



**J.M. Njenga & Co. Advocates LLP v Kimuri Housing Company Limited
(Miscellaneous Case E130 of 2024) [2025] KEELC 4577 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 4577 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CASE E130 OF 2024**

**JG KEMEI, J
APRIL 8, 2025**

BETWEEN

J.M. NJENGA & CO. ADVOCATES LLP ADVOCATE

AND

KIMURI HOUSING COMPANY LIMITED CLIENT

RULING

(In respect of the Advocate’s application dated 22/7/2024) The introduction)

1. The subject of this ruling is a reference dated 2/7/2024. The Reference is brought pursuant to the provisions of Rule 11(2) of the Advocates Remuneration Order (ARO), 2014 and all enabling provisions of the law. The Applicant seeks for orders that:
 - a. The taxation orders made on 20/6/2024 be reviewed and/or set aside and the matter referred back to a Taxing Master for re-taxation of Items 1 and 6.
 - b. The costs of this application be provided for.
2. The application is premised on the grounds on the face of it and further supported by the Affidavit of Vivianne Wachanga dated 22/07/2024. The Advocate avers that they filed a Bill of Costs dated 30/11/2023 which was taxed in the sum of Kshs. 1,000,000/= on 20/6/2024. Counsel being dissatisfied with the Ruling of the Taxing Master in respect to items 1 and 6, filed a Notice of Objection vide the Letter dated 21/6/2024.
3. Counsel avers that the Taxing Master erred in principle on account that; under Item 1 despite there being a Sale Agreement duly executed by both parties went ahead to hold that the transaction was “not completed” hence taxed it under Schedule 6 Part
II. That the allegation that the transaction was not completed is baseless and was only raised in submissions instead of being raised in an Affidavit sworn by the Client.



4. The other contention on Item 1 is that the sale agreement was indeed for all intents and purposes completed and the non- completion of the transaction envisaged under Paragraph 15 (f) of the 2014 Amended Remuneration Order was not applicable herein as completion cannot connote transfer of title.
5. As for Item 6, it is contended that the Taxing Master disallowed their prayer for interest yet Paragraph 7 of the Advocates (Remuneration) Order entitles an Advocate to charge interest at 14 % p.a. on disbursements and costs one month from the date of delivery of the bill to the Client.

Client's Grounds of Opposition

6. The Client/ Respondent opposed the application through the grounds of opposition dated 3/12/2024. The grounds are that; the Taxing Officer applied the correct principles and law in determining the Bill of Cost; the sale transaction was not completed and hence the Applicant/ Advocate cannot claim full instruction fees; the Taxing Master exercised her discretion judicially and finally, that the taxed amount was not manifestly low.
7. The Court directed that the application be canvassed by way of written submissions. The Advocates filed his submissions dated 4/2/ 2025 whereas the Respondent's submissions are dated 6/2/2025.
8. I must state that the written submissions, as well as the numerous Authorities cited and relied upon by the Advocates for the respective parties, form part and parcel of the Record of the court and in any event the same have been duly considered.

Analysis and determination

9. I have considered the substance of the reference, the rival affidavits and the parties' rival submissions. I have also considered the principle upon which this court exercises jurisdiction to interfere with the taxing officer's exercise of discretion in the taxation of bills. The issues that emerge for determination in this reference are:
 - a. Whether the taxing officer applied the wrong schedule and wrong principles in assessing the bill of costs;
 - b. Whether the taxing master erred in principle in disallowing the prayer for Interest under Item 6 of the impugned Bill of Costs;
 - c. Which orders should the Court issue?

A. Whether the taxing officer applied the wrong schedule and wrong principles in assessing the bill of costs;

10. Taxation of a bill of costs is an exercise of discretion by the Taxing Officer. In the case of Peter Muthoka & another v Ochieng & 3 others [2019] eKLR, the court set out the criteria in which the discretion should be exercised;

“It is not lost to us ... that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles in Mbogo -vs- Shah (Supra), then the decision though discretionary, may properly be interfered with ”



11. In the case of *Outa v Odoto & 3 others (Petition 6 of 2014)* [2023] KESC 75 (KLR) (22 September 2023) the Supreme Court (read Justice Ouko) set out instances when the decision of a Taxing officer may be interfered with as thus;

“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.

