



**Chadha (Sued as the Executrix of the Estate of Kulwant Singh Chadha  
(Now Deceased) v Chaundri & Associates (Miscellaneous Civil Application  
E093 of 2023) [2024] KEELC 13442 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13442 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS CIVIL APPLICATION E093 OF 2023  
MD MWANGI, J  
NOVEMBER 14, 2024  
IN THE MATTER OF TAXATION OF COSTS**

**BETWEEN**

**JOGINDER SINGH K. CHADHA (SUED AS THE EXECUTRIX OF THE  
ESTATE OF KULWANT SINGH CHADHA (NOW DECEASED) ..... APPLICANT**

**AND**

**CHAUNDRI & ASSOCIATES ..... RESPONDENT**

*(In respect to the Client's Chamber Summons dated 15th July, 2024 brought under the provisions of rule 11(2) of the Advocates (Remuneration) (Amendment) Order, 2024)*

**RULING**

**Background**

1. On the 2<sup>nd</sup> day of July, 2024, the Deputy Registrar of this court, exercising his jurisdiction as a Taxing Master delivered a ruling taxing the Advocate-Client Bill of Costs dated 4<sup>th</sup> October, 2023, at Kenya Shillings 17,720,844.10. The Client dissatisfied with the taxation filed this reference by way of the Chamber Summons dated 15 July, 2024, brought under the provisions of rule 11 (2) of the [\*Advocate's Remuneration \(Amendment\) Order, 2014\*](#).
2. In the Chamber Summons application, the client prays that the court be pleased to set aside in its entirety the ruling and reasoning of the learned Taxing Master delivered on 2<sup>nd</sup> July, 2024. Secondly, the client prays that the court be pleased to re-assess the quantum of total fees and disbursements in the Advocate-Client Bill of Costs, dated 4<sup>th</sup> October, 2023. Alternatively, that the court be pleased to remit the Advocate-Client Bill of Costs for re-assessment of quantum before another Taxing Master.



3. The Chamber Summons is supported by the grounds on the face of it and the Affidavit of Joginder K. Chandha, sworn at Nairobi on 15 July, 2024. The Client asserts that the Taxing Master misdirected himself at arriving at a decision that was not only erroneous and unreasonable in the circumstances but legally untenable. The client states that the Taxing Master awarded the Advocate fees which were unwarranted, excessive and gratuitous, without any basis in law or fact.
4. The Client opines that the Taxing Master acted contrary to the well-settled principles of law thereby arriving at an erroneous decision. He further accuses the Taxing master of failing to consider the submissions filed by the Client. Consequently, the Taxing Master erred in principle.

### **Response by the Advocate.**

5. The Advocate responded to the Chamber Summons by way of Grounds of Opposition and a replying affidavit of one Mohammed Ferhan Chaudri sworn at Nairobi on the 20<sup>th</sup> day of September, 2024. The Advocate terms the Chamber Summons application mischievous, misconceived, frivolous, bad in law and incompetent.
6. The Advocate particularly faults the Client for failing to comply with the procedure of filing a reference. The Advocate asserts that the Chamber Summons by the Client contravenes the provisions of rule 11 (2) of the *Advocate's Remuneration (Amendment) Order, 2014*, by his failure to serve a written notice of objection to the Taxing Master within 14 days following the taxation specifying the particular items objected to.

### **Court's Direction**

7. With the concurrence of the parties, the court directed that the application be canvassed by way of written submissions. All the parties complied. The court has had occasion to peruse the submissions and consider them in writing this ruling.

### **Issues for Determination**

8. Having perused the Chamber Summons application herein, together with the supporting affidavit, the Grounds of Opposition and the written submissions filed by the parties, I am of the view that the critical issue for determination is whether the Reference is incompetent for failure to comply with the provisions of Rule 11 of the *Advocates Remuneration Order*.

### **Determination**

9. Rule 11 (2) of the *Advocate's Remuneration (Amendment) Order, 2014* stipulates as follows;
  - (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing 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 the parties concerned, setting out the grounds of his objection.
  - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.



- (4) The High Court shall have power in its discretion by order to enlarge the 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.
10. In the case of *Twiga Motor Limited v Hon. Dalmas Otieno Anyango* (2015) eKLR, the Court stated that;
- “The time limits in Rule 11 of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.” [own emphasis]
11. Imperatively, the notice of objection to taxation must stipulate and/or contain the particular items, which the Applicant objects to. It is upon filing of the Notice of Objection that the taxing master is required to avail the reasons for arriving at the decision in respect of those items, which are the basis of the objection.
12. Where a Notice of Objection to taxation is lodged, the same must be specific and must not be omnibus. For clarity, an omnibus notice if any, would be incompetent and incapable of grounding a Reference before this Honourable Court.
13. In the instant case, the Advocate contends that the Client has not complied with the mandatory requirement of filing a Notice of Objection.
14. In the case of *Machira & Co. Advocates v Arthur K. Magugu & Another* [2012] eKLR, the Court of Appeal agreed with the findings of Ringera J who had struck out the reference for being incompetent on the finding that there was no written notice of objection under rule 11. The court held, *inter alia*, that;
- “Sub-rule (1) requires the party objecting to give notice in writing within 14 days “of the items of taxation to which he objects”. As the trial judge correctly found, the Respondents notice of 1<sup>st</sup> August, 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.
- As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeal or review was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation, the Respondents notice of 1<sup>st</sup> August, 2001 was fatally defective. It follows that the Respondents’ reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out.
- Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master’s decision was received is immaterial and does not avail the Respondents. Under sub-rule (2), time stops running from the date a proper notice is filed, which of course must be within 14 days of taxation, until receipt of the taxing master’s reasons for his decision.”

15. I have perused the court record and indeed confirm that in this case no Notice of Objection to taxation was ever filed by the Client; not even an incompetent one. In the absence of a Notice of Objection



to taxation, properly identifying the items objected to and filed within the statutory timeframe, the Reference before the Court is incompetent. The Notice of Objection to taxation is the equivalent of a memorandum of appeal which identifies the grounds of appeal in an appeal.

16. Having made the above finding this court has no option but to strike out the Client's reference. In take the drastic action, I am guided by the decision in the case of *Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others* [2013] eKLR, where the court stated that

“In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under Section 1A and 1B of the *Civil Procedure Act* (Cap 21) and Section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases.”

17. The Client's Chamber Summons dated 15 July, 2024 is hereby struck out with costs to the Advocate. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**M.D MWANGI**

**JUDGE**

In the Virtual Presence of: -

Mr. Gisemba for the Client/Applicant

Mr. Bruno for the Advocate/Respondent

Court Assistant: Yvette

