



**Kamundi & another v South Coast Holdings Limited (Environment & Land  
Miscellaneous Case E004 of 2024) [2025] KEELC 3323 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3323 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT & LAND MISCELLANEOUS CASE E004 OF 2024**

**AE DENA, J**

**APRIL 24, 2025**

**BETWEEN**

**F KINYUA KAMUNDI ..... 1<sup>ST</sup> PLAINTIFF**

**DT MUYAA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SOUTH COAST HOLDINGS LIMITED ..... DEFENDANT**

**RULING**

1. The application the subject of this ruling is the Chamber Summons dated 16/08/2024. It seeks the following orders; -
  - a. Spent
  - b. The court be pleased to enlarge time by 2 days from 14/8/2024 to 16/8/2024 for the Advocates/Applicants to file a Reference to this court under Rule 11(2) of Advocates Remuneration Order against the Ruling dated 31/7/2024 and uploaded on to the Judiciary's online portal on 2/8/2024 at 17:03 hours
  - c. The court be pleased to set aside the determination of the value of the subject matter and the instructions fees in paragraphs 1 and 2 on page 3 of the Ruling dated 31/7/2024 uploaded on to the Judiciary's online portal on 2/8/2024 at 17:03 hours, to determine the value of the subject matter as Kshs 1,081,855,978.00 and to assess instruction at Kshs.12,785,880.00 being 75% of total instruction fees of Kshs. 17,785,840.00
  - d. The court be pleased to recalculate VAT and the 50% uplift in paragraphs 11 and 12 on page 3 of the Ruling dated 31/7/2024 uploaded on to the Judiciary's online portal on 2/8/2024 at 17:03 hours to align the VAT and the 50% uplift with the correct instructions fees in terms of (c) above in addition to other services rendered as taxed and allowed in the bill.



- e. The court be pleased to order payment of interest by the client to the advocate at 14% per annum from 1/2/2023 until payment in full.
  - f. Instead of remitting the Bill of costs dated 1/2/2024 to the Deputy Registrar Taxing Master for re-taxation this Honourable court be pleased to tax that Bill at Kshs 25,083,443.00 inclusive of VAT and interest as at 1/2/2024.
  - g. The costs of this application and of the Advocate/Client Bill of costs dated 1/2/2024 be provided for.
2. The application is supported by the grounds on its face and the affidavit sworn by D. Muyaa on 16/8/2024. With regard to the extension of time it is stated that the Taxing Master when delivering the ruling did not give her reasons which she stated counsel would be able to appreciate the same from the ruling once uploaded. That the ruling was uploaded past official working hours on Friday and was only seen on the next official working day Monday 5/8/24 translating into a loss of 3 days from the required 14 days within which to file a reference.
  3. Rehashing the figures pleaded in the prayers sought in the plaint, it is averred that the Taxing Masters finding that the Plaintiff and Defence did not give clarity on the amount pleaded was erroneous and ultra vires. That bills of costs arising out of litigation are taxed on the basis of judgements and pleadings in the litigation and not on the basis of annexures to affidavits on applications.
  4. It is deponed that assessing instruction fees at Kshs 590,000 instead of Kshs. 12,785,880 the taxing Master was in violation of paragraph 4 of the Advocates Remuneration Order (RAO) on undercutting.
  5. That VAT should be adjusted on the correct instruction fees and other taxed items allowed by the Taxing Master and a 50% uplift applied. That the Taxing Master erred in making no award for interest which is available at 14% per annum from 1/2/2023 until 1/2/2024 and upto the payment of the corrected taxed fees. It is posited that there was no overpayment on the deposit received.
  6. Conceding the Tax Masters adjustment on the other items in the bill it is deponed the total bill should be Kshs. 25,083,443.28/- plus interest at the rate of 14% per annum from 2/2/2024 till payment in full.
  7. The court is urged to allow the application since if not granted the applicant will suffer severe loss by being forced to accept less than 5% of the fees due.

### **Response to the Application**

8. The application is opposed by the Client/respondent who filed Grounds of opposition dated 10/10/2024, Notice of preliminary objection and the replying affidavit sworn by Sultan Khimji all of even date. The Client/respondent avers that the application is incompetent for having been filed out of time and thus there is no reference, failure to cite the provisions of Order 50 Rule 6 on extension of time as read together with Rule 11(4) of the RAO, that in accordance to Rule 77(2) of the RAO, 1/6 of the bill of costs having been taxed off the Taxing Masters decision is final. It is also averred that the application is aimed at unjustly enriching the applicant, the respondent having remitted the sum awarded to the applicant under the ruling the matter is fully settled. It is further stated that the applicant has erroneously cited non-existent provisions such as Section 1A and 3A of Environment [Land Act](#).



