



**Mbugua t/a Ngure Mbugua & Co Advocates v Mumbi House
Pharmaceuticals (K) Ltd (Environment and Land Miscellaneous Application
E096 of 2023) [2024] KEELC 6475 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6475 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E096 OF 2023
JO MBOYA, J
OCTOBER 3, 2024**

BETWEEN

**JOHN NGURE MBUGUA T/A NGURE MBUGUA & CO
ADVOCATES ADVOCATE**

AND

MUMBI HOUSE PHARMACEUTICALS (K) LTD OBJECTOR

RULING

Introduction And Background

1. The Client/Applicant herein has approached the court vide chamber summons [reference] dated the 20th March 2024 brought pursuant to the provisions of inter-alia Rule 11 of the Advocates Remuneration Order, Order 22 Rule 22 of the Civil Procedure Rules and Section 1A, 1B & 3 of the Civil Procedure Act and wherein the Client/Applicant has sought for the following reliefs;
 - i.Spent.
 - ii. Pending the hearing and determination of this application, the honourable be pleased to stay execution of the costs awarded on the 6th March 2024 to the tax the Applicant in the sum of kes.3, 410, 000/= by the taxing master Hon. Vincent Kiplagat, Deputy Registrar.
 - iii. That the Ruling/Decision of Taxing Master rendered on the 6th March 2024, with respect to the amount of kes.3, 410, 000/= allowed as instruction fees in respect to tax the Applicant Advocate Bill of Costs dated the 4th April 2023, be set aside, and in respect of the Applicant tax in relation to the aforementioned be taxed afresh.



- iv. That in the alternative, this honourable court be pleased to order the taxing Applicant's Advocate Bill of Costs dated the 4th April 2023, and in respect of the Applicant tax in relation to the aforementioned be taxed afresh.
- v. That the costs of this application be borne by the Respondent
2. The chamber summons application [Reference] herein is anchored on various grounds which have been enumerated in the body hereof. Furthermore, the application beforehand is supported by the affidavit of John Ngaruro Mugo [the deponent] sworn on even date and to which the deponent has exhibited three [3] documents, including a copy of the ruling rendered on the 6th March 2024.
3. Upon being served with the chamber summons application, the Respondent/Advocate filed a replying affidavit sworn on the 20th May 2024 and wherein same [Respondent] has contended that the Client/Applicant herein instructed same [Respondent] to act in a matter pertaining to and concerning the purchase of a portion measuring 5 acres out of L.R No. 2951/72 [original number 2951/1/5/2], which was registered in the name of one Peter Kimanga Waiganjo [deceased].
4. Additionally, the Respondent averred that upon receipt of the instructions from the Client/Applicant same [Respondent] proceeded and crafted the requisite sale agreement which was thereafter signed/ executed by the respective parties. In this regard, the respondent has thus averred that same complied with the instructions by the Client/Applicant and hence same [Respondent] is entitled to instruction fees.
5. The chamber summons application came up for hearing on the 16th May 2024 whereupon the advocates for the respective parties covenanted to canvass and ventilate the application by way of written submissions. In this regard, the court proceeded to and circumscribed the timeline for the filing and exchange of the written submissions.
6. Premised on the directions of the court, the Client Applicant filed two [2] set of written submissions dated the 4th July 2024 and 18th September 2024, whereas the Respondent/Advocate filed written submissions dated the 5th August 2024.
7. Suffice it to point out that the three [3] sets of written submissions [highlighted in the preceding paragraph] form part of the record of the court and shall be taken into account whilst crafting the ruling under reference.

Parties's Submissions:

Client's/applicant's Submissions:

8. The Client/Applicant filed two [2] set of written submissions dated the 4th July 2024 and 18th September 2024, respectively, wherein the Applicant adopted the grounds at the foot of the chamber summons application and furthermore reiterated the contents of the supporting affidavit.
9. Other than the foregoing, learned counsel for the Client/Applicant has proceeded to and highlighted three [3] pertinent issues for consideration by the court. Firstly, learned counsel for the Client/Applicant has submitted that even though the Advocate/Respondent was retained and engaged by the Client to act in a matter touching on the purchase of the suit property, namely, L.R No. 2951/72 [original number 2951/1/5/2] [hereinafter referred to as the suit property], the Advocate/Respondent herein only dealt with the question of the preparation and engrossment of the sale agreement.
10. Additionally, learned counsel for the Client/Applicant has submitted that insofar as the Advocate/ Respondent only dealt with the question of the preparation of the sale agreement and did not venture



