



**Kinyanjui Njuguna & Co Advocates v National Social Security Fund
Board of Trustees (Environment and Land Miscellaneous Application
E027 of 2023) [2025] KEELC 3745 (KLR) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3745 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E027 OF 2023**

TW MURIGI, J

MAY 2, 2025

BETWEEN

KINYANJUI NJUGUNA & CO ADVOCATES ADVOCATE

AND

NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES CLIENT

RULING

1. Before me for determination is the Chamber Summons dated 17th May 2024 in which the Applicant seeks the following orders:-
 - a. That the ruling of the Taxing Officer delivered on 6th March 2024 in so far as the same relates to the reasoning and determination pertaining to the Respondent's Advocate-Client Bill of Costs dated 6th March 2024 be set aside.
 - b. That the Honourable Court be pleased to refer the matter back for re-taxation of the Respondent's Advocate-Client Bill of Costs dated 6th March 2024 before another taxing officer with proper and appropriate directions thereon.
 - c. That in alternative to prayer 2 above, the Honourable Court be pleased to re-tax the Respondent's Advocate-Client Bill of Costs dated 6th March 2024.
 - d. That the Costs of this application be borne by the Respondent.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Kellen Njue, the Applicant's General Manager sworn on even date.



The Applicant's Case.

3. The Applicant herein is aggrieved by the ruling delivered by the Taxing Officer on 6th March 2024 for the following reasons:-
 - i. The Taxing Officer erred in principle and in law by holding that the value of the subject matter of the appeal which is the subject matter of the Bill of costs was Kshs 1,900,000/= without any evidence to support the same.
 - ii. The Taxing Officer erred in principle by failing to appreciate that the appeal was against the ruling of the magistrates court's finding the Appellant in contempt of the court and therefore the subject matter was not ascertained.
 - iii. The Taxing Officer erred in principle by failing to find that the value of the subject matter for the purposes of taxation was not ascertainable from the pleadings or otherwise.
 - iv. The Taxing officer erred in principle by failing to appreciate that as per schedule 6A (1)(j)(a) of the *Advocates Remuneration Order*, the instruction fees for presenting or opposing an appeal is Kshs 25,200/= where the value of the subject matter is not ascertainable.
 - v. That the Taxing officer by holding that the value of the subject matter was Kshs 1,900,000/= without any basis erred in taxing the instruction fees as Kshs 300,000/=
 - vi. That Taxing officer erred in principle by failing to give due consideration and regard to the fact that the appeal was dismissed for want of prosecution and that it was yet to be admitted as the record of appeal was yet to be filed.
 - vii. That the Taxing officer erred in principle by failing to consider the fact that the appeal was not complex and the fact that the Applicant was not opposed to the appeal. He maintained that the only task undertaken by the Respondent in relation to the appeal was to draft and file a replying affidavit and submissions in support of the appellant's application seeking stay of execution.
 - viii. That the amount awarded as instruction fees is manifestly excessive and constitutes to an error in principle
 - ix. That the taxing officer erred in principle by allowing 2, 18,19,23,27,33 & 83 without any supporting documents.
 - x. That the taxing officer erred by allowing fees for making calls to clients and court without proof of the same.
 - xi. That the Taxing Officer erred in principle by allowing items 35, 41-92 as they were not in relation to the appeal which is the subject of the Bill of Costs.
 - xii. That the Taxing Officer did not exercise his discretion judiciously and urged the court to set aside the decision.
4. The deponent contended that the Taxing Master exercised his discretion injudiciously by awarding instruction fees that did not avail to the Respondent. She further contended that the instruction fees were manifestly high in the circumstances of the case. Based on the foregoing, the deponent urged the court to allow the application as prayed.



The Respondent's Case.