## Submissions

9. The application and the PO were canvassed concurrently by way of written submissions. The applicants' submissions are dated 19/11/2024 and the Clients/Respondent 22/11/2024. The court has considered the submissions in rendering this decision.

## Analysis and Determination

10. The following issues commend determination,
  1. Whether the reference herein is properly before court
  2. Whether this court should disturb the decision of the taxing officer as prayed.
  3. Whether the court should tax or remit the Bill
11. I will not deal with the objection directed at the prayer which sought to have the mater certified as urgent since it has been overtaken by events.

## Whether the reference dated 16/08/2024 is properly before court.

12. The main contestation is that the application has been filed out of time and that the relevant provisions have not been cited. The Chamber Summons has been brought under the provisions of Rule 11(2) of the Advocates Remuneration Order as well as sections 1A,1B and 3 of the Environment & Land Court Act and the Civil procedure Act. The substantive provisions are in my view Rule 11(2) which provides as follows

‘The Taxing Officer shall hence forth record and forward 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 parties setting out the grounds of his objections’.

13. I think the explanation by the applicant is as to when time should begin to run for purposes of computation of the fourteen days above in view of the fact that the ruling was published past the official working hours on a Friday. I understand the applicant to be saying that the said Friday, Saturday and Sunday would not count and time would start running on Monday. The court agrees with this position. The Court has also read the provisions of Order 50 rule 6 on the discretion donated to the court to enlarge time. The said provision does not provide for striking out of any such application but provides for costs to be borne by the party applying. This is again buttressed by the provisions of Order 51 Rule 10 (1) as follows; -

‘Every order, rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.’

14. It is the finding of this court that the reference brought by way of Chamber Summons dated 16<sup>th</sup> August 2024 is properly before this court.
15. Before delving into the merits of the application there is an issue that I must also address as a preliminary point. It has been urged once 1/6 of the bill of costs is taxed off then the Taxing Officers decision is final meaning there cannot be any reference. Reliance is placed on the provisions of section 77(2) of the ARO. Section 77 is on where more than 1/6 is taxed off. The said provision stipulates; -



1. If more than 1/6 of the total amount of the Bill of costs exclusive of court fees, be disallowed on taxation, the party presenting the Bill for taxation may in the discretion of the taxing officer be disallowed the cost of such taxation
  2. The decision of the Taxing Officer under this rule shall be final.
16. My interpretation of the above provisions is that subrule (2) refers to the decision of the taxing master to decline to award costs of the taxation proceedings. This is what shall be rendered final and not the taxing officers ruling on the Bill of Costs. This would in my view defeat the entire purpose of Rule 11 (2). Moreover this court has been led to paragraph 13 (page 3) of the taxing officers decision where the learned Taxing Officer held thus;-
- ‘More than 1/6 has been disallowed and hence the Applicant shall bear their own costs of this bill’
17. Clearly the Taxing Officer understood the import of Rule 77 as explained by this court above. It is the finding of this court that the Client/respondent interpretation of this provision is erroneous and the court agrees with the applicants interpretation.

**Whether this court should disturb the decision of the taxing officer with regard to the instruction fees.**

18. The main issue of controversy is the instruction fees and how it was derived by the Taxing Master. First I will look at the legal provisions on taxing instruction fees as between an advocate and his client, that is the parties in this reference.
19. Schedule 6 of the Advocates Remuneration Order applies with regard to costs of proceedings in the High Court. The suit where the bill of costs was subject of the taxation arises from proceedings commenced in the Environment and Land Court a court of equal status with the High Court.
20. Part B of schedule 6 is on Advocate Client Bill of costs. Provision is made on how instructions fees shall be charged in an ordinary suit where no appearance is entered, where a suit is determined in a summary manner or any manner without going for full trial, where settlement is reached prior to confirmation of the first hearing date, where the value of the subject matter cannot be ascertained from the pleading or judgement or settlement between the parties and also where the value can be ascertained.
21. The issue of instruction fees in relation to the contentions herein have been subject of many judicial decisions. I will start with the case of Joreth Limited Vs Kigano and Associates NRB Civil Appeal No.66 of 1999(2002) eKLR and which was cited by the Taxing Officer (see page 2/4 of the ruling). The court held thus;-

‘We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances. That is what C.K. Njai Esq. did when he said:

“ As we do not know the capital value of the property in dispute, one I believe is left to determine the matter on the general discretion donated to the taxing officer to



tax a bill, based on the importance of the matter to the parties, complexity and the responsibility placed on shoulders of counsel".

