



**Kemboy Law Advocates v Narok County Government (Miscellaneous Application E070 of 2023) [2024] KEELC 13389 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 13389 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E070 OF 2023  
JO MBOYA, J  
OCTOBER 31, 2024**

**BETWEEN**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**AND**

**NAROK COUNTY GOVERNMENT ..... RESPONDENT**

*(Being and Application for injunction and Stay of Execution of the order of the Narok Environment and Land Court [Kullow J] dated 17th January, 2019, pending the hearing and determination of an intended Appeal from the Ruling and Order delivered by Hon. Kullow J, on 17th January 2019 in Narok Environment and Land Court Petition No. 21 of 2018)*

**RULING**

**Introduction And Background**

1. The Ruling herein relates to the Chamber Summons Application [reference] dated the 30<sup>th</sup> April 2024, and the notice of preliminary objection dated 6<sup>th</sup> May 2024 which has been filed by the Client/ Respondent.
2. The Chamber Summons Application dated 30<sup>th</sup> April 2024, brought pursuant to Rule 11[2] of the Advocates Remuneration Order, 2014, and in respect of which same has sought for the following reliefs;
  - i. That the Honourable Court be pleased to review and discharge the decision of the Taxing Officer, Hon. Vincent Kiplagat, delivered on 13<sup>th</sup> March, 2024 declining to tax the Advocate/ Applicant's Advocate-Client Bill of Costs dated 31<sup>st</sup> May, 2023 and instead struck out the Bill for want of geographical jurisdiction. Kemboy Law Advocates | Chamber Summons - Reference | 30<sup>th</sup> April, 2024.



- ii. That this Honourable Court be pleased to issue appropriate directions for the taxation/assessment of the Advocate/Applicant's Advocate-Client Bill of Costs dated 31<sup>st</sup> May, 2023 to proceed before any other Taxing Officer other than Hon. Vincent Kiplagat.
  - iii. That the costs of this Reference be awarded to the Advocate/Applicant.
3. The Application vide Chamber Summons is anchored on the various grounds which is highlighted in the body thereof. Furthermore, the Application is further supported by the Affidavit of Julius K Kemboya and to which the deponent has annexed various documents including a copy of the ruling by the taxing officer and the letter seeking reasons for the taxation.
4. On the other hand, filed a Notice of Preliminary Objection and wherein the client highlighted the following grounds;
  - i. That this Honourable Court lacks the requisite jurisdiction to hear and determine the instant matter for the Chamber Summons Reference Application is-
    - a. time-barred by operation of paragraph 11(2) of the Advocates Remuneration Order having not been filed within fourteen (14) days of the decision of the taxing master delivered by Hon. Vincent Kiplagat on 13th March, 2024;
    - b. filed without leave of this Honourable Court contrary to paragraph 11(4) of the Advocates Remuneration Order.
  - ii. That in light of the preceding, the Chamber Summons Reference Application dated 30th April, 2024 is-
    - a. aberrant and illegally intended to broaden this Honourable Court's jurisdiction;
    - b. an abuse of this Honourable Court's process;
    - c. foredoomed to fail by operation of the law; and
    - d. ripe for dismissal with costs.
5. The Application beforehand came up for directions on 25<sup>th</sup> September 2024. On the said date it transpired that the Client/Respondent had also filed a Preliminary Objection directed against the Chamber Summons Application. In this respect, the court thereafter directed that both the Application and the Preliminary Objection be canvassed and disposed of simultaneously.
6. Furthermore, the court ventured forward and directed that the Application and the Preliminary Objection be canvassed by way of written submissions. In this regard, the court circumscribed the timeline for the filing and exchange of written submissions by the parties.
7. Suffice it to point out, that the Applicant thereafter proceeded to file Written Submissions dated 1<sup>st</sup> October 2024 whereas the Respondent filed Written Submissions dated 9<sup>th</sup> October 2024. Both sets of Written Submissions form part of the record of the court.

