



**Limpompo Developers (K) Ltd v Wilfred & Ngugi Associates Advocates (Environment & Land Case E013 of 2021) [2023] KEELC 16170 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16170 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E013 OF 2021  
LN GACHERU, J  
MARCH 2, 2023**

**BETWEEN**

**LIMPOMPO DEVELOPERS (K) LTD ..... CLIENT**

**AND**

**WILFRED & NGUGI ASSOCIATES ADVOCATES ..... ADVOCATE**

**RULING**

1. There are two applications for consideration before the court. The first application is Chamber Summons by the Client/Applicant dated September 30, 2022, seeking the following orders:
  1. That this honourable court be please to review, vary and/or set aside the Taxing master's decision and ruling delivered on January 24, 2022 in Murang'a ELC Misc. E013 of 2021 – Wilfred Ngugi & Associates v. Limpopo Developers Ltd.
  2. That upon granting prayer (3) above, this honourable court be pleased to issue an Order directing that the subject Bill of Costs be remitted to a different Taxing Master for fresh taxation;
  3. That this honourable court be please to make such orders as it deems mete and just.
  4. That the costs incidental to this application be provided for.
2. The application is premised on the grounds states thereon and the Supporting Affidavit of Timothy Mundia, Director of the Client/Applicant, sworn on September 30, 2022, wherein he deponed that the Taxing Master misdirected herself when he taxed the Bill of Costs at Kshs 1,287,023.56/= and taxed off Kshs 2,082,240.144/= and acted contrary to the established and well settled principles of law on taxation, which postulated that where there is a fee agreement between an Advocate and client, there is



- no jurisdiction to tax a Bill of Costs. The Client/Applicant further deponed that they had fully settled the entire legal fees as billed by the Advocate/Respondent.
3. The application is opposed through the Replying Affidavit of Wachira J.M. Advocate dated October 7, 2022, wherein he averred that the taxation master erroneously taxed off Kshs 2,082,230.144/= from the Bill of costs dated September 6, 2021, causing Advocate/Respondent great prejudice. He further averred that the taxing master erroneously found that the value of the subject matter could not be ascertained, despite the same being clearly stated in pleadings filed in Court to wit sale agreement and witness statement by the Client/Applicant's Director. That since the Advocate/Respondent has filed an Objection to the taxation, objecting to taxation, then the Bill of Costs dated September 6, 2021 was under taxed and not one taxed as alleged by the Client/Applicant. He further stated that the Advocate/Respondent elected to file a cross-reference to have the taxed fees enhanced. He urged the Court to dismiss the instant Chamber Summon application.
  4. The second application is the Chamber Summons dated October 7, 2022, by the Advocate/Applicant and which sought the following orders:
    1. That this honourable court be pleased to enhance the amount taxed in items number 1, 2, 88, and 90 in the advocate/client Bill of Costs dated September 6, 2021;
    2. That this honourable court do pronounce itself on the value of the subject matter and the honourable court to undertake the re-taxation of advocate/client Bill of Costs dated September 6, 2021, if need be; and
    3. That the costs of this application be provided for.
  5. The application is premised on the grounds set on its face and the Supporting Affidavit of Wachira J. M. Advocate sworn on the October 7, 2022. It is the Applicant's case that on January 24, 2022, the taxing master while taxing the Advocate/Client Bill of Costs dated September 6, 2021, allowed the Bill of Costs to the tune of Kshs 1,287,023.56/= while taxing off the amount of Kshs 2,082,230.4/= . The Advocate/Applicant contends that the taxing master erred in principle when she found that the value of the subject matter could not be ascertained despite the same being clearly stated in the pleadings filed in court, to wit a sale agreement and witness statement by the Client/Repondent Director. Furthermore, the value of this suit property was easily ascertainable to be Kshs 50,000,000/= and that the taxing master erred in principle when she failed to grant fees for getting up and preparing for trial, as provided for by Schedule 6(2) of the [Advocate Remuneration Order](#), despite a denial of liability being filed and issues for trial joined by pleadings.
  6. It is the Advocate/Applicant's contention that the taxing master erred in principle when she failed to allow photocopy charges to the tune of a reasonable sum, and when she failed to grant interest at the rate of 14% per annum as provided for by Rule 7 of the Advocates Remuneration Order. Lastly, that the Advocate filed a Notice of Objection to taxation, objecting to items number 1, 2, 88, and 90, in the Advocate/Client Bill of Costs dated September 6, 2021. The Advocate/Applicant contends that the Bill of Costs was undertaxed and now files this cross-reference to have the taxed fees enhanced.
  7. The Respondent, through its Director, Timothy Mundia, filed Replying Affidavit dated November 24, 2022, in response and opposition to the cross-reference. It was his contention that the taxing master failed to take into account that the legal fees in ELC Case No 35 of 20188 Phyllis Wanjiku Mburu v. Limpopo Developers (K) Ltd of Kshs 450,000/= was previously agreed upon by the Advocate/Applicant and Client/Respondent herein, and was subsequently paid in full by the Client/Respondent through cash payment and cheques dated 18<sup>th</sup> February 2019 and 24<sup>th</sup> October 2019.