5. The Respondent opposed the application through the replying affidavit of Kinyanjui Theuri Advocate sworn on 2nd June 2024. The deponent averred that the application has not met the threshold for the grant of the orders sought and is therefore an abuse of the court process. He further averred that the appeal from which the bill of costs was drawn emanated from a ruling of the magistrate's court on an application for contempt which arose from the main suit whose subject matter is ascertainable.
6. He contended that the taxing officer addressed the issue regarding the subject matter as shown in the ruling. He further contended that the taxing master was categorical that instruction fees is a static item and is not affected by the stage of the matter.
7. He asserted that the taxing master was clear that his decision was based on Schedule 6 of the Advocates Remuneration Order and was alive to the fact that the matter was not concluded summarily. He further asserted that the taxing master exercised his discretion judiciously and that the amount taxed was fair in the circumstances of the case. He argued that the application is an attempt to deny the Respondents the fruits of their labour.
8. The Respondent filed a Notice of Motion dated 26th March 2024 seeking the following orders:-
 - a. That the Honourable court be pleased to enter judgement/decree for the sum of Kshs 386,345/= in Milimani Misc Application No E027 of 2023: Kinyanjui Njuguna & Co Advocates v Board of Trustees(NSSF) in favour of the Applicant.
 - b. That interest be provided at 14% per annum from 19/04/2022 until payment in full.
 - c. That the costs of the application be awarded to the

Applicant.

10. The application is premised on the grounds appearing on its face together with the supporting affidavit of Kinyanjui Theuri Advocate sworn on even date. The Applicant contends that the Respondent has neglected to pay the legal fees duly earned despite the certificate of taxation having been drawn, signed and issued. He urged the court to enter judgment in terms of the Certificate of Taxation.
11. The Respondent opposed the application through the grounds of opposition dated 4th March 2025 raising the following grounds:-
 - a) The Application is premature as the Respondent filed a reference challenging the decision of the taxing master and hence the taxation cannot be said to be final as contemplated under Section 51(2) of the Advocates Act.
 - b) The application is misconceived, bad in law and has no merit.
 - c) The prayer for interest is unsupported and contrary to the law.
11. Both applications were canvassed by way of written submissions.

The Applicant's Submissions.

12. The Applicant filed two sets of submission dated 4/3/2025.
13. On behalf of the Applicant, Counsel submitted that the application dated 26th March 2024 is overtaken by events as the Applicant has already filed a reference challenging the taxation.



14. Counsel further submitted that the Applicant has not produced any evidence to show that they raised the issue of interest with the Respondent before filing the bill of costs. To buttress this argument, Counsel relied on the case of *B McDonald & Associates Advocates v FCC* (2021) eKLR and on the case of *Machira & Co Advocates v Arthur Magugu & another* (2019) eKLR. Counsel urged the court to dismiss the application with costs.
 15. With regards to the application dated 17th May 2024, Counsel submitted that the only issue for determination is whether the application is merited. Counsel relied on the case of *Ngatia & Associates Advocates v Interactive Gaming & lotteries* to submit on instances when a judge can interfere with the taxing officer's decision on taxation. Counsel relied on the principles set out in the case and on the contents of the supporting affidavit to submit that the taxing officer failed to exercise his discretion judiciously in taxing the bill of costs.
 16. Counsel further submitted that the taxing officer applied the wrong provisions of the *Advocates Remuneration Order* and thereby arrived at an excessive figure. To buttress this point Counsel relied on the case of *Sophie Chirchir v Africa Merchant Assurance Co. Ltd* and on the case of *Ratemo Oira & Co Advocates v Magereza Sacco Society Ltd* (2019)eKLR.
 17. Counsel further submitted that the instruction fees were manifestly high. It was submitted that the taxing officer ought to have awarded reasonable compensation for work done so as to avoid the possibility of unjust enrichment. To buttress this point, Counsel relied on the case of *R v Ministry of Agriculture & 2 others ex parte Muchiri W'njuguna & 6 others* (2006) eKLR. in taxing the instruction fees.
 18. In conclusion, Counsel contended that the court cannot enter judgment on a certificate of taxation if the same is opposed or if there is an error of law or principle in the taxation.
- Concluding his submissions, Counsel urged the court to allow the application as prayed.

The Advocate/respondent's Submissions.

