



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kibe v Mwangi Keng'ara & Company Advocates (Miscellaneous Application E261 of 2021)
[2025] KEHC 12339 (KLR) (Commercial and Tax) (27 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12339 (KLR)

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

MISCELLANEOUS APPLICATION E261 OF 2021

RC RUTTO, J

AUGUST 27, 2025

BETWEEN

JOEL KAMAU KIBE APPLICANT

AND

MWANGI KENG'ARA & COMPANY ADVOCATES RESPONDENT

RULING

1. This is a reference challenging the ruling delivered by the taxing master on 19th July 2023. The applicant contests that decision and has filed a Notice of Motion dated 28th August 2023 seeking the following reliefs:
 1. That the Honourable Court be pleased to set aside and/or review the taxing officer's ruling delivered on 19th July 2023 and the award of Kshs. 1,004,618.00 awarded as advocate costs;
 2. That upon review, this Honourable Court be pleased to order that the advocate/respondent's Bill of Costs dated 14th April 2021 be remitted back for re-taxation before another taxing officer;
 3. ...Spent;
 4. That this Honourable Court be pleased to issue any further directions and/or orders as it may deem fit;
 5. That the costs of this application/reference be awarded to the applicant/client.
2. The reference is based on the grounds stated in the Notice of Motion and is supported by the applicant's affidavit. The background to this reference is that the respondent filed its advocate/client



- bill of costs dated 14th April 2021 claiming a sum of Kshs.1,004,618.00 for legal services rendered to the applicant in preparing a sub contract agreement.
3. During the course of the proceedings, the issue of retainer was raised. The taxing master directed that issue to be determined by the High Court. The applicant objected to the existence of a retainer, but his objection was dismissed on 14th October 2022. This paved the way for the bill of costs to be heard. However, the applicant contends that no clear directions were given regarding how the bill of costs would be disposed of. Despite this the taxing master proceeded to assess the costs and delivered ruling on 19th June 2023, awarding the amount sought
 4. Dissatisfied with the ruling, the applicant filed a notice of objection dated 30th June 2023 and requested the taxing master to provide reasons for the decision. He claims that the taxing master never responded to this request until 24th August 2023 when, he obtained the ruling.
 5. The applicant now seeks to have the reference allowed on the following reasons: the taxing master failed to analyze each item in the bill of costs in order to justify the award given against the weight of the evidence adduced; the taxing master was duty bound to make a determination irrespective of whether the applicant had filed his written submissions or not, informing that he had in fact filed his submissions dated 14th December 2021; the applicant was denied a fair trial because he was not afforded an opportunity to ventilate his defence; the bill of costs was wholly opposed by the applicant; and the amount awarded by the taxing Master was speculative, manifestly excessive and a product of applying the wrong and erroneous principles of taxation.
 6. The reference is strongly opposed by the respondent. In a replying affidavit sworn on 4th October by Mercy Mwangi, advocate practicing in the nature and style of the respondent firm, the respondent urges that the application is an abuse of the court process for the following reasons: the applicant failed to file a notice of objection preceding the present Motion thereby breaching rule 11 (1) of the Advocates Remuneration Order; the letter dated 30th June 2023, purporting to be an objection to taxation, was neither paid for nor lodged on the e-filing portal; the filing of the letter on 3rd July 2023 was a nullity on account of non-payment of the requisite fees of Kshs. 100.00 and as such, couldn't be issued with a ruling; and the reference ought to be a Chamber Summons not a Notice of Motion making it procedurally defective.
 7. In addition, the respondent asserted that the applicant was afforded a fair opportunity to be heard. This they urged, is evident from the procedural history; the respondent filed its list of documents and supporting affidavit dated 12th July 2021 which were duly served on the applicant. The applicant was granted reasonable time to respond as reflected in the multiple mention dated. The taxing mater considered the applicant's replying affidavit sworn on 14th December 2021, supplementary affidavit sworn on 17th December 2021 and submissions before delivering the ruling.
 8. The respondent further stated that the issue of retainer had already been determined by the High Court in HC Misc. App. No. E297 of 2021 on 14th October 2022 with the parties being notified of the ruling on 6th October 2022. Thereafter, the matter was scheduled for directions on 14th November 2022 and mentioned on several dates 16th December 2022, 9th February 2023, 15th February 2023, 24th February 2023, 24th April 2023 and 5th June 2023. On all this occasions the applicant failed, refused and/or neglected to appear before the deputy registrar. the respondent maintains that since it had appeared in court 11th June 2021 and filed all necessary pleadings, the applicant had been afforded a fair hearing. The respondent urged this court to dismiss the reference with costs noting that the taxing master had considered the applicant's pleadings.



