



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI**

**MILIMANI COMMERCIAL COURTS**

**Misc Appli 318 of 2005**

**OJIAMBO & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**RAZCO LIMITED.....RESPONDENT**

**R U L I N G**

In a ruling dated 18<sup>th</sup> October 2005, the learned taxing officer awarded the sum of KShs. 67,987/60 as costs, following the taxation of the Advocate/Client Bill of Costs.

The advocate felt aggrieved with the award and therefore filed a reference to challenge it. This ruling in relation to that reference.

It is clear that in her considered view, the learned taxing officer found the bill to be taxable under Schedule 1. With that finding, the applicant is in agreement. However, the dispute is only in relation to the calculation.

On the other hand, the respondent has asked this court to direct the taxing officer to re-tax the bill under Schedule V part II.

When it is borne in mind that the respondent has not challenged the ruling of the taxing officer, through a reference, I find that it is not open to the said respondent to seek to vary the said finding in the manner they have chosen. I therefore turn down the respondent's invitation that I direct the taxing officer to retax the bill pursuant to Schedule V.

In any event schedule V would only have been applicable if there was otherwise no prescription for the kind of services which the applicant had provided to the client, or alternatively if the applicant had made an election under paragraph 22 of the Advocates Remuneration Order. In this case, the fee payable is prescribed in Schedule 1. Also, the advocate did not make an election under paragraph 22. Therefore Schedule V would be inapplicable to the bill of costs herein.

As far as the calculations were concerned, it is evident that there were errors. Therefore, I allow the reference, set aside the sum awarded, and direct that the costs be re-calculated by another taxing officer. The said re-calculations shall be carried out pursuant to Schedule 1 of the Advocates (Remuneration) Order.

Finally, the costs of this application shall be awarded to the applicant.

Dated and Delivered at Nairobi, this 19<sup>th</sup> day of October 2006.

**FRED A. OCHIENG**

**JUDGE**