## **Parties' Submissions**

### **a. Applicant's Submissions**

8. The Applicant filed Written Submissions dated 1<sup>st</sup> October 2024 and wherein same [Applicant] has adopted the grounds contained in the body of the Chamber Summons Application and also reiterated



the contents of the Supporting Affidavit. In addition, the Applicant has thereafter canvassed and highlighted four salient issues for consideration by the court.

9. Firstly, learned counsel for the Applicant has submitted that the Applicant herein filed an Advocate-Client Bill of Costs dated 31<sup>st</sup> May 2023 and which Bill of Costs came up for taxation before the taxing officer on 11<sup>th</sup> December 2023. Furthermore, learned counsel for the Applicant has submitted that thereafter the learned taxing officer rendered/delivered a ruling on 13<sup>th</sup> March 2024 whereupon the taxing officer struck out the bill of costs [sic] on account of want of geographical jurisdiction.
10. It was the further submissions by learned counsel for the Applicant that following the delivery of the ruling on 13<sup>th</sup> March 2024, the Applicant herein felt aggrieved and thereafter generated a letter seeking to be supplied with the reasons for the taxation and/or decision of the court.
11. Additionally, it has been submitted that following the request to be supplied with reasons underpinning the taxation of decision of the taxing master, the learned taxing officer ventured forward and availed a certified copy of the ruling to the Applicant on 16<sup>th</sup> April 2024.
12. Following the procurement of the certified copy of the ruling on 16<sup>th</sup> April 2024, the Applicant thereafter proceeded to and filed the Chamber Summons Application on the 30<sup>th</sup> April 2024. In this regard, learned counsel for the Applicant has submitted that Chamber Summons Application was filed within 14 days from the date of receipt of the decision of the learned taxing officer.
13. Premised on the foregoing, learned counsel for the Applicant has therefore submitted that the Chamber Summons Application dated 30<sup>th</sup> April 2024 has been filed timeously and in accordance with the provisions of Rule 11[2] of the Advocates Remuneration Order.
14. Secondly, for the Applicant has submitted that the Advocate-Client Bill of Costs which was the subject of taxation emanated from the proceedings vide Court of Appeal Civil Application Number 29 of 2019. For coherence, learned counsel for the Applicant has posited that the primary proceedings giving rise to the Advocate-Client Bill of Costs are the proceedings of the Court of Appeal seating at Nairobi.
15. Arising from the foregoing, learned counsel for the Applicant has submitted that the learned taxing officer was therefore wrong in finding and holding that the primary proceedings underpinning the Advocate-Client Bill of Costs were the proceedings vide Narok ELC No. 21 of 2018.
16. Thirdly, learned counsel for the Applicant has submitted that the taxing officer, who exercises the special powers of the deputy registrar has the mandate and jurisdiction to tax bill of costs across the board. In this regard, learned counsel for the Applicant has cited and referenced the provisions of Order 49 of the Civil Procedure Rules 2010.
17. Furthermore, learned counsel for the Applicant has submitted that the jurisdiction of the taxing officer as pertains to the taxation of costs is not circumscribed by territorial or geographical jurisdiction. Indeed, learned counsel for the Applicant has submitted that the provisions of Section 12 and 13 of the Civil Procedure Rules, 2010 Chapter 21 Laws of Kenya does not affect or impact upon the jurisdiction of the taxing officers.
18. Nevertheless, learned counsel for the Applicant highlighted that even if the mandate or jurisdiction of the taxing officers is circumscribed by territorial/geographical jurisdiction [which is not the case], the Advocate-Client Bill of Costs beforehand emanated from the Court of Appeal sitting in Nairobi and hence same fell within the jurisdiction of the taxing officer sitting in Milimani – Nairobi.