9. The reference was disposed of by way of written submissions which were orally highlighted. The applicant filed its written submissions dated 29th November 2023 urging the court to stay the taxing master's decision under order 42 rule 6 (1) of the Civil Procedure Rules. Citing several decisions, the applicant invited this court to interfere with the findings of the taxing master for the reason that the advocate merely performed clerical jobs and failed to provide reasons to enhance fees as set out in its bill of costs. He prayed that his reference be allowed.
10. The respondent filed its written submissions dated 10th January 2024. It submitted that the application was incompetent and fatally defective for violating paragraph 11 (1), (2) and (3) of the Advocates Remuneration Order as no notice of objection had been filed. On the issue of fair hearing, the respondent denied any violation, relying on the procedural chronology and supporting annexures. Finally, the respondent submitted that the ruling of the taxing master was bereft of any error in principle as to warrant an interference by this court. That the bill of costs was drawn and awarded to scale. It prayed that the reference be dismissed with costs.
11. I have considered the parties' submissions, and the applicable law. The guiding principle on whether this court should interfere with the taxing master exercised of discretion was enunciated in the Court of Appeal in the case of Joreth Limited v Kigano Associates [2002] KECA 153 (KLR) that held as follows:

“What the learned Judge did not appreciate was that sitting on a reference against the assessment of instruction fee by the taxing officer he ought not to have interfered with the assessment of costs unless the taxing officer had misdirected himself on a matter of principle.”
12. Before going into the merits or demerits of this reference, I must first address the issue whether the reference is competent. Two objections were raised that: the applicant filed a Notice of Motion instead of a Chamber Summon and the applicant failed to file a proper notice of objection. Paragraph 11 of the Advocates Remuneration (Amendment) Order 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 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. ...
 4. ... ”
13. On the first issue, it is instructive to note that paragraph 11 (2) of the Advocates Remuneration Order provides that an 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. However, courts have consistently held that justice should not be defeated on account of a procedural technicalities. The focus is on substance over form a Thus I find that the reference cannot be dismissing summarily on account of this issue as do so would amount to a miscarriage of justice. The objection on that ground accordingly fail.



14. The respondent further urged this court to strike out the reference on the ground that the notice of objection had not been properly filed. Paragraph 11 (1) of the Advocates Remuneration Order requires a party objecting to the taxing officer's decision to file a written notice within 14 days. The respondent pointed out that the requisite filing fees were not paid a fact the applicant did not dispute. Based on this the respondent urge that the applicant failed to comply with the prescribed timelines and procedures rendering the reference fatally defective. Was this procedural lapse fatal to the entire reference? In *Ahmed Nasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd* [2006] eKLR, the court held as follows:

“Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of sub rule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not indeed to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”

15. Taking the above cue, I exercise judicial discretion and find that though the notice of objection was not properly filed, the taxing master's ruling annexed to the reference clearly sets out the reasons for the decision. In light of Article 159 of *the Constitution* and the overriding objective (oxygen) principles, this court must prioritize substantive justice over procedural technicalities. Dismissing the reference solely on this ground would result in an unjust outcome. Accordingly, the respondent's objection is rejected, and the reference shall be considered on its merits.

16. Turning now to the merits of the reference, the ruling challenged by the applicant is found in the annexure marked JK2. It reads as follows:

“This is a Ruling on the Advocate-Client Bill of Costs dated 23.04.2021. The Superior Court on 14.10.2022 ruled that there was an existing Advocate-Client relationship hence settled issue of retainer.

The client filed their submission but only issue they disputed was instruction on basis that there was no Client-Advocate relationship. No other items were ever disputed. The applicant had suggested 1.5% of subject matter as instruction fees and same was opposed by defendant. All other items are drawn to scale hence no reason to interfere. Bill of Cost is hereby taxed at Kshs. 1,004,618.”

17. The key question is whether the taxing master err in principle and thereby reached an incorrect conclusion in taxing the bill of costs. Firstly, it is evident that the taxing master misapprehended the scope of the applicant's opposition. Contrary to the ruling, the applicant had filed a comprehensive response and written submissions opposing the entire bill—not just the instruction fees. Specifically, the applicant challenged items 2 through 27 of the bill. The taxing master's assertion that no other items were disputed is therefore inaccurate and misleading. Secondly, the taxing master failed to provide a reasoned basis for the award of instruction fees. while acknowledging the parties' opposing positions, the taxing master did not analyse or reconcile those positions in accordance with established principles of taxation. This omission amounts to a failure to apply the correct legal standards in assessing instructions fees.



18. In conclusion, the taxing master’s ruling was flawed both procedurally and substantively. The failure to consider the applicant’s submissions and to apply the correct principles of taxation resulted in a miscarriage of justice. In the interest of fairness, the bill of costs dated 14th April 2021 must be re-taxed afresh before a different taxing officer, taking into account the High Court’s ruling delivered on 14th October 2022. The upshot of the above is that the reference by Notice of Motion dated 19th July 2023 herein succeeds in the following terms:

1. The ruling of the taxing master delivered on 19th July 2023 awarding the respondent Kshs. 1,004,618.00, in respect to the advocate/client bill of costs dated 14th April 2021, be and is hereby set aside;
2. The advocate/respondent’s bill of costs dated 14th April 2021 be and is hereby remitted back for re-taxation before another taxing officer with due consideration given to the decision of this court delivered on 14th October 2022;
3. Each party shall bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 27TH DAY OF AUGUST 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Peter court assistant

