: -
    - i. The Certificate of Taxation dated 03/05/2024 certified in the sum of Kshs. 366,341.00 be adopted as a judgment of this Honourable court;
    - ii. The Advocate be at liberty to extract a decree from the judgment arising from the adoption of the Certificate of Taxation dated 03/05/2024 in the sum of Kshs. 366,341.00;
    - iii. Interest does accrue from the sum taxed at court rates from the date of taxation until paid in full; and
    - iv. That the costs of this application be borne by the Respondent.
  3. The Applicant in the Chamber Summon (Jeniffer Mulee Kyengo) in her supporting affidavit sworn on 26<sup>th</sup> July, 2024 states that she objects to Items 1 - 39 of the Bill dated 28<sup>th</sup> October, 2022, and in particular Paragraphs 4 to 24 of the Ruling arising from the Re-Taxation of the contents of Paragraphs 4 to 13 thereof, being fresh and not subject of her earlier Reference dated 21-09-2023 on record and filed in court through the Judiciary E-Filing System on 22- 09-2023.
  4. She avers that the Respondent's Advocate filed a Replying Affidavit dated 2<sup>nd</sup> April, 2024 in addition to the Bill and written submissions dated 14<sup>th</sup> February, 2024, while on her part, she filed a Replying Affidavit dated 19<sup>th</sup> January, 2024 and a further affidavit dated 20<sup>th</sup> February, 2024 together with her written submissions of even date.
  5. That the physical copies of these pleadings, which amount to new pleadings in the Bill in reference, were availed to the court as requested by the Taxing Master.
  6. It is her position that ipso Facto, the Reference dated 21<sup>st</sup> September, 2023 did not contain the new pleadings all having been filed in the year 2024 with the Reference filed in 2023. She avers further that the Respondent/Advocate did not file any Response to the Reference, or at all.
  7. That in view of the above, the Applicant states that this current Reference is not Res-Judicata or an abuse of court process in view of the earlier Reference dated 21-09-2023, and requests that the same to be deemed to be properly on record in the event the statutory timeline may have lapsed.
  8. That the matter ELRC Cause No. E568 of 2021, from which the Bill in reference emanates, is still pending in court, hence Party and Party Costs is yet to be determined.
  9. That there is no Advocate - Client Relationship and the honourable taxing master erred and misdirected himself in not finding that the Respondent's Bill is in-competent and improperly on record, having been filed by a firm of Advocates not on record for the Applicant in the Bill.
  10. She avers that the honourable Taxing Master erred and misdirected himself in finding that the subject matter value in ELRC Cause No. E568 of 2021 is Kshs. 7,052,435, and proceeding to determine instructions fees as Kshs.241,049 whereas, the matter is still pending in court and without considering wasted costs.
  11. It is her position that the Honourable Taxing Master erred and misdirected himself in finding for the Respondent in Items 2 - 30 of the Bill whereas the same were not drawn to scale.



12. The Applicant avers that the honourable Taxing Master erred and misdirected himself in finding for the Respondent in Items 31 - 39 of the Bill, whereas no cogent evidence was adduced in support thereof.
13. The Applicant states that the Honourable Taxing Master should therefore have found that the Respondent's Bill of costs dated 28/10/ 2022 untenable and struck it out with costs.
14. That in view of the above, it is imperative that, this Honourable Court, being the Appellate Court in the circumstances, pronounces itself on the Ruling of the Deputy Registrar of 29-04-2024 once and for all, and so as to ensure the ends of justice.
15. The Respondent/Advocate opposed the application vide a replying affidavit sworn on 26<sup>th</sup> November, 2024. It avers that the Applicant challenged the Tax Masters initial ruling delivered on 16<sup>th</sup> August,2023 through an application dated 21<sup>st</sup> September,2023, and that vide a consent, parties agreed to have the matter referred back to the Deputy Registrar for fresh taxation, and the bill was re-taxed on 29<sup>th</sup> April, 2024.
16. That the Respondent herein, extracted a certificate of Taxation from the said ruling on 3<sup>rd</sup> May, 2024 and served the same upon the Respondent/Applicant who raised no objection until much later in June, 2024, when they applied for typed proceedings.
17. It avers that on 7<sup>th</sup> June,2024, both parties were notified by the Registrar that the typed proceedings were ready for collection, but the Respondent/Applicant made no effort to file their intended reference within the stipulated time, even after the proceedings were availed to them on 7<sup>th</sup> June,2024.
18. That it was not until 16<sup>th</sup> September, 2024 when the Respondent/Applicant lodged an application seeking leave to file their reference out of time, 3 months from the time typed proceeds were availed, and 5 months from 29<sup>th</sup> April, 2024 when the ruling on the fresh taxation was delivered.
19. That the intended reference comes as an afterthought since court had already given directions on the Respondent application dated 16<sup>th</sup> May,2024 which sought orders to convert the certificate of Taxation into judgment.
20. It avers that without leave of the court, the Respondent/Applicant proceeded to file the supposed reference and that the counsel for the Respondent/Applicant attempted to mislead the court on the status of the said Application.
21. The Respondent avers that the Respondent/Applicant has offered no explanation on the inordinate delay in filing the reference except to frustrate their right to enjoy the fruits of the Judgment.
22. It is their prayer that the application be dismissed with cost as it is clearly meant to delay and frustrate access to justice.
23. Parties urged both applications by written submissions, which have been duly considered.

#### **Determination.**

24. I have carefully considered the twin application, grounds and affidavits in support, together with the replying affidavit in opposition, and the rival submissions. My careful perusal of the Ruling delivered by the Hon. Taxing Master on 29<sup>th</sup> April, 2025, and the motion herein, and picks out three issues for determination: -
  - i. Whether time should be enlarged to allow the Respondent/Applicant to file a reference out of time.



