



**PD Onyango & Company Advocates v Ogutu (Environment and Land Miscellaneous Application E016 of 2023) [2025] KEELC 4001 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4001 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E016 OF 2023**

**E ASATI, J**

**MAY 8, 2025**

**IN THE MATTER OF AN APPLICATION TO TAX AN ADVOCATE'S BILL  
OF COSTS ON THE BASIS OF ADVOCATE-CLIENT BILL OF COSTS**

**BETWEEN**

**PD ONYANGO & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**ROSE AWINDA OGUTU ..... RESPONDENT**

**RULING**

1. The genesis of this matter is that the applicant vide the Bill of costs dated 15/2 2024 sought the taxation and recovery of its professional fees against the Respondent. The record shows that the Bill of costs was taxed by the Deputy Registrar of the Court vide the ruling dated 5<sup>th</sup> September 2024. Dissatisfied with the taxation, each of the parties filed a reference challenging the taxation.

**Reference by the Applicant/Advocate**

2. Vide Chamber Summons application dated 17<sup>th</sup> October, 2024, the Applicant sought that the decision be set aside in respect of items No.1, 2 and 3 of the Bill of Costs dated 15<sup>th</sup> February 2024 and that the court be pleased to re-tax the said items.
3. In the alternative the Applicant sought that the Bill of Costs be remitted to the Taxing Master for re-taxation on the court's guidelines, more so on instructions fees, VAT and increase by half. The Applicant prayed that costs of the application be borne by the Respondent.
4. The grounds upon which the reference was based are that the Taxing Master did not consider the value of the property in dispute when carrying out the taxation. That the amount awarded is extremely low to amount to an error in principle. That the award in taxed costs is not commensurate with the work done, that the Taxing Master misapplied the law and principles of taxation. That the spirit and



principles of the award contradicted the Advocates Remuneration Order and Third Schedule of the Court of Appeal Rules, Rule No.111 (1) and (2) with regard to fair and reasonable remuneration of the Counsel in this matter. That the Taxing Master misdirected herself in taxing instructions fees at Kshs.200,000/- in view of the subject matter.

5. The application was supported by the contents of the Supporting Affidavit sworn by Peter Onyango Daniel and the annexures thereto.

### **Reply by the Respondent (Client)**

6. In response to the Applicant's Reference, the Respondent (Client) swore an Affidavit dated 2<sup>nd</sup> September, 2024. Her case is that the Applicant's Bills of Costs dated 15<sup>th</sup> February, 2024 was exaggerated as the Applicant (Advocate) never completed his instructions in Kisumu ELC No.E037 of 2021 and that the Applicant had failed to credit the Kshs.123,398/- which he had so far received from her (Respondent) in the course of the retainer.
7. That the instructions fees was exaggerated because the retainer was terminated before the suit was ready for hearing and was at the pre-trial phase. That the service fees within Kisumu of Kshs.3,000/- was also exaggerated as are the attendances, instructions on application, for doing drawings and for copies which had been supported by receipts. The Respondent prayed that the bill of costs be reviewed and taxed at Kshs.123,398 agreed on and so far received by the Applicant and that the Reference be dismissed with costs.

### **Reference by the Respondent (Client)**

8. On her part the Respondent vide the Chamber Summons application dated 22<sup>nd</sup> October 2024 challenged the same decision of the Taxing Master and sought for an order that the taxation ruling delivered on 5<sup>th</sup> September, 2024 by Hon. Maureen Shimenga, Deputy Registrar be reviewed, set aside and varied.
9. The grounds upon which the Respondent's reference was based as set out in the Supporting Affidavit of Andrew Ombwayo Advocate are that the Respondent was aggrieved by the award of instructions fees at Kshs.200,000/- where new Counsel came on record into the primary suit vide a Notice of Change of Advocates dated 22<sup>nd</sup> June, 2023 when the suit had not been readied for trial which rendered the award exorbitant. That the value of the subject matter is not disclosed in the pleadings, hence a reasonable award on the instructions fees ought to have been awarded.
10. That the computation of the Taxing Master did not consider that the Advocate had conceded receiving Kshs.150,000/- of the retainer fees before the Advocates – Client Bill of costs was filed and was not in dispute, that the amount ought to have been deducted from the award on instructions fees of Kshs.200,000/- to leave a balance of Kshs.50,000/=.
11. That the additional 50 per cent fees on account of advocate-client fees and the V.A.T of 16% should have been applied to the Kshs.50,000 and not to Kshs.200,000 hence the Advocate benefited unfairly from the error.