19. Finally, learned counsel for the Applicant has submitted that in proceeding to strike out the Advocate-Client Bill of Cost, the learned taxing officer committed a serious error of principle including circumscribing his jurisdiction contrary to the established practice and provision of the law.
20. Besides, it was submitted that the learned taxing officer also committed an error of principle in proceeding to strike out the Advocate-Client Bill of Cost on the basis of lack or want of geographical jurisdiction yet the issue of geographical jurisdiction was neither canvassed nor ventilated before him [taxing officer].
21. Arising from the foregoing submissions, learned counsel for the Applicant has therefore submitted that the learned taxing officer committed evident errors of principle and thus the ruling of the taxing officer is vitiated. In this regard, learned counsel for the Applicant has implored the court to find that the ruling is ridden with several error of commission and omission and thus warrant to be set aside.
22. In support of the submissions that the learned taxing officer committed several errors of commission and omission, learned counsel for the Applicant has cited and referenced various decision including Premchand Raichand Ltd & Another v Quarry Services of EA Ltd & Another [1972] EA 162; First American Bank of Kenya v Gulab P Shah & 2 Others [2002] eKLR and Joreth Ltd v Kigano & Associates [2002] eKLR, respectively.
23. In a nutshell, the Applicant has contended that same [Applicant] has isolated and established errors of principle that vitiate the ruling and decision of the taxing officer. In this regard, it has been posited that the Applicant has met the requisite threshold to warrant the grant of the orders sought at the foot of the Chamber Summons Application dated 30<sup>th</sup> April 2024.

#### **b. Respondent's Submissions**

24. The Respondent herein filed Written Submissions dated 9<sup>th</sup> October 2024 and wherein same [Respondent] has adopted the grounds contained at the foot of the Preliminary Objection and thereafter highlighted two issues for consideration by the court.
25. First and foremost, learned counsel for the Respondent has submitted that the ruling and/or decision of the learned taxing officer was rendered on 13<sup>th</sup> March 2024. In this regard, it has been contended that the Applicant herein was obliged to file the reference, if any within 14 days from the date of delivery of the impugned ruling.
26. Nevertheless, learned counsel for the Respondent has submitted that the instant reference was not filed until 30<sup>th</sup> April 2024. In this regard, learned counsel for the Respondent has contended that the reference was therefore filed out of time and in contravention of the provisions of Rule 11[2] of the Advocates Remuneration Order.
27. Arising from the foregoing, learned counsel for the Respondent has submitted that the reference beforehand is therefore premature, misconceived and incompetent insofar as same was filed outside the prescribed timelines.
28. Secondly, learned counsel for the Respondent has submitted that the Preliminary Objection dated 6<sup>th</sup> May 2024 raises pure issues/points of law. In this regard, it has been submitted that a preliminary objection is canvassed on the basis that the facts as pleaded by the adverse party are correct. To this end, learned counsel for the Respondent has contended that there is no dispute that the ruling sought to be impugned was delivered on 13<sup>th</sup> March 2024 whilst the reference was filed on 30<sup>th</sup> April 2024.



29. According to learned counsel for the Respondent the factual matrix that underpin the reference are not in dispute. In this regard, it has been contended that the Preliminary Objection therefore meets the legal parameters espoused the decision in *Mukisa Biscuits Manufacturing Ltd v West End Distributors* [1969] EA 696.
30. Arising from the foregoing submissions, learned counsel for the Respondent has therefore submitted that the reference beforehand is incompetent and misconceived. In this regard, learned counsel for the Respondent has invited the court to proceed and strike out the reference with costs to the Respondent.

### **Issues For Determination**

31. Having reviewed the Chamber Summons Application [reference] and the response thereto vide Preliminary Objection dated 6<sup>th</sup> May 2024 and upon consideration of the Written Submissions on behalf of the respective parties, the following issues do emerge and are thus worthy for determination;
  - i. Whether the reference was filed out of time and in contravention of Rule 11[2] of the Advocates Remuneration Order.
  - ii. Whether the Applicant has established and demonstrated any error of principle that vitiate the ruling of the learned taxing officer or otherwise.