- ii. Whether the Ruling dated 29<sup>th</sup> April, 2024 should be set aside
- iii. Whether the certificate of taxation should be adopted as an order of the court

Whether time should be enlarged to allow the Respondent/Applicant to file a reference out of time

25. In an application to enlarge time such as the one before me, extension is not a right, but a discretionary power of the Court. Key considerations in the exercise of such discretion include sufficiency of the reasons for the delay, whether the delay is inadvertent and excusable, the length of the delay and the likely prejudice to the opposing party amongst others.
26. The ruling of the Taxing Master was rendered on 29<sup>th</sup> April, 2024, while the reference herein, is dated 26<sup>th</sup> July, 2024 and lodged in Court on 29<sup>th</sup> July, 2024. Although the Advocate/Respondent contends that the reference was filed in September, 2024, the record says otherwise. The reference before court is dated 26<sup>th</sup> July, 2024 and filed on 29<sup>th</sup> July, 2024 and this is the time the court will use to determine whether the delay in filing the reference was inordinate.
27. As correctly submitted by the advocate/Respondent herein, Rule 11 of the Advocates (Remuneration) Order provides that a party dissatisfied with the decision of the Taxing Master issues notice of the items that they object within 14 days. The taxing officer is thereafter required to give reasons for the decision on those items and if still not satisfied, the objector is then required to lodge his reference within fourteen days from the date of receipt of the reasons.
28. By the Advocate/Respondent's own admission, it was not until 7<sup>th</sup> June, 2024, when parties were notified that the typed proceedings were ready for collection. This position is confirmed by the court record of 12<sup>th</sup> June, 2024 where counsel for the Applicant informed court that they had not yet obtained typed proceedings, and the court on that basis allowed them more time.
29. In the case of *Owiti, Otieno & Ragot Advocates v. County Government of Migori* (2022) eKLR, it was held that courts have discretion to extend time where justice requires.
30. In my considered view, the time from when proceedings were ready and the filing of the reference, is about one month, which in my view is not inordinate, and the reasons given for the delay, amount to sufficient reasons for the delay, hence the delay is excusable. I thus, in the interest of substantive justice, find the application for enlargement of time merited and is allowed as prayed.

**Whether the Ruling dated 29<sup>th</sup> April, 2024 should be set aside.**

31. On whether the taxation by the Deputy Registrar in ELRCMISC/E181/2022 Oscar Onyango T/ A Oscar & Associate Advocates -Vs- Jeniffer Mulee Kyengo of the Respondent's Bill of Costs dated 28/10/2022 vide his Ruling of 29-04-2024 should be set aside and the said bill be taxed De-Novo by another Deputy Registrar, the Applicant's objection relates to all the items subject of the bill.
32. The general principle in determining taxation references was spelt out by the Court of Appeal in *Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board Nairobi* [2005] eKLR, where the Court held that on a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs for the reason that questions solely of quantum are regarded as matters which the taxing officers are particularly fitted to deal with, and the court will interfere only in exceptional cases.
33. The Applicant objects the taxation of Items 1 - 39 of the Bill dated 28-10-2022, and in particular Paragraphs 4 to 24 of the Ruling arising from the Re-Taxation of the Bill.



34. It is clear from the Applicant/Respondent's application that her objection is in respect of the entire ruling on the sole reason that when the reference went back for re-taxation, the Taxing Master ordered parties to file further affidavits and submission which directions both parties complied with. The Applicant argues that the filing of the submissions and further affidavits as ordered, amounts to new pleadings in the Bill in reference.
35. The directions to file affidavits and submissions was purely for purposes of enabling the Hon. Taxing Master determine the reference. The new documents did not form part of the bill as the bill was already drawn and filed for taxation.
36. From the ruling, it is clear that the Taxing Master evidently analyzed each item and gave reasons for the decision arrived at on each of them. In my view, the Applicant's objection is solely on quantum, which is a matter of discretion, and one that the taxing officer was particularly fitted to deal with, and I find no reason to interfere.
37. I find and hold that the Applicant's objection and prayer to set aside or vacate the decision of the Taxing Master is unfounded and is declined. The Chamber Summons application dated 26<sup>th</sup> July, 2024 therefore fails and is dismissed in its entirety.

Whether the certificate of taxations should be adopted as an order of the court

38. On the motion by the advocate seeking the adoption of the Certificate of Taxation dated 3<sup>rd</sup> May, 2024 in the sum of Kshs. 366,341.00, Section 51(2) of the Advocates Act empowers this court to enter judgment in favour of an advocate on taxed costs, except where a certificate of costs has been varied or set aside or where there is a dispute as to retainer. (See Lubulellah & Associates vs N.K. Brothers Limited (2014) eKLR).
39. A certificate of costs would ordinarily not be adopted where there is a reference against the ruling or where the ruling has been set aside or altered. Having dismissed the reference against the ruling herein, and the said ruling not having been set aside or otherwise altered, nothing bars the court from entering judgment.
40. In the premise, the Motion dated 16<sup>th</sup> May, 2024, is allowed as follows: -
  - a. That the Certificate of Taxation dated 3<sup>rd</sup> May, 2024 certified in the sum of Kshs.366,341.00 be and is hereby adopted as a judgment of the court.
  - b. That interest shall accrue from the sum taxed at court rates from the date of this order until paid in full
  - c. I make no orders on costs.

41. Orders accordingly.

**SIGNED, DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY, 2025.**

**C .N. BAARI**

**JUDGE**

