



Idris v Kadenyi t/a Emily & Associates Advocate (Miscellaneous Succession Cause 4 of 2021) [2025] KEHC 5407 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS SUCCESSION CAUSE 4 OF 2021
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

FAMI IDRIS APPLICANT

AND

EMILY KADENYI T/A EMILY & ASSOCIATES ADVOCATE RESPONDENT

RULING

1. What is coming up for determination is the chamber summons dated 14/7/2022. It is in the nature of a reference arising from the taxation of Advocate- client Bill of Cost by the taxing master. The client (Applicant) faults the ruling on the taxation and has moved this court to either re- tax the bill or refer it back for taxation by another taxing matter other than the one who taxed the current one.
2. The right to file a reference is founded on Rule 11 of the *Advocates (Remuneration) order*. The Rule sets out the procedure to be followed when a party is aggrieved by the outcome of taxation. The rule provides 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 master 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 the Judge by chamber summons which shall be served on all the parties concerned, setting out the grounds of objection.
 3. Any person aggrieved by the decision of the Judge upon any objection referred to such judge under sub section (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 sub paragraph (1) of sub paragraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving every other interested party not less than three clear day 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.”
3. Thus the first step in initiating a reference is to do a letter to the taxing officer, to provide reasons for the decision.
4. In paragraph 5 of the Supporting Affidavit, the Applicant states that he did file a notice of objection to the registrar/taxing officer. However, no such notice was attached to his affidavit in support of the summons. What the Applicant has referred to as “FM2” is not his document and it is not a Notice. The document referred to are grounds of opposition to a preliminary objection by the respondent herein.
5. The lack of Notice was pointed out by the Respondent in her reply but I did not see any response by the Applicant to this obvious omission.
6. In my own endeavor to find out whether the Notice was indeed filed ,I have carefully read through the proceedings and documents filed before the taxing officer, and there is no such Notice filed. The Applicant’s reference therefore to a Notice of Objection when none was ever filed, is misleading.
7. Rule 11 (4) also provides a remedy in the event that a party is late in undertaking the steps set out in Rule 11, but apparently the Applicant failed to take advantage of this provision
8. I consider the Notice to the taxing officer a vital document , because it is on the basis of the “reasons” that the judge will interrogate whether the taxing officer erred in principle. Or in any other way.
9. I am alive to the Provisions of Article 159 (2) (d) of the Constitution which requires dispensation of justice without undue regard to technicalities but the said Article , I believe was meant to cure every defect and allow litigants to get away with all conceivable procedural breaches. Allowing litigants to casually violate procedural Rules has the potential of opening a pandora’s box, where procedural law can easily be tossed off as an irritating inconvenience. Such approach would make Article 159(2) (d) a convenient tool for the indolent.
10. While addressing procedural violations in the light of Article 159 (2) (d) the superior courts have expressed themselves as follows: In Telkom (K) Ltd Vs John Ochanda (Suing on his own behalf and on behalf of 996 Former Employees of Telkom Kenya Ltd (2014) KECA 600 KLR the Court of Appeal stated; - “We are content to state that the constitutional provision is not meant to white wash every procedural failing and it is not meant to place procedural Rules at naught. In fact, what has befallen the respondents is proof, if any were needed, that there is great utility in complying with the rules of procedures; such compliance is neither anathema nor antithetical to the attainment of justice. As has been said before, the rules serve as hand maidens of the Lady Justice”.
11. In Raila Odinga Vs IEBC & Others (2013) eKLR, the Supreme Court stated inter alia “The Article simply means that a court of law should not pay undue attention to procedural requirements at the expense of substantive justice. It was never meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from court of law”.
12. I have considered the circumstances of this case, the respondent had thrown the attention of the Applicant to non-compliance, Rule 11 , thus it is not as though he was not aware of steps he had missed . He seemed to have chosen to ignore. He had the option of seeking for extension of time or withdraw the Application altogether and start afresh. Again as I have pointed out , this procedural step is not minor.



13. This procedural requirement is not a harmless one, so as to persuade this court to overlook it. It is my finding that the reference is incompetent.
14. I have also noted other, albeit ,minor omissions in the Application. The annexures to the Affidavit are not properly marked as exhibits. Though such omissions do not make the Application incompetent, it reflects the unfortunate casual approach to these proceedings by the applicant.
15. I have taken note of the fact that the Applicant is represented by an advocate and therefore there is no valid excuse for these obvious missteps.
16. In conclusion, for failure to comply with Rule 11 (1) of the *Advocates (Remuneration) order*, this reference is incompetent. It is hereby struck off.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 29TH DAY OF APRIL, 2025

S. CHIRCHIR

JUDGE.

In the presence of:

Godwin Luyundi- Court Assistant.

Ms Kadenyi for the respondent