### **Analysis And Determination**

#### **Issue Number 1. Whether the reference was filed out of time and in contravention of Rule 11[2] of the Advocates Remuneration Order.**

32. The Respondent herein has contended that the reference has been filed and/or lodged outside the prescribed period. According to the Respondent, it was incumbent upon the Applicant to file the reference, if any within 14 days from the date of delivery of the ruling or decision of the learned taxing officer.
33. Arising from the foregoing, learned counsel for the Respondent contended that the ruling having been delivered on 13<sup>th</sup> March 2024, the 14 days within which the reference ought to have been filed lapsed and or terminated on or about 27<sup>th</sup> March 2024. However, the reference beforehand was not filed until 30<sup>th</sup> April 2024.
34. To the extent that the reference was filed on 30<sup>th</sup> April 2024, which is contended to be more than 41 days from the date of delivery of the ruling, the court has been invited to find and hold that the reference is premature, incompetent and misconceived.
35. On the other hand, learned counsel for the Applicant has submitted that though the ruling was delivered on 13<sup>th</sup> March 2024, the Applicant herein was neither availed nor supplied with a copy of the ruling. Furthermore, learned counsel for the Applicant has submitted that following the delivery of the ruling, the Applicant was obliged to seek for the reasons/decision of the learned taxing officer.
36. Owing to the foregoing, learned counsel for the Applicant has posited that the Applicant proceeded to and sought for a copy of the ruling/reasons underpinning the decision of the taxing officer. In this regard, learned counsel for the Applicant has exhibited a copy of the letter dated 13<sup>th</sup> March 2024 and in respect of which same [Applicant] sought for the reasons for the decision/ruling on taxation.
37. Additionally, learned counsel for the Applicant has submitted that the learned taxing officer ultimately availed and/or supplied the Applicant with a certified copy of the ruling on 16<sup>th</sup> April 2024. Thereafter,



it has been contended that the Applicant proceeded to and filed the Chamber Summons Application [reference] on 30<sup>th</sup> April 2024.

38. According to learned counsel for the Applicant the reference beforehand was filed within 14 days from the date when the Applicant was availed and/or supplied with the reasons underpinning the ruling/decisions of the learned taxing officer. In short, it has been posited that the reference was filed in accordance with the provisions of Rule 11[2] of the Advocates Remuneration Order.
39. Having highlighted the rival submissions, I beg to take the following position. To start with, an applicant or such other person, who is aggrieved by the taxation/decision of a taxing officer is obligated to issue and serve a notice of objection to taxation in accordance with the provisions of Rule 11[1] of the Advocates Remuneration Order. For good measure, the notice of objection to taxation, in whichever form must be filed and served within 14 days from the delivery of the impugned ruling/decision.
40. Secondly, upon the lodgement of the notice of objection to taxation/request for the decision underpinning the said decision, the taxing officer is obliged to avail the reasons for taxation or a certified copy of the ruling to the Applicant. Suffice it to point out that the timeline within which the taxing officer is to avail the reasons underpinning the taxation or a certified copy of the ruling, is not prescribed by Rule 11[1] of the Advocates Remuneration Order.
41. Nevertheless, there is no gainsaying that the provisions of the reasons underpinning the taxation or a certified copy of the ruling by the taxing officer constitutes both judicial and administrative process. In this regard, it behoves the learned taxing officer both avail the reasons for taxation or a certified copy of the ruling without unreasonable delay. [See Article 10[2] and 47 of *the Constitution*, 2010].
42. In respect of the instant matter, it has been posited that the Applicant filed/lodged a request for the reasons for the decision of the taxing officer on even dated namely 13<sup>th</sup> March 2014. For good measure, the request for the reasons on taxation was copied to the learned counsel for the Client/Respondent.
43. Additionally, the Applicant herein has submitted that the learned taxing officer thereafter availed and/or supplied the Applicant with a certified copy of the ruling on 16<sup>th</sup> April 2024. Suffice it to underscore that the averment by the Applicant pertaining to the timeline when the certified ruling was availed, has neither been controverted nor contradicted. To this end, the averment stands and shall be deployed for purposes of determining the timelines of the reference.
44. To the extent that the Applicant was availed the reasons for the decision by the taxing officer on 16<sup>th</sup> April 2024, it behoved the Applicant to lodge the intended reference with 14 days in accordance with the provisions of Rule 11[2] of the Advocates Remuneration Order. In this regard, the 14 days would be reckoned/computed from the 16<sup>th</sup> April 2-024. Nevertheless, the computation of the timeline would be undertaken by excluding the first day, namely 16<sup>th</sup> April 2024, but including the last day namely the 14<sup>th</sup> day.
45. To my mind, the Chamber Summons Application dated 30<sup>th</sup> April 2024 was filed/lodged within the prescribed timelines. Simply put, the reference was filed within 14 days from the reasons of the decision/ certified copy of the ruling was availed. Suffice to point out that the computation of the timeline is not reckoned from the date of delivery of the ruling, but from the of availing the reasons of the certified copy of the ruling containing the reasons.
46. To this end, I beg to reiterate and re-echo the observation of the judge in the case of Muturi Mwangi & Associates v Mwangi [Environment & Land Misc. Application E163 of 2021] [2024 KEELC 1604] [KLR] [14<sup>th</sup> March 2024] [Ruling] where the judge stated as hereunder;