The Client/Respondent further contends that the Advocate/Applicant and Client/Respondent had agreed upon mode of billing, despite full knowledge of the Advocates Remuneration Order. That the Advocate/Applicant is keen on making double and illegal benefits at the Client/Respondent's detriment.

8. In conclusion, the Client/Respondent contends that despite settling the entire series of fee notes before delivery of judgement, the Advocate/Applicant proceeded to raise the Bill of Costs dated 6<sup>th</sup> September 2021, citing outstanding legal fees. Plainly, the Client/Respondent prays that the cross-reference dated October 7, 2022, be dismissed.
9. The Advocate/Applicant filed a Supplementary Affidavit dated November 29, 2022, in which they deny receiving any payment in cash from the Client/Respondent, nor that an agreement, related to fees, existed between the Advocate/Applicant and the Client/Respondent. They further deponed that no proof of such agreement has been presented.
10. The two applications were canvassed together by way of written submissions.
11. The Advocate/Applicant filed their written submissions dated January 17, 2022, through the Law Firm of Wilfred & Ngugi Associates Advocates. The Advocate/Applicant relied on the case of [\*Joreth Ltd v. Kigano and Associates\*](#) Civil Appeal No 66 of 1999 and [\*Otieno Omuga & Ouma Advocates v. CFC Stanbic Bank Ltd\*](#) HCCC No 75 of 2012 where the Court held that instruction fees is ascertained from the pleadings and that witness statements, list of documents and witness statements are pleadings respectively.
12. They further relied on the case of [\*Masore Nyang'au & Co. Advocates Vs. Kensalt Ltd\*](#) (2019) eKLR where the court held as follows:

"..... at the end of the day, costs will need to be pegged on the value open to this subject matter, and my own view of the matter, is that the court is not precluded from asking for evidence so as to determine what the value of the subject matter may be for purposes of taxing costs, or refer to other documents provided in the course of the case, and which may point at the value of the subject matter. Such documents may include the sale agreement, valuation report, or the consideration noted in the transfer instrument or title. Indeed, [Rule 13 of the Advocates Remuneration Order](#) does allow the court to even call for evidence for purposes of determining a dispute before it....."
13. On the issue of getting up fees, the advocate/Applicant relied on part two of the 6<sup>th</sup> Schedule of the [\*Advocates Remuneration Order\*](#) which provide for fees for getting up or preparing for trial. The Schedule states:

"In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation."
14. Lastly, the Advocate/Applicant submits that taking the complexity, dynamics of the land laws, time taken among all other circumstances in the matter, the Advocate/Applicant herein is entitled to an increment in the instruction fees as well as getting up fees. They pray that this court undertakes the re-taxation of the Bill of Costs and enhance the taxed fees.
15. Accordingly, the Client/Respondent/Applicant filed their written submissions dated November 25, 2022 through the Law Firm of Robson Harris Advocates LLP. It is the Client/Respondent/