- forward to conclude the transaction [conveyance]the Advocate/Respondent herein cannot lay a claim to full instruction fees, as if same [Respondent] acted in the matter until the completion of the transaction.
11. Premised on the foregoing, learned counsel for the Client/Applicant has therefore submitted that the taxation and award of instruction fees due and payable to the Advocate/Respondent ought to have taken into account the scope of the work that was done by the Advocate/Respondent.
 12. In support of the foregoing submissions, learned counsel for the Client/Applicant has cited and referenced inter-alia the holdings in the cases, namely, *Moronge & Co Advocates v KPA* [2014]eKLR, *Desai Sarvia & Palan Advocate v Tausi Assurance Co Ltd* [2017]eKLR, *Ratem Oira & Co Advocate v Magereza Sacco Society Ltd* [2019]eKLR and *Republic v Ministry of Agriculture & 2 Others [Ex-parte Muchiri Wanjuguna & 2 Others]* [2006]eKLR, respectively,
 13. Secondly, learned counsel for the Client has submitted that the learned taxing officer erred in law in proceeding to tax the Advocate's Respondent's costs on the basis of Schedule 1, notwithstanding the fact that the Advocate/Respondent did not conclude the transaction. In this regard, learned counsel for the Client/Applicant has contended that the Advocate/Respondents' costs ought to have been taxed in accordance with the provisions of Rule 18[f] of the Advocates Remuneration Order, which stipulates that where the transaction is not completed, the costs shall be assessed in line with schedule 5 of the Advocate Remuneration Order.
 14. Based on the foregoing, learned counsel has submitted that the taxation and award of instruction fees to and in favour of the Advocate/Respondent was premised on an error of principle and thereby culminating into an exorbitant award on account of instruction fees.
 15. Additionally, learned counsel for the Client/Applicant has submitted that the taxation and award of instruction fees, is erroneous and has culminated into an award which represents an unjust enrichment on the part of the Advocate/Respondent.
 16. Thirdly, learned counsel for the Client/applicant has also submitted that the learned taxing officer proceeded to and taxed the instruction fees in favour of the Respondent herein without taking into account that the property that forms the basis of the transaction for which the Respondent was instructed was still registered in the name of the deceased.
 17. In addition, learned counsel has submitted that even though the Respondent herein proceeded to and crafted the sale agreement, it was imperative to take cognizance of the fact that the Respondent herein did not take any precipitate steps in respect of the succession matter, which matter would have impacted on the sale transaction in question.
 18. Furthermore, it has been submitted that insofar as the transaction was being carried out on the basis of a property that was still registered in the name of the deceased, there is no gainsaying that the transaction in question was bound to collapse and hence the Respondent herein should have known that the transaction in question was prohibited by the provision of Section 45 of the *Law of Succession Act*.
 19. Consequently, learned counsel has implored the court to find and hold that the certificate of taxation and more particularly the aspect pertaining to instruction of fees is wrought and replete with errors of principle and thus same [certificate of taxation] ought to be set aside.
 20. Furthermore, learned counsel for the Client/Applicant has sought for an order to remit the Advocates Bill of Costs to a different taxing officer [other than Honourable Vincent Kiplangat] for purposes of re-taxation.



Respondent's Submissions:

21. The Respondent filed written submissions dated the 5th August 2024, and in respect of which same [Respondent] reiterated the averments contained at the foot of the replying affidavit sworn on the 20th May 2024 and thereafter same proceeded to and re-produced the very submissions that were canvassed before the taxing officer.
22. Suffice it to point out that at the foot of the written submissions dated the 5th August 2024, the learned counsel for the Respondent has raised, highlighted and canvassed two [2] salient issues for consideration by the court.
23. First and foremost, learned counsel for the Respondent has submitted that the Client/Applicant herein duly instructed and retained the Respondent to act for same [Client/Applicant] in a matter pertaining to the purchase of L.R No. 2951/72 [original number 2951/1/5/2] [hereinafter referred to as the suit property], Furthermore, learned counsel has posited that the value of the suit property was known and same in any event has been conceded by the Client.
24. To the extent that the Advocate/Respondent was duly instructed and retained by the Client/Applicant to undertake the transaction pertaining to the suit property, learned counsel for the Respondent has submitted that the Respondent herein was entitled to charge instruction fees over and in respect of the entire transaction. In this regard, it has been posited that it is immaterial whether or not the Respondent proceeded with the transaction up to completion or otherwise.
25. Simply put, learned counsel for the Respondent has submitted that instruction fees is earned the moment the Advocate [Respondent], executed the instructions of the Client/Applicant herein. In this regard, learned counsel for the Respondent has submitted that the learned taxing officer was correct in proceeding to tax and certify the instruction fees in the manner same [taxing officer] did.
26. In support of the foregoing submissions, learned counsel for the Respondent has cited and referenced decision including Kagwimi kangéthe & Co Advocates v A. A Kawir Transporters Ltd [2014]eKLR, Desai Savia & Palan Advocates v Tausi Assurance Co Ltd [2017]eKLR, Noly K Musango v Peter Odanga & Another [2021]eKLR, Insurance Regulatory Authority v Waweru Gatonye & Co Advocates [2021]eKLR and Joreth Ltd v Kigano & Associates [2002]eKLR, respectively.
27. Secondly, learned counsel for the Respondent has submitted that the transaction for which the Respondent was instructed in, touched on and or concerned the sale/purchase of the suit property and hence the instruction fees pertaining to the work done ought to be computed on the basis of the schedule relating to sales and purchases of properties.
28. In addition, learned counsel for the Respondent submitted that the nature of work for which the Respondent was instructed falls within the purview of Schedule 1 of the Advocates remuneration Order and not otherwise. In this regard, learned counsel for the Respondent has posited that the learned taxing officer was right on the basis of the taxation and award of instruction fees in respect of schedule 1.
29. On the other hand, learned counsel for the Respondent has submitted that had the learned taxing officer based and or premised the taxation and award of costs on the basis of Schedule 5 in the manner posited by the Client/Applicant, such an endeavour would have resulted into an error of principle.
30. To this end, learned counsel for the Respondent has cited and referenced the holding in Kimani Richu & Associates Advocates v Centurion Holdings Ltd [2018]eKLR, where the judge dealt with a similar situation where the transaction in question was not completed.



31. Finally, learned counsel for the Respondent has submitted that the honourable court can only interfere with the certificate of taxation where it is established and demonstrated that the learned taxing officer took into account extraneous issues; failed to take into account relevant issues or better still, committed an error of principle, which vitiates the certificate of taxation.
32. Nevertheless, learned counsel for the Respondent [Advocate] has posited that the client/Applicant herein has failed to demonstrate any error of principle or otherwise, which was committed by the taxing officer to warrant interference with the certificate of taxation.

Issues For Determination:

33. Having reviewed the chamber summons application and the response thereto and upon taking into account the written submissions filed on behalf on behalf of the respective parties, the following issues do crystalize [emerge] and are thus worthy of determination;
 - i. Which is the relevant schedule which ought to be applied by the taxing officer whilst taxing instruction fees in a matter pertaining to sale and purchases affecting lands including the subject matter.
 - ii. Whether the learned taxing officer applied the correct principle/formular in taxing and awarding instruction fees in respect of the subject matter or otherwise.
 - iii. What orders ought to be granted in respect of the instant matter.

Analysis And Determination

Issue Number 1 Which is the relevant schedule which ought to be applied by the taxing officer whilst taxing instruction fees in a matter pertaining to sale and purchases affecting lands including the subject matter.

34. There is no gainsaying that the Respondent herein [who is an advocate of the high court of Kenya] was duly instructed and retained by the Client/Applicant in respect of a matter wherein the Client/Applicant was purchasing all that property known as 209/4917/4-Nairobi.
35. Suffice it to underscore that upon being retained by the Client/Applicant herein, the advocate proceeded to and rendered professional services to and in favour of the Client/Applicant. For good measure, the fact that the Respondent herein rendered professional services to and in favour of the Client has not been contested.
36. Additionally, there is no gainsaying that the Respondent herein duly filed various documents together with the bill of costs, which documents demonstrates the various activities [services] that were undertaken by the Respondent albeit on behalf of the Client/Applicant.
37. At any rate, it is also worthy to point out that the Client/Applicant herein has not raised and/or canvassed any issue as pertains to the quality of legal services that were rendered/offered by the Respondent herein. In any event, it is not lost on the court that if there were any such contentions, same would have been raised and canvassed with the advocate disciplinary tribunal.
38. Be that as it may, it is common ground that the Respondent herein proceeded to and executed the instructions on behalf of the Client/Applicant and thereafter a dispute arose, culminating into the Client taking away the brief from the Respondent/Advocate and giving same [transaction] to a different law firm namely, M/s Pauline Mwaniki & Co Advocates.