21. The timelines stipulated in the Advocates Remuneration Order are that a party seeking to object to a decision should, within fourteen days of such decision, give notice in writing to the Taxing Officer of the items of taxation to which he objects. The Taxing Officer should thereafter forward the reasons for her decision with respect to those items. Within fourteen days of receiving the reasons, the objector should file a Chamber Summons setting out the grounds of his objection.
47. Likewise, the legal position, highlighting the timelines for filing of a reference was also espoused in the case of *Vincent Narisia Krop, Cox Patricia Nasira, Chemutuken Paleeloukoyum & Jane Nasira Chepotum v Martin Semero Limakou, Kapchonge Sharti, Samuel Alukuren & Riongosia Samakituk & 9 others* (Environment & Land Case 118 of 2013) [2021] KEELC 348 (KLR) (14 December 2021) (Ruling), where the court held thus;
17. At that point two things are likely to occur: the parties will agree to the taxation or one party may be aggrieved by the decision. In case the parties agree, then execution shall ensue or payment shall be due. In my view, that can only be ascertained after the end of 14 days of the delivery of the decision or up to the time an aggrieved party writes to the taxing master intimating that he wishes to be given reasons for the taxation of certain or all items, whichever is earlier. The reason is that under paragraph 11 (1) of the Order any party aggrieved by the findings of the taxing master has up to 14 days to consider the decision and notify the taxing master.
- If after the end of 14 days there is no notice of objection to the taxation, the execution may proceed. That is when the execution shall have crystallized, and the road is clear. It would be advisable for taxing masters to always give a stay of execution for at least 14 days of the delivery of their decisions so that this sub-rule is given effect.
18. The second occurrence is where a party is aggrieved by the taxation. There is no doubt that such a party will have to lodge an objection in writing to the taxing master. He needs to do so within 14 days of the decision of the taxing master. He should list the specific items he has an issue with and ask the taxing master to give reasons for his decision. Upon receipt of the notice the taxing master is under duty to give him or her the reasons for the taxation. Thus, it would be advisable that taxing masters ought to have their reasons on the ready just in case they are asked to account for how and why they taxed each item as they did. This would avoid delays and going through the bill twice, so to say.
19. In terms of paragraph 11(2) of the Order, once the aggrieved part receives the reasons, he may take two of the options herein: he may see the light and agree with the taxing master or he may disagree with the taxing master. In case the earlier option is taken he will comply or wait for execution. In case he takes the second option, he is obligated to file a reference to a judge, setting out the grounds of the objection. He has to do so within fourteen (14) days upon receipt of the reasons from the taxing officer. Once a reference is filed, the costs cannot be said to be ascertained in terms of the taxation unless and until the reference is determined on merits, struck out or dismissed for whatever reasons.
48. Arising from the foregoing analysis, my answer to issue number one is threefold. Firstly, the timeline for the filing of a reference in terms of Rule 11[2] of the Advocates Remuneration Order is reckoned/ computed from the date of receipt of the reasons of taxation or better still a certified copy of the ruling by the taxing officer.



