



Kabinga & 2 others v Kenya Women Microfinance Bank PLC (Commercial Case E389 of 2020) [2025] KEHC 12277 (KLR) (Commercial and Tax) (29 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E389 OF 2020**

H NAMISI, J

AUGUST 29, 2025

BETWEEN

EDWARD KANGETHE KABINGA 1ST APPLICANT

MARION NJERI NDICHU 2ND APPLICANT

BEATRICE NYAMBURA KABINGA 3RD APPLICANT

AND

KENYA WOMEN MICROFINANCE BANK PLC RESPONDENT

RULING

1. This reference arises from the Defendant/Respondent's Party and Party Bill of Costs dated 12 August 2022. On 11 June 2024, the Taxing Master rendered her Ruling, taxing the Bill at Kshs 531,189.31. Being dissatisfied with the decision of the Taxing Master, the Applicants instructed their Advocates to obtain reasons for the Ruling with a view to challenging the same. A letter to this effect was prepared on 31 July 2024, but the same was not filed in Court until 9 August 2024. The Taxing Master responded on 20 August 2024.
2. The Applicants have moved this Court by way of Chamber Summons dated 21 August 2024 seeking the following orders:
 - i. That this Court be pleased to grant an order of stay of execution of the warrants of attachment and sale issued to the respondent on 15 August, 2024 pending the hearing and determination of this application;
 - ii. That the execution of the Certificate of Costs dated 29 July, 2024 together with the Ruling thereto, dated 11 June 2024 be suspended and/or stayed pending the hearing and determination of this Application;



- iii. That the Application herein be admitted as a reference against the taxation proceedings and the Honourable Court be pleased to quash, vary, review and/or set aside the Certificate of Costs and the Ruling in its entirety of the learned Taxing Master dated and delivered on 11 June 2024 taxing the Defendant/Respondent's Party and Party Bill of Costs dated 12 August 2022 at Kshs. 531,189.31/=.
 - iv. That in alternative to prayer (3) above, the Honourable Court be pleased to re-assess the quantum of total fees and disbursements in the Party and Party's Bill of Costs;
 - v. That in the alternative to prayers (3) and (4) above, the Honourable Court be pleased to remit the Bill of Costs dated 12 August 2022 for re-assessment of the quantum of total fees and disbursements chargeable before the Taxing Master or a different Taxing Master with appropriate directions thereof
 - vi. That this court be pleased to grant any other order and/or directions as it deems fit, just and fair.
3. The Application is premised on the grounds on the face of it and supported by the Affidavits sworn by the 1st Applicant.

Brief Background

4. The suit was instituted by the Plaintiff/Applicants seeking injunctive orders against the Defendant. On 18 March 2021, in a ruling delivered with respect to an Application, injunctive relief was granted, effectively nullifying the statutory notices that had been issued by the Defendant/Respondent.
5. On 2 August 2022, the parties formally recorded a consent order, which stipulated that the Plaintiffs' suit was to be marked as withdrawn with costs to the Defendant. A critical term of this consent was that the Defendant was obligated to lodge its Bill of Costs within 21 days thereof.
6. Despite the clear timeline, the Defendant's Party & Party Bill of Costs, although dated 12 August 2022, was actually filed on 27 September 2023. Reading through the submissions by the parties, the Applicants herein did not raise any objection to this delay. It was not until they filed the present Application that they raise the issue in their Supplementary Affidavit.
7. The Taxing Master delivered her Ruling on the aforementioned Bill of Costs on 11 June 2024, which decision is the subject of the present Application.
8. Parties canvassed the application by way of submissions.
9. The Applicants assert that the Taxing Master fundamentally misapplied established legal principles and erred in her discretion. They contend that the fee awarded was not only manifestly excessive but also unjust, effectively creating a barrier to access to justice for ordinary litigants. This, they argue, demonstrates a non-judicious exercise of discretion by the Taxing Master. The Applicants submit that when a suit is resolved through a consent order leading to its withdrawal, the traditional notion of "winners or losers" does not apply. Consequently, they argue that the appropriate outcome regarding costs should have been that each party to bear its own costs, rather than awarding costs to the Defendant. They emphasise that the consent order was mutually beneficial, implying a shared resolution rather than a clear victory for one side.
10. The Applicants contend that the Taxing Master committed a significant error of principle by adopting an incorrect Schedule and incorrectly determining the value of the subject matter. The Taxing Master relied on the outstanding debt of Kshs 23,924,652.19 and applied Schedule 6(1)(b) of the Advocates Remuneration Order, which is typically used for quantifiable claims. They submit that the correct



applicable scale should have been Schedule 6(1)(k), which pertains to matters where the value of the subject matter is not readily ascertainable. They argue that the prayers sought in their Plaint were primarily declaratory and injunctive in nature, making the value of the subject matter not discernible from the pleadings in a straightforward monetary sense.