19. The Respondent filed its submissions dated 7th March 2025. On behalf of the Advocate, Counsel submitted outlined the following issues for the court's determination:-
 - a) Whether the application dated 26th March 2024 should be allowed.
 - b) Whether the application dated 17th May 2024 should be allowed.
20. On the first issue, Counsel submitted that an advocate is entitled to charge 14% interest on the taxed amount if a client fails to pay the advocates fees. To buttress this argument, Counsel relied on the case of *D.Njogu & Co Advocates v Kenya National Capital Corporation* (2006) eKLR. Counsel further submitted that the application is properly before the court.
21. On the second issue, Counsel submitted that the subject matter was ascertainable regardless of whether the bill emanated from a ruling on an application or a judgment on the main suit.
22. In the matter at hand, Counsel submitted that the bill emanated from a ruling of the magistrate court on an application for contempt which arose from the main suit and whose value of the subject matter was ascertainable. To buttress this argument, Counsel relied on the case of *George Arunga Sino T/ A Jone Brooks Consultants Limited v Patrick J.O Otieno and Geoffrey D.O Yogo T/A Otieno Yogo & Co Advocate* and on the case of *Joreth Limited v Kigano & Associates* (2002) eKLR
23. Concluding his submissions, Counsel argued that the application is meant to delay the Advocates from realizing the fruits of their labour and urged the court to dismiss the same with costs.



Analysis And Determination.

24. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Taxing Officer erred in taxing the bill of costs in the manner that he did.
25. The Principles of taxation were aptly stated in the case of *Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and others* (1972) EA 162 where the court held that:
- “(a) a) successful litigant ought to be fairly reimbursed for costs he has had to incur (b) That costs be, not allowed to rise to such level as to confine access to justice to the wealthy. (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and (d) that as far as practicable there should be consistency in the awards made. (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically (g) the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”
26. In the case of *Kipkorir Titoo & Kiari Advocates v Deposit Protection Fund Board* (2005) 1 KLR 528 the court of Appeal held that: -
- “On a reference to a judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer erred in principle in assessing the costs- an example of an error of principle is where the costs allowed are so manifestly excessive s to justify an inference that the taxing officer acted on erroneous principles.”
27. The Applicant is challenging the instruction fees awarded to the Respondent on the grounds that the same were assessed outside the express parameters provided under Schedule 6 of the *Advocates Remuneration Order* 2014. It was argued that the instruction fees are high and oppressive in the circumstances of the case.
28. The Respondent contended that the instruction fees arose from an application for contempt which emanated from the main suit whose subject matter is ascertainable.
29. In the case of *Ratemo Oira & Co Advocates v Magereza Sacco Society Ltd* (2019) the court held that:-
- “Indeed it is trite that an Advocate is entitled to his fees once he is instructed, retained or employed by a client.”
30. It is common ground that the bill of costs, the subject of the reference herein emanated from an Appeal that was filed by the Applicant pursuant to a ruling that was delivered by the magistrates court in respect of an application for contempt of court.
31. In *Joreth Ltd v Kigano and Associates* [2002] 1 EA 92 (CAK), the Court of Appeal held as follows: -
- “Where the value of the subject matter of a suit could not be determined from the pleadings, judgment or settlement, a taxing master was entitled to use his discretion in assessing the



instruction fee and in doing so the factors to be taken into account included the nature and importance of the cause, the interest of the parties, the general conduct of the proceedings, any directions of the trial Judge and all other relevant circumstances.”

32. The value of the subject matter was not ascertainable because the appeal related to orders issued by the magistrates court in respect of an application for contempt of court. The taxing officer adopted a value of Kshs 1,900,000/= as the basis which informed an assessment of Kshs 300,000/= as instruction fees.
33. It must be noted that an Advocate is entitled to payment of reasonable fees commensurate for the work done.
34. Advocate-Client costs in appeal proceedings before the High Court are governed by Schedule 6 Part B of the *Advocates (Remuneration) Order*.
35. Clearly, there was an error of principle on the part of the taxing master. On that score, the assessed instruction fees were manifestly excessive.
36. In the end I find that the application dated 17th May, 2024 is merited and the same is hereby allowed in the following terms: -
 - a. The ruling of the Taxing Officer delivered on 6th March 2024 in so far as the same relates to the reasoning and determination pertaining to the Respondent’s Advocate-Client Bill of Costs dated 6th March 2024 be and is hereby set aside.
 - b. The Respondent’s Advocate-Client Bill of Costs dated 6th March 2024 is hereby remitted to another taxing officer for fresh taxation.
 - c. The Certificate of Taxation dated 6th March 2024 is hereby set aside.
 - d. Costs of the application to await the outcome of the taxation.

RULING DELIVERED DATED AND SIGNED VIA MICROSOFT TEAMS THIS 2ND DAY OF MAY 2025

T. MURIGI

JUDGE

