



REPUBLIC OF KENYA



**Wabuke & another v Elijit (Miscellaneous Civil Application  
E033 of 2022) [2025] KEHC 5399 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5399 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
MISCELLANEOUS CIVIL APPLICATION E033 OF 2022**

**AC MRIMA, J**

**APRIL 30, 2025**

**BETWEEN**

**KENNEDY WABUKE ..... 1<sup>ST</sup> APPLICANT**

**ISAAC GIRAGWA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**BILASIO EPIUS ELIJIT ..... RESPONDENT**

**RULING**

**Introduction:**

1. This ruling is in respect of a reference from taxation by a Taxing officer. It is by way of a Chamber Summons dated 21<sup>st</sup> October 2022 filed by the Applicants as against the Respondent.
2. The reference was opposed to by the Respondent and was heard by way of written submissions where both parties duly complied, hence, this ruling.

**The Chamber Summons:**

4. The Applicants expressed dissatisfaction with the Taxing Master's in the manner she taxed a Bill of Costs and, in filing a reference, prayed for the following reliefs: -
  1. That the costs allowed by the Deputy Registrar on Taxation of the said party and party bill of costs dated 7<sup>th</sup> June 2021 in Kitale High Court Civil Appeal No. E003 of 2021 between Kennedy Wabuke & Isaac Giragwa Isagi -vs- Bilasio Epius Elijit be reviewed and enhanced (sic) to Kshs. 15,813/- and or be struck out and or remitted with appropriate directions to another Taxing Officer as the Court may deem fit for consideration.
  2. That the costs of this application be in the cause.



5. In their grounds and affidavit in support of the application, the Applicants contended that the Bill of costs was taxed inordinately high as not to accord to the taxation law thereby attracting the reference. It was the Applicant's case that the purported taxation was a travesty of justice in that the Bill of costs was taxed without due adherence to the guiding principles in the Advocates Remuneration Order and that no reasons or at all were given.
6. Through their written submissions dated 24<sup>th</sup> July 2024, the Applicants urged that this Court can interfere with the Taxing Master's findings if there was an error of principle or the fee awarded was manifestly high. It drew support from *First American Bank of Kenya -vs- Shah and Others (2002) eKLR EA 63* and *Joreth Ltd -vs- Kigano and Associates (2002) EA 92*.
7. The Applicants further asserted that it filed a Notice of Objection dated 8<sup>th</sup> October 2021 and wrote a letter dated 13<sup>th</sup> October 2021 requesting for reasons but reasons were not supplied despite the provisions of Paragraph 11 of the Advocates (Remuneration) Order. The Applicants, therefore, urged this Court to allow the application.

#### **The Respondent's case:**

8. Bilasio Epilus Elijit challenged the application through his Replying Affidavit deposed to on 21<sup>st</sup> February 2024. He deposed that the application was bad in law, poorly drafted, defective and lacked merit, hence, ought to be struck out with costs. It was his case that the Bill of Costs was taxed in adherence to the law and that the Applicants' Counsel was given an opportunity to object but failed to do so. He urged the Court to allow the bill as assessed.
9. In his written submissions dated 26<sup>th</sup> April 2024, the Respondent just as the Applicants' argued, based on the decision in the case of *First American Bank of Kenya -vs- Shah and Others (2002) eKLR*, that the Taxing Master's decision can only be interfered with if it is shown that it is manifestly excessive or is based on error of principle.
10. To that end, the Respondent submitted that the instruction fees, getting up fees, filing/disbursements, service, attendance, drawings and perusal fees were all assessed as per the scale.
11. He, then, urged that the application was without merit and ought to be dismissed with costs.

#### **Analysis:**

Having considered the application and the submissions alongside the decisions referred to, one of the issues which came to the fore was the effect of failure by the Taxing officer to render the reasons in taxing a bill when requested to do so. The legal foundation of a reference by way of a Chamber Summons is Paragraph 11 of the Advocates (Remuneration) Order which states as follows: -