22. The Court of Appeal in the case of Peter Muthoka & Another Vs Ochieng, Onyango, Kibet & Ohaga Advocates & 3 Others Civil Appeal No. 328 of 2017(2019)eKLR pronounced itself thus;-

‘It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.

Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.

It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing.’

23. So how did the Taxing Officer arrive at the figure for instructions fees as between advocate and client. The Taxing officer stated at page 3/4 of the ruling that; -

1. ‘...noted keenly that the value of the subject matter did not come out in the ruling or judgement at appeal. It was mentioned in the plaint and the defence, both of which are not giving clarity as they are contested and not ascertained by parties herein’
2. Moreover, it is possible for one to claim for items more than what exists and it is also possible for one to reject the value of what exists to their benefit. This court shall thus not rely on the same but shall consider the valuation report of Redfearn, the property professionals dated 17<sup>th</sup> January 2018 of assets held at Nakumatt Diani which is the subject of the suit and the same is stated to be

The current replacement cost – Kshs.18,500,000; and

The depreciated replacement cost-Kshs 7,500,000.

24. Simply put the Taxing Officer was not guided by the pleadings for the reason that the same did not provide clarity on the value of the subject matter and since the same were contested. The applicants’ case is that the value of the subject matter in accordance to the Plaint is determinable from all the monetary prayers in the Plaint.

25. The prayers in the plaint dated 23/07/2018 which started as ELC Cause No. 171 of 2028 and subsequently allocated the new ELC cause No. 235 of 2021 following transfer of the file to Kwale ELC were for;-

- a. Loss of Fixtures, Fittings, Furniture and Equipment Ksh. 120,000,000.00;
- b. Loss of Stock – Ksh. 69,355,848.00;



- c. Staff Release Cost – Ksh. 12,500,000.00;
  - d. Lost income from use of the suit property w.e.f 17/11/2017 until termination of the lease on 6/05/2019 calculated at the rate of Ksh. 8,804,349.47 per month – Ksh. 149,673,940.99;
  - e. Loss of income from the use of the Fixtures, Fittings, Furniture and Equipment w.e.f 17/11/2017 to the date of filing suit Ksh. 70,434,795.76 and onwards at the rate of Ksh. 8,804,349.47 until payment in full.
  - f. Mesne profits derived from the Defendant’s use of the Plaintiff’s Fixtures, Fittings, Furniture and Equipment calculated at the rate of Ksh. 8,804,349.47 per month w.e.f 17/11/2017 until hand over of the said items.
  - g. General damages for irreparable injury/damage to the Plaintiff’s Business Model valued at Ksh. 7 (SEVEN) Billion as at 17/11/2017.
  - h. Interest on (a), (b), (c), (d), (e) and (i) above at the current commercial Rate w.e.f 17/11/2017 until payment in full.
26. Can the above prayers be considered as the value of the subject of litigation for purposes of taxation of the advocate client bill of costs? The answer was provided by the Supreme Court of Kenya in the case of Kenya Airports Authority Vs Otieno Ragot & Company advocates Petition No. E011 of 2023 SC, The Apex court expressed itself thus;-
- (59) We are of a considered opinion that a claim in a suit which is struck out at the preliminary stage does not ipso facto render that claim or amount pleaded therein without more the value of the subject matter. The position still remains that the amount therein has not been ascertained or determined, and as such, it cannot be applied as the value of a subject matter in a disputed taxation. The application of such a claim or amount as the value of the subject matter would go against the rationale that the fees/costs paid to an advocate and a successful party should be reasonable. Consequently, we are not persuaded by the respondent’s contention that even where the amount claimed in a pleading which is struck out by a court, as in the instant appeal, the said amount would still act as the value of the subject matter when it comes to taxation of instruction fees.
27. The above finding of the court is self-explanatory and I will not belabour the point. As long as the said figures were not ultimately interrogated and confirmed in judgement of the court then applying the decision of the Supreme Court above, I will respectfully disagree with the applicants’ position that the subject matter of the dispute was determinable and or discernible from the pleadings. The Taxing Officer was thus correct in finding that the value of the subject matter was not ascertainable.
28. How then should a taxing officer proceed after finding that the value of the subject is not discernible from the pleadings? Applying the caselaw the taxing officer is then permitted to use his discretion to assess instructions fees in accordance with what he considers just. This would entail taking into account, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, the stage at which the suit is terminated and the work put in by the applicants. I have perused the mother file and all this information may be gleaned from the file proceedings. The ruling does not state much on this.
29. Did the Taxing Officer apply the above guidelines? Indeed the taxing officer then proceeded to use the value of assets held at Nakumatt Diani as given in the valuation report dated 17<sup>th</sup> January 2018 prepared by Redfearn, property professionals. That respondents client submission is that the Taxing