39. Notwithstanding the foregoing, it suffices to point out that the advocate herein was retained to act for and on behalf of the Client/Applicant in a matter pertaining to the purchase of the suit property. Furthermore, there is no gainsaying that the Respondent proceeded to and acted in the course of the purchase of the suit property on behalf of the Client/Applicant.
40. To my mind, the Respondent herein was retained in respect of a specific transaction. For good measure, the transaction touched on and/or concerned sales/purchase of an immovable property, which was/is duly registered in the recognized land registry within the Republic of Kenya.
41. Premised on the foregoing, it is my finding and holding that the Respondent herein having been retained and engaged in a transaction pertaining to purchase of an immovable property, same [Respondent] was obligated to charge instruction fees in accordance with Schedule 1 of the Advocates Remuneration Order which touches on and concerns scale fees on sale and purchases affecting land registered in any registry.
42. Furthermore, whilst charging instruction fees, the Respondent herein was at liberty to raise and charge instruction fees on the basis of the nature of work [sale/purchase] for which same [Respondent] was retained. In any event, there is no gainsaying that instruction fees is an item [read, unit] that is earned immediately upon receipt of instructions.
43. Furthermore, it is also imperative to observe and outline that instructions fee is not affected by the any subsequent events or better still, the progress/status of work done by the advocate. Pertinently, it is important to underscore that instruction fees accrues the moment the advocate is retained nay instructed, regardless of whether the designated assignment is concluded or otherwise.
44. To buttress the foregoing exposition of the law, it suffices to cite and reference the case of *Ratemo Oira & Co Advocates v Magereza Sacco Society Ltd* [2019] eKLR, where the court held and observed as hereunder;

Indeed, it is trite that an advocate is entitled to his fees once he is instructed, retained or employed by a client. (See Civil Appeal No. 280 of 2015, *Desai Sarvia & Pallan Advocates vs. Tausi Assurance Company Limited* [2017] eKLR). 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.

45. Similarly, in the case of *Joreth Limited v Kigano & Associates* [2002] eKLR, where 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. There is nothing however to suggest in the ruling of C.K. Njai, Esq., that he had considered the Instruction Fee on the stage the suit had reached. It was the learned judge who so considered the matter. The learned judge was clearly wrong in saying that one-half the work done qualifies for one-half Instruction Fee. As we are agreeing with C.K. Njai, Esq., we need not consider the said first ground. The other two grounds in the said notice have already been dealt with by us when we referred to what C.K. Njai Esq.,



said in regard to the importance of the suit to the parties and the exceptional dispatch. As we agree with what Mr. Njai said those grounds do not fall for consideration.

46. In addition, the legal position that instruction fees is not affected by the stage of the proceedings or the quantum of work done by the advocate upon receipt of instruction was also highlighted in the case of Insurance Regulatory Authority v Waweru Gatonye & Company Advocates [2021] eKLR, where the court held thus;

25. The Authority's position is that the Deputy Registrar ought to have taken into account the stage where the case had reached. It has been settled that instruction fees are earned when the Advocate acts on the Client's instructions to defend the suit by filing the defence and a matter does not have to be set down for hearing for an advocate to earn instruction fees.

47. Arising from the foregoing discussion, my answer to issue number one [1] is twofold. Firstly, the learned taxing officer correctly proceeded to tax the instruction fees on the basis of Schedule 1 of The Advocates Remuneration Order. In this regard, the learned taxing officer did not commit any error of principle. [See the holding in the case of Kimani Richu & Associates Advocates v Centurion Holdings Ltd [2018]eKLR].

48. Secondly, 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.

Issue Number 2 Whether the learned taxing officer applied the correct principle/formular in taxing and awarding instruction fees in respect of the subject matter or otherwise.

49. Having found and held that the learned taxing officer was right in applying and deploying Schedule 1 in taxing the instruction fees, the next question that does arise relates to whether or not the taxing officer correctly applied the principle underpinned by schedule 1 of the Advocates Remuneration Order.

50. It is important to point out that the provision of Schedule 1 of the Advocates Remuneration Order prescribe the manner in which the instructions is to be calculated. For good measure, the instruction fees is calculated cumulatively on the basis of consideration on the value of the property.

51. Furthermore, there is no gainsaying that Schedule 1 has indeed provided a graduated manner in which the instruction fees is to be computed and reckoned. For ease of reference, it suffices to reproduce the provisions of Schedule 1.