- Applicant's submission that the taxing master failed to take into account that the Client/Respondent/Applicant had fully settled the legal fees and had failed to consider evidence substantiating the same. They further submitted that the Advocate/Applicant/Respondent filed the Bill of Costs two years after the settlement of the fee note. The Client/Respondent raised 3 issues on which they anchored their submissions.
16. On the issue of whether this court has powers to overturn the decision of the taxing master, the Client/Respondent relied on the case of *Hasham Kora v. Abdul Mohammed Hussein Kamali*, where the court held as follows:
- "The decision of the taxing master is not absolutely final even on a question of quantum. For instance, a large sum ought to be allowed, but from the very fact of the amount, the court might see that their master in arriving at so large a sum, must have acted on a wrong principle or have taken something into consideration which he ought not to have done. It doubtless requires an exceptional case to call for the interference of the court, but exceptional cases do occasionally arise."
17. On the issue as to whether the taxing master erred in taxing the Bill of Costs dated 6<sup>th</sup> September 2021, the Client/Respondent submitted that the parties herein had agreed on the fees payable and the same was fully paid. They relied on the case of *Kakuta Maimai Hamise v. Peris Tobiko, IEBC & the Returning Officer Kajiado East Constituency* (2017) eKLR, where the court held as follows:
- "The issue of validity of agreements between advocate's and clients with respect to remuneration was dealt with by Ochieng J in *Ahmednasir Abdikadir & Co. Advocates National Bank of Kenya Limited (2) (2006) 1 EA 5*, in which the learned judge held that a reading of Section 45(1) of the Advocates Act reveals that the agreements in respect of remuneration would be valid and binding on the parties thereto provided that the agreements were in writing and signed by the client or his agent duly authorised in that behalf."
18. They further place reliance on the case of *John Maina t/a John Maina Mburu & Co. Advocates v. George Munene (sued as the administrator of the estate of Samuel Munene & 3 Others)* (2015) eKLR, where the High Court held as follows:
- "I agree with the submissions of Ms. Thongori on the application and effect of Section 45 of the Advocates Act. Where there is a fee agreement between an advocate and clients, that is no jurisdiction to tax a Bill of Costs."
19. On the final issue as to whether this honourable court should uphold the ruling dated 24<sup>th</sup> January 2022, on the Bill of Costs dated 6<sup>th</sup> September 2021, the Client/Respondent submitted that the taxing master misdirected herself by taxing a Bill of Costs whereas the legal fees in the suit had long been settled. They relied on the case of *D.N Njogu & Co. Advocates v. NBK* (2007) eKLR where Justice Warsame stated as follows:
- "It is provided under Section 45(6) of cap 16 that where there is an agreement, the costs of an advocate shall not be taxed unless there is fraud, illegality and or coercion in the agreement."
20. In conclusion, the Client/Respondent submitted that the entire legal fees was paid to the Advocates. They prayed that the Advocate's Application be dismissed.
21. Having now considered the two Chamber Summons Applications and the rival written submissions, the court renders itself as follows:



22. Vide a Plaint dated March 20, 2014, the Plaintiff instituted Nyeri ELC No 51 of 2014 – Phyllis Wanjiku Mburu v. Limpopo Developers (K) Ltd seeking injunctive orders restraining the parties from dealing with the suit property, and a declaration that the Plaintiff was the proprietor of the suit property. The Defendant, who is the Client/Applicant and Respondent herein was pronounced legal proprietor of the suit property thereof. Following the determination, the Advocate/Respondent/Applicant herein filed an Advocate/Client Bill of Costs dated 6<sup>th</sup> September 2021, praying for the sum of Kshs 3,369,354.70/=. The taxing master subsequently taxed the bill of cosst at Kshs 1,287,023.56/ = taxing off Kshs 2,082,230.14/=.
23. Dissatisfied with the taxed Bill of Costs, the Client/Applicant/Respondent herein filed a Reference dated 30<sup>th</sup> September 2022, seeking to review, vary and/or set aside the Taxing Master’s decision on the grounds that the taxing master erred by failing to consider that there was a fee agreement and that the legal fees chargeable had been paid in full. Subsequently, the Advocate/Applicant/Respondent herein filed the cross-reference herein that the court should enhance the taxed Bill of Costs and pronounce itself on the value of the suit property and thereafter re-tax the Bill of Costs dated 6<sup>th</sup> September 2021.
24. The Court has considered the pleadings in general, the rival written submissions, the cited authorities and the relevant provisions of law and finds the main issues for determination are:
1. Whether the advocate was paid the full legal fees, the payment of which is disputed by the advocate who asserts that on account of Nyeri ELC No 51 of 2014 – Phyllis Wanjiku Mburu v. Limpopo Developers (K) Ltd no payment was made?
  2. The amount of instruction fees payable?
  3. Whether the value of the subject matter has been ascertained?
  4. Whether there was an agreement between the parties?
25. On the issue as to whether or not there was an agreement on the fee payable and whether this fee was paid, this court is guided by Section 45 of the *Advocates’ Act*, CAP 16, which makes provision for agreements in respect of the remuneration of an advocate. It is drawn as follows :-
45. Agreements with respect to remuneration
- (1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may
    - (a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate’s remuneration in respect thereof;
    - (b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate’s instruction