11. Objection to decision on taxation and appeal to Court of Appeal:
  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.
12. In this matter, the Taxing Master rendered her Ruling on 21<sup>st</sup> September 2021 in presence of both Counsel. Subsequently, a Certificate of Taxation was issued on 7<sup>th</sup> October 2021. Aggrieved, the Applicants lodged a Notice of Objection on 8<sup>th</sup> October 2021 disputing the whole taxation. They also wrote a letter dated 13<sup>th</sup> October 2021 to the Deputy Registrar requesting for reasons upon which the amounts taxed were arrived at.
  13. From the record, it is apparent that the reasons were not supplied to the Applicants despite the objection and the letter of request. Further, from a perusal of the impugned ruling, it is also discernible that the Taxing Master failed to incorporate any reasons and the formula for the taxation. The officer only drew a table with a column for the sums sought and another column for the amounts taxed off. No explanation whatsoever was ever given for the taxation. There was, therefore, no compliance to the requirements under paragraph 11(2).
  14. This Court is alive to the decision by the Court of Appeal in *Kipkorir, Titoo & Kiara Advocates -vs- Deposit Protection Fund Board Civil Appeal No. 220 of 2004; (2005) eKLR* where the Court discussed the propriety of a reference with respect to compliance with paragraph 11 of the Advocates (Remuneration) Order as follows: -
 

..... It is true that the taxing officer did not record the reasons of the decision on the items objected to after the receipt of the respondent's notice. It seems that the taxing officer decided to rely on the reasons in the ruling of taxation dated 24<sup>th</sup> February, 2004. That ruling at least indicated the formula that the taxing officer applied to assess the instructions fees. Although there was no strict compliance with Rule 11 (2) of the Order, we are nevertheless, satisfied that there was substantial compliance. The adequacy or otherwise of the reasons in the ruling is another matter. Indeed, we are of the view, that if a taxing master totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference. (emphasis added).
  15. Further, in *Evans Thiga Gaturu -vs- Kenya Commercial Bank Limited [2012] eKLR*, the Court while discussing paragraph 11 of the Advocates (Remuneration) Order stated as hereunder: -
 

.... In most cases the court is aware that the taxing officers in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons thereafter. In such circumstances, it would be fool hardy to expect the taxing officer to redraft another "ruling" containing reasons.
  16. The Applicants expected to receive reasons for the taxation after which the period of 14 days within which to file the reference to a Judge would start running. Since no reasons were given then time did not start running and as such, the Applicants cannot be faulted on the basis of the time they filed the reference. Therefore, the holding by the Court of Appeal in *Kipkorir, Titoo & Kiara Advocates -vs-*



Deposit Protection Fund Board case [supra] that ‘... if a taxing master totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference...’ was meant to safeguard the rights of an objector in instances where a taxing officer decides to blatantly disregard the law and refuse to give the reasons. In such instances, the filing of the reference will accord the objector an opportunity to bring to the Judge the taxing officer’s conduct. That was the case in this matter.

17. Going by the manner in which the ruling was rendered, that is without any reasons, and the refusal by the taxing officer to give the reasons for the taxation, then there is no way the taxation can be upheld. The Applicants have a right to be given the reasons so as to be able to exercise their right to file a reference in case of need and in instances where there is a complete failure then the Applicants rights under inter alia Articles 47 and 50[1] of *the Constitution* stand infringed.
18. Having so found and held, there is in fact no need to consider any other issue since that will add no value at all to this matter. The matter has to come to an end.
19. From the foregoing discussion, this Court believes that it has said enough to demonstrate that the Chamber Summons must succeed and thereby makes the following final orders: -
  - (a) The Chamber Summons dated 21<sup>st</sup> October 2022 is hereby allowed with costs to the extent that the ruling on taxation dated 21<sup>st</sup> September 2021 and the resultant Certificate of Taxation dated 7<sup>th</sup> October 2021 be and are hereby set-aside and quashed accordingly.
  - (b) The Bill of costs dated 7<sup>th</sup> June 2021 shall be placed before another Taxing officer other than Hon. C. M. Kesse for a fresh taxation.
  - (c) The costs of the reference herein be agreed, otherwise be taxed.
  - (d) The above orders shall apply mutatis mutandis to High Court Misc. Civil Applications No. 34 of 2022, No. 35 of 2022, No. 36 of 2022 and No. 37 of 2022.

It is so ordered.

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

**A. C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Miss. Mukamo, Learned Counsel for the Applicants.

Miss. Ekisa, Learned Counsel for the Respondent.

Chemosop/Duke – Court Assistants.