12. In the case of *Kipkorir, Tito & Kiara Advocates vs. Deposit Protection Fund Board* [2005] eKLR the Court of Appeal stated: -

“The learned judge like the taxing officer was exercising judicial discretion when he allowed the reference. This Court cannot interfere with the exercise of that discretion unless it is shown that the learned judge acted on the wrong principles of law. The appeal to this Court from the decision of a judge on reference from a taxing officer is akin to a second appeal and should be governed by Section 72 (1) of the *Civil Procedure Act*. In our view, such an appeal can only be allowed on any of the three grounds specified in Section 72(1) of the *Civil Procedure Act*, that is to say, if the decision is contrary to law or some usage having the force of law; or the decision has failed to determine some issue(s) of law or usage having the force of law or where there is a substantial error or defect in the procedure provided by law which may possibly have produced error or defect in the decision on the case upon merits.”

13. Equally the court in the *Kamunyori & Company Advocates vs. Development Bank of Kenya Limited* (2015) stated as thus:

-“Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer’s decision on taxation unless it is based on an error of principle. Where it is shown



that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside”.

14. Is there a competent reference before the Court? In the case of *Twiga Motor Limited -vs- Hon. Dalmas Otieno Anyango* (2015) eKLR, the Court stated that;

“The time limits in Rule 11 of the Advocates Remuneration Order (ARO) have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.”

15. It is to be noted that the Advocate being aggrieved with the decision of the Taxing Master filed a Notice of Objection dated 21/6/2024, being a day after the Ruling was delivered. The Objection further stated the specific Items objected to. This court finds that the reference before Court was filed within the time limit set by Rule 11 of the ARO and therefore has jurisdiction to determine this Reference.

16. With these principles in mind, I will proceed in determining whether the taxing officer rightly exercised her discretion to determine the appellant’s instruction fees in the Advocate.

17. The present reference traces its root to instructions given to the advocate to act for the client who was a Vendor in a contract involving LR Number 10390/4 (IR 77197). The purchase price of the said property as captured in the Sale Agreement dated 22/01/2022 is Kshs. 310,000,000/=. It is evident from the Agreement and the correspondences adduced in support of the Bill of Costs that both the Vendor and the Purchaser, Lovenir Module Limited executed the said sale agreement. However, as adduced by the Advocate in her own words, there was a fallout between the Advocate and the Respondent forcing the Advocate to file an Advocate-Client dated 30/11/2023. The said Bill was taxed on 20/6/2024.

18. In her Ruling, the Taxing Master noted that since there was no document showing that the transaction was completed, Schedule 1 of the Advocates Remuneration Order was not application. She therefore relied on Paragraph 18 (f) of the ARO for uncompleted transactions and applied Schedule 5 Part II (1).

19. Section 18 of Part II of the Advocates Remuneration Order which deals with Non- Contentious matters provides for remuneration of advocates, in part, as follows:

“Subject to paragraph 22, the remuneration of an advocate in respect of conveyance and general business (not being in any action, or transacted in any court or in chambers of any judge or registrar) shall be regulated as follows—

Uncompleted transactions and other business

- (f) In respect of any business referred to in this paragraph which is not completed, and in respect of other deeds or documents, including settlements, deeds of gift inter vivos, assents and instruments vesting property in new trustees, and any other business of a non-contentious nature, the remuneration which has otherwise not been provided for, the remuneration is to be that prescribed in Schedule 5



20. Schedule 5 of the Advocates Remuneration Order provides for the alternative mode of assessment. Part II thereof sets out the basis for assessment of instruction fees as follows:

“Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule.”

21. The Client’s contention is that since the transaction is incomplete, Section 18(f) of the Advocates Remuneration Order applies. A reading of that provision, which I have set out above, shows that it applies under two conditions. First, the transaction must be incomplete and second, the transactions must be one which is not provided for under the Advocates Remuneration Order. Once those conditions are satisfied then the provisions of Schedule 5 would apply.
22. In this case, the transaction concerned the sale of a property, a matter squarely within Schedule 1 First Scale of the Advocates Remuneration Order dealing with “Scale Fees on Sale and Purchase of Land registered in any Registry.” The evidence that the Advocate was instructed by the Client to act for it in the transaction which culminated into the preparation of a sale agreement duly executed by the parties and dated 24/1/22 has not been impeached. The client has not denied the instructions and that the said advocate acted on the said instructions. Save for the sale agreement there are a number of correspondences between the advocate and the advocates of the purchaser to denote that the advocate indeed acted on the instructions.
23. Further, it is a settled principle of law that Advocate earns instruction fees once he is instructed and acts in accordance with the said instructions. In the case of *Ratemo Oira & Co. Advocates –vs- Magereza Sacco Society Ltd* [2019] eKLR, where the Court of Appeal held that;