fee in respect thereof or his fees for appearing in court or both;

- (c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof, and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

- (6) Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48.”

26. In summary of Section 45 above, an advocate is at liberty to agree with his client on the remuneration payable for the services rendered or to be rendered. The agreement is binding, provided that it is in writing, and is signed by the client or his agent. This Court does not think that such agreement must be in one document titled “agreement for payment of legal fees.” It is sufficient that there be a memorandum in writing, and this would include correspondences, so long as these reveal that they are aimed at fixing the fee payable. Indeed, in the case of *D Njogu & Company Advocates vs National Bank of Kenya Limited*, Civil Appeal No 165 of 2007 (2016) eKLR, the Court of Appeal upheld an agreement between an advocate and client. The agreement was actually construed from a letter.
27. In the present case, when the Advocate/Applicant/Respondent filed their Bill of Costs, and the Client/Applicant/Respondent filed an Affidavit through which he claimed that they had an agreement on the fee payable, and that the fee was duly paid. The Court has carefully gone through that affidavit. In it, the Client/Respondent alleges that the Advocate/Applicant/Respondent and the Client/Respondent/Applicant had a prior agreement for the sum of Kshs 450,000/- which was paid in full and therefore there is not jurisdiction for a bill of costs. The Client/Respondent/Applicant annexed signed cheques to assert that the amounts were fully paid. It is thus the contention of the Client/Respondent/Applicant that the correspondences and annexures thereto demonstrate the agreement on fees.
28. This Court has further gone through the correspondences annexed to the pleadings and highlighted that payment was indeed made to the Advocate/Applicant/Respondent. The first payment was made on 11<sup>th</sup> March 2019 to the Advocate/Applicant/Respondent, by the Client/Respondent/Applicant. It is for the sum of Kshs 250,000/=. There is an acknowledgement note. The second cheque is that dated 24<sup>th</sup> October 2019, for the sum of Kshs 50,000/=. Both of these remittances are to M/s Wilfred Joseph Mwangi Wachira. From the above cheques, this court is baffled as to what the said money that was paid to the Advocate/applicant/Respondent was for? And for what purpose, and lastly if the money indeed reached the intended recipient? No correspondence as to the existence of an agreement regarding legal fees has been provided.



29. There being no correspondence or any other document from the Client/Applicant/Respondent to point to any contrary position, the only conclusion that the Court can reach is that there was no agreement between the parties as to the fees to handle Nyeri ELC No 51 of 2014 – Phyllis Wanjiku Mburu v. Limpopo Developers (K) Ltd, and that the amount of Kshs 450,000/= is not sufficiently explained.
30. There is nothing to inform this court that there was agreed fee for the matter that were being handled by the Advocate/Applicant/Respondent on behalf of the client/Applicant/Respondent. It is not enough to depose that this was the agreed fee. The law at Section 45 of the *Advocates Act*, requires that there be proof in writing of the agreement, and in this instance, there is none. There is certainly no document before this Court that shows that the the agreed fee for the matter is Kshs 450,000/= . This Court, conclusion therefore is that there is no proof of any agreement that the sum of Kshs 450,000/= was the agreed legal fees. It is this court’s finding that there is no agreement disclosed between the Advocate/Applicant/Respondent and Client/Respondent/Applicant, that verifies that the two parties had an agreement of what is payable as legal fees for Nyeri ELC No 51 of 2014 – Phyllis Wanjiku Mburu v. Limpopo Developers (K) Ltd.
31. Having considered the pleadings, this court find that the above reasons gives basis for taxing the instruction fees.
32. The suit Nyeri ELC No 51 of 2014 – Phyllis Wanjiku Mburu v. Limpopo Developers (K) Ltd was filed in the Environment and Land Court which is a court with equal to status of the High Court. The taxation would thus follow the same line of taxation for a matter that has been filed in the High Court. This would be Schedule 6 of the *Advocates Remuneration Order* which provides as follows:-