### **Applicant's response to the Respondent's Reference**

12. In response to the Reference by the Respondent (Client) the Applicant through the Replying Affidavit of Peter Onyango Daniel stated that the new Counsel came on record after pre-trials were complete and the matter fixed for hearing, that therefore the Applicant was entitled to full instructions fees. That the value of the suit property was disclosed in the valuation report to be Kshs.15,000,000/-.



13. That Kshs.150,000/- was deducted by the Taxing Master which amount had been paid by the Respondent. That the 50 percent increase on Advocates Client fees and VAT ought to be applied to the sub-total amount and not on 50,000/-. That the application lacked merit and should be dismissed.

### **Submissions**

14. The References were canvassed by way of written submissions. It was submitted on behalf of the Applicant that the Taxing Master taxed items number 1 which is instructions fees at Kshs.200,000/- which amount was very low considering the value of the subject matter that was before the trial court. That the value of the subject matter should be determined from the pleadings, judgement or settlement.
15. That no reason was given for taxing the instruction fees below what is provided for in the order. That the valuation report filed in court and which formed part of the pleadings gave the value of the subject matter to be Kshs.15,000,000/-.
16. That based on the valuation report, the instruction fee ought to have been Kshs.120,000/- for the 1<sup>st</sup> one million and Kshs.280,000/- being the fees for the balance of Kshs.14,000,000/= giving a total of Kshs.400,000/- to be increased by 1/3 thereof being the getting up fees, thereby making a total of Kshs.533,000 as instruction fees. That this amount should be increased by half thereof as provided for under Schedules 6(B)(a) to be 799,500/=.
17. That the Taxing Master made an error in her assessment of the instructions fees.
18. Counsel relied on the cases of Joreth Limited -vs- Kigano & Advocates [2002]eKLR and Seth Ambusini Panyako -vs- IEBC & 2 Other [2020]eKLR to support his submission and prayed that the Reference be allowed.
19. In respect of the Respondent's Reference dated 22<sup>nd</sup> October, 2024 it was submitted on behalf of the Applicant vide the written submission dated 17<sup>th</sup> January, 2025, that Schedule 6(1)(a)(b) and (c) of the Advocate's Remuneration Order only provides instances when the instruction fees can be reduced and this happens only when there is no appearance or the suit is not defended, where the suit is determined in a summary manner without going to the full trial or where settlement is reached prior to the confirmation of the first hearing date.
20. Counsel submitted that change of advocate occurred when the matter had been confirmed for hearing and that hence he was entitled to payment of full instruction fee. Replying on the case of Insurance Regulatory Authority -vs- Waweru Gatonyi & Company Advocates [2021]eKLR, Counsel submitted that Advocates instruction fees does not depend on the stage of the matter.
21. Further, that the value of the subject matter was disclosed, that the prior payment of Kshs.150,000 was factored in the Ruling of the Taxing Master and that V.A.T. was applicable to the amount awarded by the Taxing Master.
22. On behalf of the Respondent, it was submitted via the written submissions dated 5<sup>th</sup> February, 2025 that schedule 6 clause 1(a) of the Advocate Remuneration Order 2014 grants the Taxing Master discretion to reduce the instructions fees based on the circumstances of each case. That clause B provides that the 50 percent increase on party and party costs is to cater for all proper attendance and correspondences. That the value of the subject matter of the suit could not be determined from the plaint. That as such the instruction fee award of Kshs.200,000 was exorbitant.
23. That the Taxing Master acted in judicially in arriving at her award which thus should be unsettled.



### **Submissions on Applicant's Reference**

24. I have considered the two applications/References arising from the Ruling of the Taxing Master dated 5<sup>th</sup> September, 2024.
25. The issues that arise from the two applications are;
  - a. whether or not the valuation report was a pleading for purposes of ascertaining the value of the subject matter for purposes of taxing Advocate-Client Bill of Costs?
  - b. whether or not the ruling of the Taxing Master took into account monies paid by the Client to the Advocate before the taxation.
  - c. whether or not the Advocate was entitled to the entire of the instructions fees and getting up fees considering the stage of the suit as at the time the Advocate (Applicant) ceased acting for the Client (Respondent)
  - d. whether or not the matter should be remitted to the Taxing Master for fresh taxation
  - e. what order to make on costs.