49. Secondly, it was erroneous on the part of the learned counsel for the Respondent to posit that the timeline for the filing of the reference ought to be computed from the date of delivery or rendition of the impugned ruling/decision. Such a contention constitutes a misreading and misapprehension of the clear provisions of Rule 11[2] of the Advocates Remuneration Order.
50. Thirdly, the Chamber Summons Application [reference] before the court was filed/lodged within the prescribed timeline. In this regard, the reference is neither premature nor misconceived. On the contrary, the reference was timeously filed and thus ought to be considered on its merits.

**Issue Number 2 Whether the Applicant has established and demonstrated any error of principle that vitiate the ruling of the learned taxing officer or otherwise.**

51. The taxation of bills of costs, whether party and party bill or advocate-client bill of costs fall within the mandate of the taxing officer. Suffices it to underscore that the taxing officers are possessed of the requisite technical and professional competent to undertake the taxation of bills of costs.
52. Furthermore, there is no gainsaying that in taxing or handling bills of costs, the taxing officers exercise judicial discretion. In this regard, the judge handling a reference from the taxation of a bill of costs is obliged to differ to the decision of the taxing officer, unless it is established that the taxing officer either took into account extraneous factors, failed to take into account relevant material or better still committed an error of principle.
53. Save for the aspects/perspectives that have been mentioned in the preceding paragraph, a judge handling a reference should exercise necessary caution or precaution before interfering with the decision of a taxing officer. Simply put, the jurisdiction of a judge handling a reference from a taxation is circumscribed and restricted under the law.
54. As pertains to the scope and extent of the jurisdiction of a judge handling a reference, it suffices to cite and reference the holding of the court in. To this end, it suffices to cite and reference the case of Republic –Vs- Minister for Agriculture & 2 Others [2006] KLR it was held:

“ The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will therefore not interfere with the award of a taxing officer particularly where he is an experienced officer...

55. While dealing with the circumscribed jurisdiction of the Judge to interfere with the discretion of the Taxing Officer and particularly on matters of quantum of costs, the Court of Appeal in the case of Peter Muthoka v Ochieng & 3 Others [2019] eKLR, stated and held thus:

It is not lost to us, as we address that single issue, that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the High Court upon a reference will be slow to interfere with them.

It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles.

When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in mis-justice, to borrow the holding in MBOGO -vs- SHAH (Supra), then the decision though discretionary, may properly be interfered with.



56. Finally, the circumscribed jurisdiction of the judge whilst entertaining a reference and in particular, the mandate to interfere with the certificate of taxation only in exceptional circumstances was also highlighted to in the case of Attorney General of Kenya v Peter Anyang Nyong'o & 9 Others Taxation Reference No. 5 of 2010 [East African Court of Justice], where the court stated thus;

Firstly, that I am not travelling in a virgin land in this legal field, as there is a plethora of persuasive authorities from national courts which say the following:

- (a) As a general rule the allowance for instruction fee is a matter peculiarly in the taxing officer's discretion and courts are reluctant to interfere into that discretion unless it has been exercised injudiciously. As stated in the PREMACHAND's Case (supra) and by this Court in January 15, 2010 MODERN HOLDINGS (EA) LIMITED V KENYA PORTS AUTHORITY – Taxation References No. 4 of 2010 (KENYA PORTS AUTHORITY V MODERN HOLDINGS LTD)
- (b) A judge will not alter a fee allowed by a taxing officer merely because in his opinion he should have allowed a higher or lower amount (See: KENYA PORTS AUTHORITY's Case (supra) which had followed the decision in BANK OF UGANDA V. BANCO ARABI ESPANIOL, Application No. 29 of 1999 of the Supreme Court of Uganda.
- (c) Even if it is shown that the taxing officer erred on principle, the judge should interfere only o being satisfied that the error substantially affected the decision of quantum and that upholding the amount allowed would cause injustice to one of the parties (See BANK OF UGANDA's case (supra) and KENYA PORTS AUTHORITY (supra) to mention just a few decisions on this point.