1. Instruction fees

Subject as hereinafter provided, the fees for instructions shall be as follows —

- (a) To sue in an ordinary suit in which no appearances is entered under Order IX A of the Civil Procedure Rules where no application for leave to appear and defend is made, the fee shall be 65% of the fees chargeable under item 1(a).
- (b) To sue or defend in a suit in which the suit is determined in a summary manner in any manner whatsoever without going to full trial the fee shall be 75% of the fees chargeable under item 1(b).
- (c) In a suit where settlement is reached prior to confirmation of the first hearing date of the suit the fee shall be 85% of the fee chargeable under item 1(b) of this Schedule.

The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it—

- (a) To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defence or other denial of liability is filed, where the value of the subject matter



can be determined from the pleading, judgment, or settlement between the parties and—

That value exceeds Kshs But does not exceed Kshs  
Kshs

500,000 45,000

500,000-750,000 65,000

750,000-1,000,000 75,000

1,000,000-20,000,000 fees as for Kshs 1,000,000 plus an additional 1.75%

Over 20,000,000 fees as for 20,000,000 plus an additional 1.5%.

- (b) To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment, or settlement between the parties and—

That value exceeds Kshs . But does not exceed Kshs  
Kshs

- 500,000 75,000

500,000-750,000 90,000

750,000 - 1,000,000 120,000

1,000,000 - 20,000,000 fees as for Kshs 1,000,000 plus an additional 2%.

Over 20,000,000 fees as for 20,000,000 plus an additional 1.5%.

- (c) To defend proceedings where the defendant substantially adopts the defence of another defendant; an instruction fee calculated under sub-paragraph 1(a).

- (d) To defend any other proceedings; an instruction fee calculated under sub- paragraph 1(b).

33. The Advcoate/Applicant/Respondent, was engaged to defend the suit on behalf of the Client/Respondent/Applicant. There is no indication that the advocate/Respondent/Applicant, substantially adopted the defence of another defendant, in which event, the fee payable would be as prescribed in paragraph 1(d) above. Sub-paragraph 1(b) provides for a graduated scale “where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties.” The Court has perused the pleadings and has observed that the value of the suit property was the accumulated value of the property and the development on the suit property. The value of the suit



property of Kshs 30,000,000/= was extracted from the sale agreement, while the value of development was obtained from the 4<sup>th</sup> Defendant's witness statement.

34. Further the Court has observed that sub-paragraph (b) of the 6<sup>th</sup> Schedule does provide for "where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties." There certainly would be no problem if the value of the subject matter is in the pleadings or judgment, which is the case herein.
35. The final issue is how to ascertain the value of the subject matter? Fees, where there is no agreement, will need to be pegged on the value of the subject matter, and the Court finds nothing wrong with a party to the taxation, presenting an agreement in order to demonstrate the value of the subject matter, more so in cases touching on land. That was indeed what was held in the case of *Masore Nyangau & Company Advocates vs Kensalt Limited*, ELC Nakuru, Miscellaneous Application No 196 of 2015 (2019)eKLR where the court stated as follows :-

"Schedule 6 above, does prescribe how costs should be assessed 'where the value of the subject matter can be determined from the pleading, judgment, or settlement between the parties'. The said schedule does not however explicitly prescribe what should be done, where the value of the subject matter is not in the pleadings, judgment, or settlement. You could indeed have litigation where the value of the subject matter is not given in the pleadings, judgment, or settlement. A common example is in land cases, where say, the plaintiff files suit to cancel the defendant's title claiming that the defendant acquired the title through fraud but the title rightfully belongs to the plaintiff. In such a case, all that may be given in the pleadings is the registration particulars of the said land and no more. Assuming the plaintiff in such a case succeeds, and the court orders the defendant's title to be cancelled, and in place, the plaintiff to be registered as proprietor, what would the plaintiff be entitled to as costs in respect of instruction fees since no actual value may be given in such a judgment?"