Master correctly applied its discretion by relying on a professional valuation to determine the subject value which is in my view not correct. The applicants assert and correctly so that this was wrong and that the action of taking the totals given in the valuation report that is Kshs 26,000,000 and adjusting instructions fees against the said value arriving at the Kshs590,000/- was erroneous as the primary role of taxation was to adjust the value of the subject matter based on the pleadings, judgement or settlement.

30. The applicant further submits that it was expected the taxing officer would total up the claims sought in the plaint in comparison with item 1 of the Bill of costs, there being no alternative settlement figure of the claim or final judgement. The court respectfully disagrees with this proposition by counsel for the applicant for the reason that I have already made a finding based on the Supreme Court decision hereinbefore cited, that the figures in the pleading/plaint had not been ascertained and could not be used as the basis for determining the value of the subject matter. Consequently any proposition based on the prayers in the plaint would be a non starter.
31. I have seen the applicants arguments based on the decision made on security for costs. My understanding of the applicants argument in this regard is that based on the amounts for security for costs of Kshs 40,000,000.00 upheld by the Court of Appeal in the judgement delivered on 4/11/2022 then their fees would be at least Kshs. 60,000,000/= though they had done a reasonable calculation of fees at Kshs 38,004,256.87 (see paragraph 11 of Mr. F. Kinyuas affidavit in support of the Bill of Costs dated 1/2/2024).
32. I took time to read the ruling of my sister A.Omolo J that made the orders for deposit of security of the said Kshs. 40,000,000.00. and also the judgement of the Court of Appeal on the same. Mr Kinyua had urged in the application for security for costs that their instruction fees and getting up fees alone would be Kshs 150,847,196.00. This is the figure the applicant wanted deposited as security. The tabulation of how the said sum was arrived at is given in the supporting affidavit of Mr Sultan Khimji one of the applicants directors.
33. With regard to the sum fixed as security for costs. My understanding of security for costs is that it is an order of the court requiring a plaintiff to deposit money, property, or a bond to cover the defendant's potential litigation costs if the plaintiff loses, ensuring the defendant is compensated. The ruling was for an order of security for costs and therefore that remains the objective of the said proceedings. For me the said sum of Kshs. 40 million still remained a projection because the value of the claim pleaded would still need to be ascertained at judgement or settlement and which emerging sum would be the basis upon which instructions fees would be pegged.

**Whether this court should disturb the decision of the taxing officer with regard to the instruction fees.**

34. The circumstances under which a decision of the Taxing Officer may be interfered with were explained in the case of Fredrick Otieno Outa Vs Jared Otieno Odoto & 3 Others SC Petition No.6 of 2014 the court stated thus;-

[10] The principles of setting aside the decision of a Taxing Officer are now old hat, going by the numerous decisions of the superior courts below. As early as 1972 these principles were propounded by Spry VP, in the leading case of Premchand Raichand Limited & Another v. Quarry Services of East Africa Limited and Another; [1972] EA 162, which has been approved in a long line of subsequent rulings, for example, First American Bank of Kenya v. Shah and



Others; (2002) EA 64 and Joreth Ltd v. Kigano and Associates (2002); 1 EA 92, to name but two.

- (11) A certificate of taxation will be set aside and a single Judge can only interfere with the taxing officer's decision on taxation if;
- a. there is an error of principle committed by the taxing officer;
  - b. the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy;(and I may add, conversely, if the award is so manifestly deficient as to amount to an injustice to one party).
  - c. the court is satisfied that the successful litigant is entitled to fair reimbursement for the costs he has incurred, (and I may add, the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party); and
  - d. the award proposed is so far as practicable, consistent with previous awards in similar cases.

