



**Coast Bus Mombasa Limited & another v Chepkoech (Suing as administrator and/or personal representative of the Estate of Kiplangat Koech Willy - Deceased) (Civil Miscellaneous E001 of 2025) [2025] KEHC 742 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 742 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL MISCELLANEOUS E001 OF 2025  
JK SERGON, J  
JANUARY 30, 2025**

**BETWEEN**

**COAST BUS MOMBASA LIMITED ..... 1<sup>ST</sup> APPLICANT**

**PHILIP ARAKA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EMMY CHEPKOECH (SUING AS ADMINISTRATOR AND/OR PERSONAL REPRESENTATIVE OF THE ESTATE OF KIPLANGAT KOECH WILLY - DECEASED) ..... RESPONDENT**

*(Being a reference from the decisions of the Taxing Officer, in E142 of 2023 Emmy Chepkoech (Suing as the administrator and or personal representative of the estate of Kiplangat Kipkoech Willy Vs Coast Bus Mombasa Limited & Philip Araka)*

**RULING**

1. The application coming up for determination is a chambers summons dated 3rd January, 2025 seeking the following orders;
  - (i) Spent
  - (ii) That pending the hearing and determination of this application, this Honourable Court be pleased to order that the execution of the Plaintiff's Bill of Costs dated 14th August 2024 arising from the Taxing officer, be stayed.
  - (iii) That the decision of the taxing officer in respect of the plaintiff's bill of costs dated 14th August 2024 with respect to all the items, be set aside and taxed afresh by this Honourable Court.
  - (iv) That the costs of this application be provided.



2. The application is supported by the grounds on the face of it and the supporting affidavit of Lydia Kemunto Ongwacho an advocate practicing in the name and style of Kimondo Gachoka and Company Advocates who are in conduct of the instant suit.
3. She avers that the plaintiff's bill of costs dated 14th August 2024 in Kericho CMCC number E142 of 2023 Emmy Chepkoech (Suing as the administrator and or personal representative of the estate of Kiplangat Kipkoech Willy Vs Coast Bus Mombasa Limited & Philip Araka was taxed ex parte and the defendants did challenge the same and upon hearing the application by the defendants challenging the taxing of the bill ex parte, the Honourable trial magistrate directed that the bill be referred back to the registry and be taxed within 7 days.
4. She avers that subsequently the taxing officer subsequently taxed the bill of costs at the registry after the lapse of 7 days and failed to serve the defendants and or their advocates with the certificate of costs. She further avers that the defendants only became aware that the bill had been taxed after they were served with warrants of execution together with the decree.
5. She avers that after informing the Applicants' insurer under their rights of subrogation, the contents of the said Decree which include the costs as taxed, they were aggrieved with the assessment by the taxing officer and they instructed them to write a letter to the Taxing Officer notifying him of the Applicants' objection to taxation of all the Items, as the award was excessive and the same was awarded without giving any justification and that they issued a notice of objection in respect to the said ruling.
6. She avers that the taxing officer failed to take into account the scale of fees prescribed under the Schedule 7 of the Advocates (Remuneration) Order 2014 in the award for services and disregarded the submissions by the Applicants though filed demonstrating what would amount to a fair and reasonable costs in view of the circumstance of this suit. She therefore asserted that the learned magistrate made serious errors in principle in taxing the said Bill of Costs and thereby arrived at the wrong decision, and more specifically contended the following items ;
  - (i) the taxing officer misdirected himself in taxing drawing of pleading fees as the same is not provided for under schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.
  - (ii) the taxing officer misdirected himself in making of copies fees as the same is not provided for under schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.
  - (iii) taxing officer misdirected himself in taxing attending court to file pleadings fees as the same is not provided for under schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.
  - (iv) taxing officer misdirected himself in taxing attending court for mentions and hearings on a higher scale which is not in line with the provisions of schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.
  - (v) The taxing officer misdirected himself in taxing travelling subsistence for the plaintiff fees as the same is not provided for under schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.
  - (vi) The taxing officer misdirected himself in taxing commissioning of affidavit fees as the same is not provided for under schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.



- (vii) The taxing officer misdirected himself in taxing VAT as the same is not provided for under schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.
  - (viii) The taxing master failed to subject the total taxed amount to contributory negligence.
7. She avers that the said taxation is hence irregular and the decision of the Learned Magistrate ought to be set aside and the opposed items in Bill of Costs dated the 10th day of June 2024 be taxed afresh.
  8. The Respondent filed a preliminary objection dated 17th January, 2025 on the following grounds;
    - (i) That the Reference application dated 3rd January 2025 is statutory time barred, incompetent, and offends the Provisions of Rule 11(2) of the Advocates Remuneration Order as it is filed more than 14 days after the Taxing Officer's decision being objected to
    - (ii) That the Reference application is misconceived and bad in law as it offends the express Provisions of Rule 14(4) of the Advocates Remuneration Order.
    - (iii) That the Order for Stay of Execution is sub-judice and a total abuse of the Court process since there exists similar applications seeking the same reliefs before the trial court in Kericho CMCC No. E142 of 2023 and the High Court in Kericho High Court Civil Appeal No. E042 of 2024. (dated 20th August 2022, 17th December 2024 and 24th December 2024 respectively).
    - (iv) Penultimately, this honourable court is deprived of the jurisdiction to entertain, or determine the Chamber Summons herein as it is not only time barred, stale, untenable, frivolous and an abuse of the court process but clearly offends the Provisions of Section 6 of the Civil Procedure Act; 2010.
    - (v) That the application herein ought to be dismissed with costs to the Respondent.
  9. I have considered the application and response by the parties and I find that the issue (s) for determination is whether to entertain the taxation reference. On one hand the applicant argues that the taxation was done ex parte and the defendants did challenge the same and upon hearing the application by the defendants challenging the taxing of the bill ex parte, the Honourable trial magistrate directed that the bill be referred back to the registry and be taxed within 7 days. They further contended that the taxing officer subsequently taxed the bill of costs at the registry after the lapse of 7 days on 14/8/2024 and failed to serve the defendants and/or their advocates with the certificate of costs and that the defendants only became aware that the bill had been taxed after they were served with warrants of execution together with the decree and filed their notice of objection on 17/12/2024. On the other part the respondent filed a notice of preliminary objection contending that the reference application dated 3rd January, 2025 is statutory time barred, incompetent, and offends the Provisions of Rule 11(2) of the Advocates Remuneration Order as it is filed more than 14 days after the Taxing Officer's decision being objected to.
  10. The procedure for taxation is well laid out in paragraph 11 of the Advocates Remuneration Order. The Applicants herein have not advanced sufficient reasons for the delay in bringing this reference. In any event, they had the opportunity to seek leave of court to enlarge the time for filing of the application. They did not utilize that opportunity. In *Twiga Motor Limited v Hon. Dalmas Otieno Onyango* [2015] eKLR, the Court stated that: "The limits in Rule II 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."
  11. For reasons that the reference herein was filed out of time and without leave of court in accordance with the provisions of paragraph 11 (4) of the Advocates Remuneration Order, I find and hold that it



is incompetent and amenable for striking out. It is hereby struck out. Consequently, the preliminary objection dated January 17, 2025 upheld with costs to the Respondent.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 30<sup>TH</sup> DAY OF JANUARY, 2025.**

.....

**J. K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Mwita for the Respondent

No Appearance for Applicant