57. From the foregoing decision, it is crystal clear that a judge can only interfere with the ruling and taxation of the taxing officer where it is demonstrated inter alia that the taxing officer committed an error of principle. Consequently, I am no minded to venture forward and to discern whether the learned taxing officer committed any error of principle in proceeding to strike out the Applicant's bill of costs.

58. First and foremost, there is no gainsaying that the Applicant's bill of costs related to and arose from the proceedings that were undertaken by the Court of Appeal vide Court of Appeal Civil Application Number 29 of 2019. Furthermore, it is evident that the proceedings under reference were undertaken at Nairobi.

59. At any rate, the fact that the Applicant's Bill of Costs is anchored on the proceedings that were taken vide Court of Appeal Civil Application Number 29 of 2019, is evident on the face of the Bill of Costs. For coherence, the Applicant clearly depicted that the miscellaneous application beforehand arises from Civil Application Number 29 of 2019.

60. Quite clearly, the Applicant's Bill of Costs arose from the proceedings at the court of appeal in Nairobi. In this regard, the Applicant was well within his lawful mandate to file and lodge the bill of costs at Milimani – Nairobi for purposes of taxation.

61. In the circumstances, I am at pains to appreciate the skewed reasoning by the learned taxing officer that the matter beforehand arose from the proceedings before Narok ELC and thus the Bill of Costs ought to have been filed in Narok and not Nairobi. Certainly, the learned taxing officer did not appreciate the primary proceedings that underpinned the taxation of the Applicant's Bill of Costs.



62. Secondly, it is also important to point out that upon being served with the Applicant's bill of costs, the Respondent herein filed a Notice of Preliminary Objection dated 20<sup>th</sup> November 2023 and wherein same raised [sic] two salient issues. The first issue that was raised by the Respondent related to the provisions of Section 4 and 6 of the Arbitration Act, 1995.
63. According to the Respondent, the learned taxing officer was not seized of the requisite jurisdiction to tax the Applicant's bill of costs because there was a provision excluding the jurisdiction of the court to tax the said bill.
64. The other limb or perspective of the preliminary objection by the Respondent touched on the provisions of Article 159 [2] [c] of the Constitution. In this regard, the Respondent has contended that the bill of costs was filed in contravention of the doctrine of exhaustion.
65. The foregoing grounds are the grounds that underpins the notice of preliminary objection that was canvassed before the learned taxing officer. However, the four-paragraph ruling by the learned taxing officer adverts to the fact that the Applicant's Bill of Costs relates to a matter emanating from Narok. In this regard, the learned taxing officer proceeded to and held that same [taxing officer] lacked the requisite geographical jurisdiction to entertain and adjudicate upon the Bill of Costs.
66. It is not lost on this court that the question/issue of lack of geographical/territorial jurisdiction was neither adverted to nor canvassed before the learned taxing officer. To the extent that the question/issue of geographical jurisdiction was not canvassed before the learned taxing officer, same [taxing officer] would therefore not lie on [sic] lack of geographical jurisdiction to strike out the Applicant's bill of costs.
67. At any rate, if the learned taxing officer was keen to address the question of geographical jurisdiction [which had not been canvassed by either party] then it behoved the learned taxing officer to afford the Applicant an opportunity to be heard on the question beforehand.
68. Suffice it to point out that by proceeding to strike out the Applicant's Bill of Costs on the basis of lack or want of geographical jurisdiction, which had neither been canvassed nor ventilated by either of the parties, the learned taxing officer condemned the Applicant unheard. In this regard, the ruling and decision of the learned taxing officer constitutes an affront to the provisions of Article 50[1] of the Constitution 2010, which underpins the right to fair hearing.
69. Similarly, by deploying and replying on an issue that had not been canvassed by either of the parties, the learned taxing officer breached and violated the hackneyed principle of due process of the law. Suffice it to point out that due process entails reasonable notice, fair hearing and a reasoned decision based on the issue canvassed before the court.
70. To appreciate the import and tenor of the principle of due process of the law, it suffices to take cognizance of the holding of the court of appeal in the case of County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR, where the court stated and observed as hereunder;
  1. The primary meaning of the rule of law as anybody who has anything to do with the law knows, "is that everything must be done according to law." In relation to governmental power, this means that every government authority must justify its action, which deprives an individual of his right or infringes his liberty, as authorized by law. This "is the principle of legality." But the rule of law demands more than just the principle of legality. It demands, and this is the second meaning of the rule of law, "that government should be conducted within a framework