52. Same is reproduced as hereunder;

Schedule 1 First Scale 1. Scale Fees On Sales And Purchases Affecting Land Registered In Any Registry Vendor's Advocate and Purchaser's Advocate

The scale fee shall be calculated cumulatively on the basis of the consideration or value of the subject matter as follows—

- i. from Kshs. 1 to Kshs. 5,000,000, 2% of the consideration or the value of the subject matter or Kshs. 35,000 whichever is higher.
- ii. (ii) from Kshs. 5,000,001 to Kshs.100,000,000, the fee prescribed in (i) plus 1.5% of the balance.



- iii. (iii) from Kshs.100,000,001 to Kshs. 250,000,000, the fee prescribed in (ii) plus 1.25 % of the balance.
 - iv. (iv) from Kshs. 250,000,001 to Kshs.1,000,000,000, the fee prescribed in (iii) plus 1% of the balance (v) in respect of an amount where the consideration or value is more than Kshs.1,000,000,000, the fee set out in (iv) plus 0.1% of the balance.
53. My reading of Schedule 1 drives me to the conclusion that the taxing office should have proceeded in a graduated manner whereby the first 5 Million, the instruction fees would be calculated/reckoned on the basis of 2% thereof or kes.35, 000/=, whichever is higher. Thereafter, if the value in question exceeded kes. 5 Million then the taxing officer would subject the excess to 1.5% up to a maximum of 100 Million.
54. Additionally, where the value of the suit property/consideration exceeded 100 Million, then the taxing officer would subject the excess up to 250 Million to 1.25% of the balance and in the event that there is still an excess, like in the instant case, the balance thereof up to 300 Million would be subjected to 1%.
55. Upon ascertaining the total figures deducible from the prescribed scheme/formula, the learned taxing officer would thereafter add the cumulative figures with a view to arriving at the appropriate instruction fees.
56. For example, in respect of the instant matter, the instruction fees pertaining to the suit property would be reckoned in the manner hereunder;
- i. [from 1shs to 5, 000, 000/=, 2% of the value; which works as follows; 5, 000, 000 x 2% =?
 - ii. [from 5, 000, 001/= to kshs.100, 000, 000/= the fees prescribed in one above plus 1.5% of balance] which works as follows; 950, 000, 000 x 1.5% =?
 - iii. [from kes.100, 000, 0001 to kes.250, 000, 000/=, the fees prescribed to [ii] plus 1.2% of the balance] which works as follows; 150, 000, 000 x 1.25% =?
57. From the foregoing, the learned taxing officer would then be called upon to total the amounts arrived at in respect of each item and thereafter come down to the grant total, which would constitute the instruction fees.
58. Notwithstanding the clear formulae prescribed by schedule 1 of the Advocates Remuneration Order, the learned taxing officer proceeded to state that the Respondent's/Advocates claim on instruction fees was charged at 1.36% of the value of the subject matter. In this regard, the learned taxing officer thereafter proceeded to and taxed the instruction fees as drawn.
59. Even though the learned taxing officer held that the Advocate/Respondent had charged the instruction fees on the basis of 1.36% of the value of the subject matter, I beg to posit that I am unable to discern or decipher where from the learned taxing officer found 1.36% which was adopted and deployed in taxing the instruction fees.
60. To my mind, the deployment of [sic] 1.36% of the value of the subject matter as the benchmark for taxing and awarding the instruction fees, is clearly erroneous. In this regard, I come to the conclusion that the learned taxing officer indeed committed an error of principle, which thus vitiates the entirety of the certificate of taxation. [See Peter Muthoka v Ochieng & 3 Others [2018]eKLR, where the court of appeal underscored the necessity to appreciate the benchmark/prescribed scale fees before venturing to exercise discretion].



61. Having come to the conclusion that the learned taxing officer committed an error of principle; it thus becomes apparent that the certificate of taxation is amenable to impeachment. In this regard, it suffices to cite and reference the decision in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, where the court of appeal stated and held thus;

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. In *Arthur v Nyeri Electricity Undertaking* [1961] EA 497, the predecessor of this Court said at page 492 paragraph I:

“where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.

An example of an error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles – see *Arthur v Nyeri Electricity Undertaking* (supra) or where the taxing officer has over emphasized the difficulties, importance and complexity of the suit (see *Devshi Dhanji v Kanji Naran Patel* (No. 2), [1978] KLR 243.