To these general principles, I may add that;

- i. There is no mathematical formula to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances,
- ii. Although the taxing officer exercises unfettered judicial discretion in matters of taxation that discretion must be exercised judicially, not whimsically,
- iii. The single Judge will normally not interfere with the decision of the taxing officer merely because the Judge believes he would have awarded a different figure had he been in the taxing officer's shoes.'

35. Applying the above guidance to the facts of the present case the effect of the entirety of the foregoing analysis is that there was an error of principle in arriving at the Taxing Officers decision. Consequently there is justification to interfere with the taxing masters decision.

36. But I must address the contention raised by the client respondent that were the Bill to be allowed as taxed then it would amount to unjust enrichment which was also an issue during the proceedings before the Taxing Officer. The Taxing Officer stated at paragraph 9 under the heading 'Instruction Fees' thus;-

'This court resonates with the principles that support any costs awarded to an advocate for services rendered ought to be commensurate to the work done. Thus, no advocate should be allowed to unjustly enrich himself or herself for work not done.'

37. The Taxing Officer cited the case of Moronge & Company Advocates Vs. Kenya Airports Authority (2014) eKLR in support of the above.



38. Let me state that the issue above and whether instructions fees are static or not has been a subject of litigation in Kenya Courts upto the Supreme Court of Kenya. On reasonability of fees charged by advocates I will highlight some judicial decisions on the subject.

39. In Kenya Airports Authority Vs Otieno Ragot & Company advocates Petition No. E011 of 2023 SC, the Supreme Court pronounced itself on the objectives of the Advocates Remuneration Order thus; -

50. The overall objective is to prevent exploitation of parties to a suit/transaction with regard to remuneration of advocates and compensation of costs or expenses incurred by a successful party as well as maintain the standards of the legal profession. Differently put, it is to ensure that fees/costs paid to an advocate and a successful party are reasonable. Of importance, is that what amounts to reasonable costs can only be determined on a case-by-case basis.

40. The Supreme court further added thus; -

‘As emphasized in the many authorities and submissions made to us, instruction fees ought to take into account the amount of work done by an advocate, the prevailing economic times and should be reasonable to a level where the charges should not impede access to justice. Odunga, J., (as he then was) in Nyangito & Co. Advocates vs. Doinyo Lessos Creameries Ltd., HC Misc No. 843 of 2013; [2014] eKLR expressed as follows:“... the instructions fees ought to take into account the amount of work done by the advocate, and where relevant, the subject matter of the suit as well as the prevailing economic conditions; one must envisage a hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particular high fee sometimes demanded by counsel of pre-eminent reputation; then one must know that what fee this hypothetical character would be content to take on the brief; clearly it is important that advocates should be well motivated but it is also in the public interest that cost be kept to a reasonable level so that justice is not put beyond the reach of poor litigants.”Equally, the finding by Ojwang, J. (as he then was) in Republic vs. Ministry of Agriculture & 2 Others Ex parte Muchiri W’njuguna & 6 Others, HC Misc 621 of 2000 [2006] eKLR, resonates with the matter at hand. He stated as follows: “Taxation of costs as a judicial function is to be conducted regularly, on the basis of rational criteria which are clearly expressed for the parties to perceive with ease. Regularity in this respect cannot be achieved without upholding fairness as between the parties; the Taxing Officer is to provide only for reasonable compensation for work done; the should avoid the possibility for unjust enrichment for any party and ought to refuse any claim that tends to be usurious;...”

41. In the case of Fredrick Otieno Outa Vs Jared Otieno Odoto & 3 Others SC Petition No. 6 of 2014 the court emphasised thus

‘.....that in awarding costs, courts must be guided by the principles of fairness, justice, and access to justice. See Mercy Kirito Mutegi v Beatrice Nkatha Nyaga & 2 others; [2013] eKLR, Martha Wangari Karua v Independent Electoral & Boundaries Commission & 3 others (supra); Dennis Magare Makori & Another v IEBC & 3 Others, Kisumu Election Petition Appeal No. 22 of 2018; and Philip Kyalo Kaloki v IEBC & 2 Others, Election Petition Appeal 25 of 2018.’

42. Clearly going by the above caselaw the instruction fees as raised in the Bill of cost would be excessive considering the work done by Counsel on record before the instructions were terminated. Even the correspondence exchanged as seen in the email written by Mr. Kinyua Kamundi to his client and the



supporting affidavit of the client in respect of the application for deposit for security for costs would not justify the amount of fees raised in the Bill of Costs.

