



Otieno & Achieng Advocates v Warera (Miscellaneous Cause E006 of 2024) [2025] KEELC 4134 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4134 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
MISCELLANEOUS CAUSE E006 OF 2024**

**E ASATI, J
MAY 8, 2025**

BETWEEN

OTIENO & ACHIENG ADVOCATES APPLICANT

AND

CHARLES GWARA WARERA RESPONDENT

(Arising from the professional services rendered by the Applicant for the Respondent in ELC CASE NO. 2 OF 2020)

RULING

1. What is before court for determination is the Advocate's Reference brought by way of Chamber Summons dated 18th December, 2024 and stated to be brought pursuant to the provisions of Rule 11 of the Advocates Remuneration Order. The Reference challenges the decision of the Taxing Master, Hon. M. Nyigei, Deputy Registrar, delivered on 6th December, 2024 and seeks for an order that the decision be reviewed and set aside particularly on item 1 of the Bill of Costs or in the alternative the Bill of Costs dated 21st February, 2024 be remitted back for taxation before the same Taxing Master with appropriate directions on the question of the assessment.
2. The Reference also seeks that costs thereof be awarded to the Advocate/Applicant.
3. The Reference was supported by the averments in the Supporting Affidavit of Ruth Otieno Advocate and the annexures thereto. The Reference was unopposed.
4. Affidavit of service filed by Ruth Otieno Advocate on 25th February, 2025 shows that the Respondent was served with the Reference via email on 16th January, 2025 at 11.00.
5. The grounds upon which the Reference was brought were that the Taxing Master erred in taxing item 1 of the Bill of Costs at Kshs.50,000/- by assuming that no specific amount was claimed and thereby arrived at an erroneous computation of instructions fees on the basis of the value of the subject matter



under Schedule 7 Rule 1(b) of the Advocate Remuneration Order 2014. That the value of the subject property was Kshs.900,000/- per acre for 17 acres as indicated in the plaint.

6. The plaint was not availed to court to enable the court appreciate the contents thereof.
7. A copy of the Bill of Costs in the court file shows that the Advocate had given the value of the suit land at Kshs.20,000, 000/- and claimed Kshs.540,000/- as instruction fees.
8. The value of the subject matter is to be ascertained from the pleadings, judgement or settlement (where applicable). While on the Bill of Costs, the value of the subject matter is indicated to be Kshs.20,000,000/- in the Chamber Summons and oral submissions by Counsel for the Applicant, the subject matter is stated to be the whole of the suit land measuring 17 acres each worth Kshs.900,000 which should amount to Kshs.15,300,000/-.
9. I find no evidence attached to the application or the Bill of costs to show that the value of the subject matter of the suit was ascertainable from the pleadings, judgement or settlement. In such a case, the Taxing Master exercises his/her discretion to tax the instructions fee taking into account the circumstances of the case. I find that the Taxing Master exercised her discretion judicially and I find no reason to interfere with the decision.
10. The Reference is hereby dismissed. No orders as to costs as the Reference was not opposed.

Orders accordingly.

Ruling, dated and signed at Kisumu, read virtually this 8th day of May 2025 through Microsoft Teams Online Application.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Otieno for the Applicant/Advocate.

N/A for the Respondent/Client.