### **Determination**

26. As a general rule, the High Court will not interfere with the decision of a Taxing Master, unless there exists an error in law or in principle in the taxation. In *Kipkorir Titoo & Kiara Advocates -vs- Deposit Protection Fund Board Nairobi* Court of Appeal, Civil Appeal No.220 of 2004 [2005]eKLR it was held that;

“on Reference to a Judge from 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.
27. Both Applicants contend that the Taxing Master erred in principle in assessing the Bill of Costs and arriving at the award.
28. The Advocate contends that the Taxing Master erred by not taking into account the value of the subject matter as disclosed in the valuation report when taxing item No.1 of the Bill of Costs.
29. From the Bill of Costs in the court file, item 1 thereof was instructions fees. The Advocate claimed for Kshs.500,000/= basing the same on the value of the subject matter of Kshs.15,000,000 as shown in valuation report.
30. One of the authorities relied on by the Advocate was the case of *Joreth Limited -vs- Kigano & Associates* [2002] eKLR where the Court of Appeal held 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, judgement or settlement (if such be the case). That if the value of the subject matter is not ascertainable, the taxing officer is entitled to use his discretion to assess such instructions fees 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.



31. There is no dispute that the value of the subject matter was not disclosed in the plaint but only in the valuation report. Pleading is defined in Section 2 of the Civil Procedure Act as;  

“includes petition or summons and the statement in writing of the claim or demand of any Plaintiff, and of the defence of any defendant thereto and of the reply of the plaintiff to any defence or counterclaim or a defendant”.
32. The documents contained in the list or bundle of documents is not pleadings. The valuation report in my view was only part of the evidence proposed to be produced by the Client, which was awaiting production as exhibit and admission as evidence. It cannot form the basis of ascertaining the value of the subject property for purposes of taxation which value was not pleaded in the plaint.
33. As the value of the subject matter of the suit was not disclosed in the pleadings, the Taxing Master was left with the option of exercising her discretion considering the special circumstances and facts of the case before her.
34. The Taxing Master did not err in not considering the value of the property indicated in the valuation report.
35. The Client contended that the amount of Kshs.200,000/- awarded to the Advocate was exorbitant given that the suit had not been readied for hearing. The Advocate however has demonstrated that by the time he ceased acting, the matter had gone through pre-trial, confirmed for hearing and a hearing date given. A copy of a Notice of Change of Advocates annexed to the Advocate’s Replying Affidavit sworn on 4<sup>th</sup> November, 2024 shows that the same was dated 2<sup>nd</sup> June, 2023 and filed in court on the same date. Counsel explained in paragraph 3 of the said Replying Affidavit that by 13<sup>th</sup> February, 2023 pre-trials had been completed and the matter listed for mention before the Judge on 1<sup>st</sup> March, 2023 for a date for hearing when the matter was fixed for hearing on 24<sup>th</sup> May, 2023. This was not denied the by the Client.
36. I find that the Taxing Master exercised her discretion judiciously in arriving at the amount of Kshs.200,000 in her ruling dated 5<sup>th</sup> September, 2024. She stated that she reasonably taxed item 1 at Kshs.200,000/-.
37. The Client further contended that the trial court ought to have subtracted from the taxed amount, the sum of Kshs.150,000 which she had paid to the Advocate prior to the taxation. It is not denied by the Advocate that the sum of Kshs.150,000 had been paid by the Client before the taxation.
38. The Advocate’s position is that that amount was deducted by the Taxing Master before getting the grand total to be paid by the Respondent. A reading of the Taxing Master’s ruling dated 5<sup>th</sup> September, 2024 shows that the total computation of the amount taxed was Kshs.497,550.50 less paid Kshs.150,000/=. Grand total Kshs.347,550.50 which is the amount certified by the Taxing Master. The other issues raised relate to V.A.T. and increment of the instruction fee by half. It was not disputed that V.A.T. should apply to instruction fee or that instruction fees should be increased by half as between the applicant and the Respondent. The contestation was on the amount of the instruction fee on which the V.A.T. should apply and which should be increased by half.
39. Having determined that the Taxing Master made no error in awarding Kshs.200,000/- as instruction fees, I find that the Taxing Master correctly applied V.A.T at 16% to the instructions fees after increasing the same by half in accordance with the Advocates Remuneration Order.
40. For the foregoing reasons, I find that both the reference by the Advocate and reference by the Client lack merit. Both References are hereby dismissed.



41. Given the circumstances of the case namely; that each of the parties' Reference has failed, each party shall bear own costs.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 8<sup>TH</sup> DAY OF MAY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen - Court Assistant.

Bagada for the Applicant.

Omwayo for the Respondent.