At the end of the day, costs will need to be pegged on the value of the subject matter, and my own view of the matter, is that the court is not precluded from asking for evidence so as to determine what the value of the subject matter may be for purposes of taxing costs, or refer to other documents provided in the course of the case, and which may point at the value of the subject matter. Such documents may include the sale agreement, valuation report, or the consideration noted in the transfer instrument or title. Indeed, Rule 13 of the Advocates' Remuneration Order does allow the court to even call for evidence for purposes of determining a dispute before it. The said provision of the law is drawn as follows :-

#### 13 A. Powers of taxing officer

For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.

It is thus a fallacy to suppose that the court can look at nothing else other than the pleadings, or judgment, or settlement, so as to determine the value of the subject matter. If the court can call for witnesses to determine the matter at hand, a fortiori, the court can certainly refer to documents presented before the court, so as to determine the value of the subject matter, which will then lead to a decision on instruction fees.



36. With the value of the subject matter having been Kshs 30,000,000/= for the suit property and Kshs 20,000,000/= stated to be developments in farm produce, the matter proceeded to trial and was determined. The instruction fee to the advocate was earned in full, once he filed the pleadings and unless the suit was determined summarily, which is not the position here, then the advocate was entitled to the whole of his fees. The circumstances under which this court can interfere with the taxing officer's exercise of discretion are reaffirmed in the case of *First American Bank of Kenya vs Shah & Others IEA 64*. It was held: -

"First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on error of principle, on the fee awarded was manifestly excessive as to justify the interference. That it was based on an error of principle (see *Steel Construction Petroleum Engineering (EA) Ltd vs Uganda Sugar Factory (Supra)*) of Course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and competence of the cause or matter, the amount of value of the subject matter involved, the interest of the parties and general conduct of the proceedings and any discretion by the trial Judge".

37. This court having established that there was no agreement between the parties herein as to the legal fees, and that there was indeed an error in the taxed bill that failed to consider the value of the subject matter of the suit property. This court is of the opinion that the Bill of Costs ought to be re-taxed.

38. For the above reasons, the Chamber Summons application dated September 30, 2022, by the Client/Applicant is found not merited and is hereby dismissed with costs to the Advocates/Respondent.

39. On the 2<sup>nd</sup> Chamber Summons Application, the Court finds that the 6<sup>th</sup> Schedule provides for Advocate/Client costs as between advocate and client the minimum fee shall be—(a) the fees prescribed in A above, increased by 50%.

40. From this Court's calculations, the instruction fees as per the 6<sup>th</sup> Schedule of the Advocates Remuneration Order due to the Applicant is Kshs 1,237,500/=. The taxing officer therefore fell in error in taxing the advocates' fees at Kshs 797,454/=. Consequently, the getting up fee as per Schedule 6 Rule 2 of the Advocates Remuneration Orders is hereby set as Kshs 412,500/=.

41. Item 88 on the Bill of Costs is taxed off as no proof of receipts to support the items were presented.

42. The final issue relates to Item 90, in the Bill of Costs on interest chargeable. As per Rule 7 of the Advocates Remuneration Order, an advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his Bill of Costs to the client, provided that such claim for interest is raised before the amount of the Bill of Costs shall have been paid or tendered in full. See the case of *Makhecha & Co Advocates Vs Central Bank of Kenya* (2020) eKLR, where the Court held that; -

"the Rules 7 of the Advocates Remunerations Order entitles an advocate to charge interest above the normal or applicable rate of 12%, provided that the claim for interest was raised before payment or settlement of the Advocate Bill of Costs".

43. In the instant case, the said claim was raised before the Bill of Costs was settled and thus the Advocate is entitled to interest.



44. Having considered and evaluated the Chamber Summons dated October 7, 2022, as above, the court finds that the Bill of Costs should be enhanced as above stated. For an avoidance of doubt the Bill of Costs is taxed as follows:

Instruction fees – Kshs 1,237,500/=

Getting up fees – Kshs 412,500/=

Interest – Kshs 288,750/=

45. The rest of the items to remain as taxed. The Advocates/Applicant's application dated October 7, 2022, is allowed partially as stated above. The Advocate/Applicant is also entitled to the costs of this application.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MURANG'A THIS 2<sup>ND</sup> DAY OF MARCH 2023.**

**L.GACHERU**

**JUDGE**