43. The court has also been invited to make a finding that interest is payable on the Bill of costs. Rule 7 of the Advocates Remuneration Order provides as follows with regard to interest; -

"An Advocate may charge interest at 14% per annum on his disbursements and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided such a claim for interest is raised before the amount of the bill has been paid or tendered in full."

44. The question would be did the Bill of Costs charge interest. The answer is in the affirmative. My reading of the ruling on taxation shows that the Taxing Officer did not pronounce itself on the issue of interest payable. The ruling is silent meaning interest was not awarded. Justice Fred Ochieng (now Judge of Appeal) faced with the subject of interest in the case of *Amondi & Co Advocates v County Government of Kisumu* [2021] aptly stated; -

- '15. It therefore follows that under the *Advocates Act*, the Court does not have discretion to award any rate of interest, even if the Court deems such a rate as reasonable in the circumstances. Whilst Section 26 of the *Civil Procedure Act* authorizes the Court to award any reasonable rate of interest; the *Advocates Act* specifies the rate as 14% per annum.
16. And whilst under the *Civil Procedure Act* the Court has discretion to award interest at 3 different levels, the Court lacks such discretion under the *Advocates Act*.
17. Under the *Advocates Act*, the interest may be awarded from the expiration of one month from the date when the Bill was delivered by the Advocate to the Client.
18. When the discretion of the Court has already been so constrained, I hold the considered view that it would be unjust to the Advocate to either withhold interest altogether or to reduce it on account of the consideration that the Client was a public entity.
19. However, the Advocate is not entitled to interest from the date when he filed the Bill of Costs in Court. I so hold because the quantum sought in the Bill of Costs was much more than the sum which the learned Taxing Officer finally awarded. Emphasis Mine.
20. In my considered view, the Client became aware of the "Bill" on the date when the Ruling on Taxation was delivered.
21. Rule 7 of the Advocates Remuneration Order appears to have been designed to allow a Client a period of 30 days from the date when the Advocate delivered his bill. In my considered opinion, justice would be served by allowing the Client 30 days from the date when the Ruling on Taxation was delivered.
22. Accordingly, I order that Judgment be entered in favour of the Advocate/Applicant for the taxed costs, together with interest thereon at 14% per annum, from the expiration of 30 days from the date when the Ruling was delivered. Emphasis mine.



23. In this instance I peg the 30 days to the date when the Ruling was delivered because the Client/Respondent was in Court when the Taxing Officer delivered the Ruling on Taxation. As the Client was present, it means that immediately after the Taxing Officer pronounced her decision, the Client became aware of the Bill that it had an obligation to settle.’

45. I’m persuaded and agree with the above position. It is the finding of this court that the Taxing Officer erred in failing to award interest and which is available at 14% per annum from the expiration of 30 days from the date when the Ruling is delivered.

46. The court has been invited to tax the instructions fees rather than remitting the bill back for taxation to the same taxing officer, or remit it to another taxing officer for efficiency in terms of time. For me I think I should not descend into the arena. I have already given enough relevant guidance that will enable any taxing officer to tax the Bill afresh on the items raised herein. I’m guided in this regard by the case of Peter Muthoka & another v Ochieng & 3 others [2019] eKLR, where the Court of Appeal held that matters of quantum of taxation properly belong in the province and competence of taxing masters.

47. The upshot of the foregoing is that the reference succeeds to the extent that there was an error of principle by the taxing officer in determination of the value of the subject matter and by extension the instructions fees. The Taxing Officer also erred in failing to award interest.

48. The following orders issue to dispose of the Chamber Summons dated 16/08/2024

- i. The determination of the value of the subject matter and the instructions fees in paragraphs 1 and 2 on page 3 of the ruling dated 31/07/2024 are hereby set aside.
- ii. The Bill of Costs is hereby remitted to a different Deputy Registrar Taxing Master for taxation afresh on the instruction’s fees. Interest shall be applied appropriately as guided hereinabove.
- iii. Costs of the application are granted to the Applicant
- iv. Leave to appeal this decision is granted if required.

Orders accordingly.

**RULING DATED SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

.....

**A.E DENA**

**JUDGE**

**Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of: -**

In the presence of:

Ms. Muyaa for the Applicant

Ms Nyaga for the Respondent/Client

Mr. Hud Hassan Court Assistant