11. A further argument is that the charge amount of Kshs 23,924,652.19 should not have been used as the basis for instruction fees. The Applicants assert that the central issue before the Court was not the validity of the charge itself, but rather the legality of the Defendant's exercise of its statutory power of sale and the precise computation of the Plaintiffs' indebtedness.
12. They also raise a jurisdictional concern, suggesting that basing costs on a charge amount in this context could be seen as encroaching on the jurisdiction of the Environment and Land Court, which is mandated to handle matters pertaining to interests in land.
13. The Respondent vehemently opposes the Application, asserting that the Application is nothing more than an afterthought driven by bad faith and designed solely to scuttle the execution process with the ultimate aim of delaying justice.
14. The Respondent's primary contention is that the Application is plagued by inordinate delay and was filed well outside the statutory timelines, thereby offending Paragraph 11 (1) of the Advocates Remuneration Order. They argue that the application is incurably defective. The Respondent highlights that while the Taxing Master's Ruling was delivered on 11 June 2024, the Applicants' letter seeking reasons for the decision, though dated 31 July 2024, was uploaded on the Case Tracking System (CTS) on 9 August 2024, approximately 57 days after the Ruling and significantly beyond the 14-day period stipulated in Rule 11(1).
15. The Respondent firmly asserts that the Taxing Master's Ruling on 11 June 2024 was comprehensive and self-contained, effectively incorporating the reasons for the taxation decision. Therefore, they contend, there was no legitimate necessity for a separate request for reasons. In their view, the 14-day period for filing the reference should have commenced from the date of the Ruling itself.
16. According to the Respondent, the Applicants' failure to seek an order for enlargement of time under Rule 11(4) of the Advocates Remuneration Order, despite evident delay, renders the Application incurably defective and warrants its striking out in toto. The Respondent dismisses the Applicants' assertion that the Application became timely upon receiving the Taxing Master's response on 20 August 2024 as moot, reiterating that the Ruling was self contained and any delay in seeking reasons was solely attributable to the Applicants.
17. The Respondent places significant emphasis on the consent of the consent order dated 27 July 2022. They highlight that this consent expressly stated that the Plaintiffs agreed to withdraw the suit with costs to the Defendant. They argue that parties not legally bound by the terms of their consents, which operate as contracts, and therefore, the Taxing Master was correct in proceeding to tax costs in accordance with this binding agreement.

Analysis and Determination

18. I have carefully considered the Application, responses and the submissions herein. The first issue for determination herein is whether the Application is competent and filed within the prescribed timelines.
19. Paragraph 11 of the Advocates Remuneration Order provides, inter alia;
 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.
20. Consequently, therefore, the Applicants were required to write to the Taxing Master within 14 days after the Ruling. Whereas the Ruling herein was delivered on 11 June 2024, it wasn't until 9 August 2024 that the Applicants filed the said notice. Without a doubt, the Applicants did not comply with the provisions of the Advocates Remuneration Order, neither have they provided any reason for the 57-day delay in doing so.
21. Having failed to file within the prescribed time, it behoved the Applicants to move this Court seeking enlargement of time. They did not.
22. In the case of *Matiri Mburu & Chepkemboi Advocates vs Occidental Insurance Company Limited* [2017] eKLR, the Court when striking out a Reference held as follow
- “The provisions of Paragraph 11 of the Remuneration Order serve several purposes. Firstly, the requirement that a party seeking reasons gives a notice of items objected to, serves to narrow down the issues, and secondly, give notice to the adverse party and the taxing master of his objection. Thus, the taxing master, adverse party and ultimately the reference court in their respective roles can focus on the specific matter objected to rather than entire bills of costs, which often run into several pages. The objective is obvious: the expeditious disposal of taxation disputes. Thus, compliances with the requirements of paragraph 11 of the Remuneration Order is not a mere technicality that can be pushed aside peremptorily as the Applicant appears to suggest. The provisions of Article 159 (2) (d) of *the Constitution* were not intended to overthrow procedural or technical requirements, but to guard against “undue regard “to procedural technicalities in the administration of justice.”
23. It is evident that the Applicants did not comply with the provisions of Paragraph 11(1) of the Advocates Remuneration Order before filing the instant application. It is, however, now settled law that a Court's jurisdiction to deal with a Reference is invoked upon compliance with the provisions of paragraph 11(1) of the Advocates Remuneration Order. Courts have also held on numerous occasions that a Notice of Objection serves the same purpose as a Memorandum of Appeal. Therefore, failure to file and serve a Notice of Objection is not a technical issue that can be wished away. Failure to serve the said Notice goes to the root of the Court's jurisdiction to deal with a Reference.
24. In the premise, this Court finds that its jurisdiction to hear and determine the instant application has not been properly invoked for lack of compliance with Paragraph 11(1) of the Advocates Remuneration Order. Consequently, there is no competent Reference before this Court for hearing and determination.
25. The Application dated 21 August 2024 is hereby struck out with costs to the Respondent.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT



Delivered on virtual platform in the presence of:

Applicant: Mr. Oduor h/b Wachira

Respondent: Mr. Kipkoech

Court Assistant: Lucy Mwangi