“... it is trite that an advocate is entitled to his fees once he is instructed, retained or employed by a client.... However, it must be noted that an Advocate will be entitled to payment of a reasonable fee which is commensurate with the work done. The business of taxation of costs must ensure a delicate balance between the guiding principles aptly pronounced by the Premchand case which include: the “Court owes a duty to the general public to see that costs are not allowed to rise to such a level as to deprive of access to Courts but the worthy” and “the general level of the remuneration must be such as to attract worthy recruits to the profession”. What is a reasonable fee in the circumstance can only be adjudicated by a taxing master by application of his discretion.

24. In the case of *Hayanga and Company Advocates –vs- Riyal Garden Developers Limited* HC ML Misc. No. 305 of 2004 [2006] eKLR the court stated that,

“In effect, if an advocate was instructed to prepare an Agreement for Sale, he would have earned his full instruction fee, as soon as the said Agreement was ready.”

25. In the case of *Joreth Limited v Kigano & Associates* [2002] eKLR, the court stated and held thus;

“By the first ground thereof the respondent states that Instruction Fee is an independent and static item, is charged once only and is not affected or determined by the stage the suit has reached. In principle that is correct.

.....”



26. It is therefore my finding that the Advocates were therefore entitled to the full instruction fee once the sale agreement was signed. I rely on the persuasive decision of John Ngure Mbugua t/a Ngure Mbugua & Co. Advocates -vs- Mumbi House Pharmaceuticals (K) Ltd (Environment and Land Miscellaneous Application E095 of 2023) [2024] where Justice Ogutu Mboya held that;

“..... it is also imperative to observe and outline that instructions fee is not affected by the any subsequent events or better still, the progress of work done by the advocate. Pertinently, it is important to underscore that instruction[s] fees accrue the moment the advocate is retained, regardless of whether the designated assignment is concluded or otherwise.

.... the Respondent herein was entitled to full instruction fees chargeable on the basis of the instructions/assignment that had been given unto him [Advocate], irrespective of whether the assignment was undertaken to completion or otherwise. In this regard, the Client/Applicant herein cannot escape paying the full instruction fees merely because same [Client/Applicant] took away the work from the Respondent.”

27. It is therefore my finding that the Taxing Master erred in law and principle assessing the instruction fees under Schedule V of the 2014 Remuneration Order instead of applying Schedule 1 in taxing the instruction fees.

B. Whether the taxing master erred in principle in disallowing the prayer for Interest under Item 6 of the impugned Bill of Costs

28. The Advocate/Applicant contends that the taxing master erred in law in disallowing their prayer for interest as indicated in Item 6 of the Bill of Costs. Counsel cites Rule 7 of the Advocates Remuneration Order and argues that interest should be charged at 14% from the expiry of one month from the date of delivery of the bill or fee note.

29. Rule 7 of the ARO provides;

“An advocate may charge interest at 14% per annum on his disbursements and cost, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest it raised before the amount of the bill has been paid or tendered in full.”

30. As such, the rule deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one month from the date of delivery of the bill or fee note.

31. The Court of Appeal in the case of Otieno, Ragot & Company Advocates -vs- Kenya Airports Authority (2021) e KLR, A.K. Murgor, JA stated that;

“.....As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure...”

32. The Advocate/Applicant having included the claim for interest in the Bill of Costs, Rule 7 was obviously applicable. The Taxing Master therefore was wrong in disallowing Item 6 on interest.



Which orders should the Court issue?

33. For the above stated reasons, my conclusion is that the taxing master erred in principle in the areas pointed out in the foregoing analysis. Consequently, I set aside the ruling of the taxing master dated 20/6/2024 and remit the Bill of Costs dated 30/11/2023 for fresh taxation by a different taxing master on Item 1 and 6 only.
34. The Application herein is therefore allowed as prayed.
35. The Advocate/ Applicant shall have costs of the application.
36. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF APRIL, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI JUDGE

Delivered Online in the presence of:

1. Ms. Wachanga for the Applicant
2. Mr. Ndeto for the Respondent
3. CA – Ms. Yvette