We have no doubt that if the taxing officer fails to apply the formula for assessing instructions fees or costs specified in schedule VI or fails to give due consideration to all relevant circumstances of the case particularly the matters specified in proviso (1) of schedule VIA (1), that would be an error in principle.

62. Likewise, the circumstances under which a judge may interfere with the certificate of taxation by the taxing officer were also elaborated upon by the Supreme Court [the apex court] in the case of *NGO v Eric Gitari & 5 Others* [2023] KESC 75 [KLR] where the court stated thus;

This Court recently in *[Outa v. Odoyo & 3 Others, SC Petition No. 6 of 2014](#)*; [2023] KESC 75 (KLR) highlighted the following principles to be considered in an application for setting aside a certificate of taxation: “[11] 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 Page 11 of 14 SC Petition (Application) No. 16 of 2019 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.”

63. Flowing from the foregoing analysis, my answer to issue number two is to the effect that learned taxing officer clearly took into account extraneous factors, including [sic] a 1.36% of the value of the property,



which is neither stipulated nor provided for in law. Quite clearly, the learned taxing officer committed an error of principle.

Issue Number 3 What orders ought to be granted in respect of the instant matter.

64. The matter beforehand touched on and concerns the manner in which the learned taxing officer ought to have reckoned and computed the instruction fees due and payable to the Respondent/Advocate. For good measure, the question pertaining to taxation is a matter that falls within the exclusive preserve of the taxing officer.

65. Though the judge is equally equipped to undertake taxation of costs where apposite, the general principle is to the effect that where a judge finds that the taxing officer committed an error of principle, the judge should pinpoint the error of principle and thereafter remit the bill of costs for taxation/re-taxation by a taxing officer other than the one whose certificate of taxation has been impeached.

66. To this end, it suffices to reiterate the holding of the Court of Appeal Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR, where the court of appeal stated and held thus;

And if a judge on reference from a taxing officer finds that the taxing officer has committed an error of principle the general practice is to remit the question of quantum for the decision of taxing officer (see - D'Souza v Ferrao [1960] EA 602. The judge has however a discretion to deal with the matter himself if the justice of the case so requires (see Devshi Dhanji v Kanji Naran Patel (No. 2) (supra).

67. Duly guided by the ratio decidendi in the decision [supra], the course of events that commends itself to me is to remit the entire Advocate Client Bill of Costs dated the 4th April 2023 to the taxing officer other than Hon. Vincent Kiplagat [DR] for purposes of re-taxation in accordance with Schedule 1 of the Advocates Remuneration Order, albeit taking into account the cumulative formulae to be applied.

68. To buttress the observation adverted to in paragraph 62 hereof, it suffices to adopt and reiterate the holding of the judge in the case of Kimani Richu & Associates Advocates v Centurion Holdings Limited [2018] eKLR, where the court stated and held as hereunder;

19. In the present reference, the taxing officer applied Schedule V in assessing fees in respect of services relating to sale and purchase of land. Her view was that an incomplete sale/purchase of land is not provided for under Schedule 1. That in my view was an error. The taxing officer should have taxed the bill based on Schedule 1 which provides the costing of land sale and purchase services.

While applying Schedule 1 she would be required to take into account the extent of the advocate's services and what remained to be done to complete the conveyance. That way she would have arrived at a rational figure.

69. In respect of issue number three [3]; it suffices that the bill of costs under reference ought to be subjected to re-taxation by a distinct taxing officer [Deputy Registrar] guided by the prescription adverted to and enumerated in the body hereof.

Final Disposition:

70. Flowing from the analysis, [details highlighted in the body of the ruling], it is evident and apparent that the learned taxing officer committed an error of principle in taxing and arriving at the instruction fees that was awarded in favour of the Respondent herein.

71. Consequently and in the premises, the orders that commend themselves to me are as hereunder;



- i. The chamber summons application dated the 20th March 2024, be and is hereby allowed.
- ii. The certificate of taxation arising from the Ruling delivered on the 6th March 2024 be and is hereby set aside.
- iii. The Advocate Client Bill of Costs dated the 4th April 2023 be and is hereby remitted for taxation before a taxing officer other than Hon. Vincent Kiplagat.
- iv. Costs of the Application shall await the outcome of the taxation.

72. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2024

OGUTTU MBOYA

JUDGE

In the presence of:

Benson – court Assistant.

Mr. Gikaria for the Client/Applicant

Ms. Mkaburi h/b for Mr. Ngure Mbugua for the Respondent/Advocate