of recognized rules and principles which restrict discretionary power.” This is the principle of due process.

1. Due process is a fundamental aspect of the rule of law. Due process is the right to a fair hearing. The right to a fair hearing encapsulated in the audi alteram partem rule (no person should be condemned unheard) and founded on the well-established principles of natural justice, is not a privilege to be graciously accorded by courts or any quasi-judicial body to parties before them. As is clear from Articles 47 and 50 of our Constitution, it is a constitutional imperative.
71. Other than the foregoing, it is difficult to understand how the taxing officer held and found that the taxation of the Applicant’s Bill of Costs was premised on Narok ELC No. 21 of 2018 yet from the face of the Applicant’s bill it clearly shows that the bill is underpinned on the proceedings vide Court of Appeal Civil Application Number 29 of 2019.
  72. Quite clearly, the learned taxing officer misapprehended and misconstrued elementary issues that coloured the proceedings before him. To my mind, had the learned taxing officer spared a minute to review the Bill of Costs, no doubt same could have come to the conclusion that the Bill of Costs related to and concerned the proceedings before the Court of Appeal sitting at Nairobi. In any event, even item number one [1] relating to instruction fees would have been helpful.
  73. Finally, I beg to mention the question of geographical jurisdiction. In this respect, it is imperative to underscore that the jurisdiction of the taxing officers and the deputy registrars in general is not circumscribed by geographical jurisdiction. For good measure, the provisions of Order 49 of the Civil Procedure Rules do not advert to and or circumscribes geographical jurisdiction in taxation of bills.
  74. Arising from the foregoing, it is crystal clear that the four [4] line ruling by the learned taxing officer is riddled with and replete of serious errors of principle. At any rate, some of the errors are so elementary that one wonders whether the learned taxing officer paid regard to the Bill of Costs that was placed before him for taxation.
  75. Simply put, I come to the conclusion that the Applicants herein have established and demonstrated various errors of principle that vitiate the impugned ruling by the taxing officer. In this regard, the impugned ruling by the learned taxing officer merits impeachment.

### **Final Disposition**

76. Flowing from the analysis [details enumerated in the body of the ruling], there is no gainsaying that the Applicant has espoused and demonstrated various errors of commission and omission. In this regard, the Applicant has met the requisite threshold to warrant the setting aside of the impugned ruling.
77. In the premises, the final orders that commend themselves to me are as hereunder:
  - i. The Chamber Summons Application dated 30<sup>th</sup> April 2024 be and is hereby allowed.
  - ii. The ruling of the learned taxing officer dated 13<sup>th</sup> March 2024 be and is hereby set aside.
  - iii. The Applicant’s Bill of Costs dated 31<sup>st</sup> May 2023 be and is hereby ordered to be placed before a taxing officer other than Hon. Vincent Kiplagat, for purposes of fresh taxation in accordance with the Advocate Remuneration Order, 2014.
  - iv. The preliminary objection by the Respondent be and is hereby dismissed.
  - v. Costs of the reference and the preliminary objection be and are hereby awarded to the Applicant.



- vi. For good measure, the costs of the reference are assessed and certified in the sum of kes.40,000/= only.

78. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER 2024**

**OGUTTU MBOYA**

**JUDGE.**

In the presence of:

Benson – court Assistant.

Mr. Kere for the Applicant/Advocate

Mr. Migwe for the Respondent/Client

