



**Sheth & another t/a Harit Sheth Advocates v NIC Bank Limited (Civil Suit 280 of 2010) [2025] KEHC 2770 (KLR) (Civ) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2770 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**CIVIL**  
**CIVIL SUIT 280 OF 2010**  
**A MABEYA, J**  
**MARCH 12, 2025**

**BETWEEN**

**HARIT SHETH & RICHARD KARIUKI T/A HARIT SHETH  
ADVOCATES ..... PLAINTIFF**

**AND**

**NIC BANK LIMITED ..... DEFENDANT**

**RULING**

1. This is a ruling on a Reference dated 9<sup>th</sup> January, 2024 on a taxation ruling dated 11<sup>th</sup> December, 2023 by Hon. Mary Osoro, Deputy Registrar on a Party and Party Bill of Costs dated 11<sup>th</sup> July, 2023. It was brought, inter alia, under Rule 11 of the *Advocates Remuneration Order*.
2. The Reference sought the setting aside of the taxation in the sum of Kshs.3,370,580/= or in the alternative item Nos. 1, 2, 3, 27, 30 to 40, 80, 82, 83 and 90 of the Advocates Bill of Costs dated 11<sup>th</sup> July, 2023 be set aside and they be retaxed afresh. The grounds for the reference were set out in the body of the summons and in the affidavit of Stephen Atinya sworn on 9<sup>th</sup> January, 2024.
3. These were that; the bill of costs dated 11<sup>th</sup> July, 2023 was taxed at Kshs.3,370,580/= on 11<sup>th</sup> December, 2023, that the instructions fees were excessive which impacted on item No. 2 on getting up, that Item Nos. 3 to 27 and 30 to 40 were taxed without considering whether the actual folios indicated on the Bill of Costs were correct. That Item Nos. 80, 82, 83 and 90 were taxed without considering the actual time spent in court.
4. The Reference was opposed vide the affidavit of Harit Sheth sworn on 7<sup>th</sup> June, 2023. He stated that considering that the suit commenced in 2011 and only completed in 2023, that it involved the Plaintiff's own profession and livelihood, the novel points of law involves and documentation, the fee of Kshs.2 million on instructions fees was not excessive.



5. That the accurate figures and times used and indicated in the Bill of Costs were correct. That there was no valid reason to interfere with the discretion of the Taxing Officer, it had not been demonstrated that the taxing officer had erred in law, failed to consider relevant matters or considering irrelevant matters. That in any event the reference had been compromised vide a consent recorded in the Court of Appeal and the costs had already been paid. The matters raised are therefore moot.
6. I have considered the rival contestations and the submissions on record. This is an application by the defendant challenging a ruling on taxation by a taxing officer.
7. The principles applicable in such matters are well known. In *R-vs-Minister for Agriculture and 2 Others Ex-parte Samuel Muchiri W'njuguna* [2006] eKLR, the Court held: -
 

“The taxation of costs is not a mathematical exercise: it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award is so high or so low as to amount to an injustice to one party or the other. The Court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded with manifestly excessive as to justify an inference that it was based on an error of principle.” (Emphasis added).
8. In *Peter Muthoka & Anor –vs – Ochieng and 3 Others* [2019] eKLR, the Court of Appeal held: -
 

“It is not lost to us, as we address that single issue, that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so that High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition of a judicial discretion to be exercised, not capriciously at a whim but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting to mis-justice, then the decision though discretionary may properly be interfered with.”
9. Those then are the parameters within which the Court is to determine the matter at hand. The present reference is based on three grounds; that the instruction fees was excessive and unjustified, that items 3 to 27 and 30 to 40 were taxed without due consideration whether the actual folios indicated were correct and finally that items Nos. 80, 82, 83 and 90 were taxed without considering the actual time taken in court.
10. Under the authority of the case of *Joreth Ltd –vs- Kigeno & Associates* [2002] eKLR, instructions fees is to be based on the value of the subject matter. The value of the subject matter herein was discernible from the judgment. It was a total of Kshs.66, 335,282/=. The minimum instructions fees is about Kshs.940,000/=. The taxing officer properly calculated the same to be Kshs.941,191/=. She reasoned that considering the nature and importance of the matter, its complexity research involved the volume of the pleadings and submissions made, the increased the instruction fees was increased to Kshs. 2 million.
11. In my view, that was an exercise of discretion. The Taxing Officer gave reasons for increasing the instructions fees from Kshs.941,191/= to Kshs.2 million. Can that increase be termed excessive so as to amount to either a mis-justice or unjust enrichment? I do not think so. The taxing officer was not shown to have considered any immaterial matters or failed to take into consideration materials she



was supposed to consider. There is no error of principle and I decline to interfere with her exercise of discretion on this head.

12. On items Nos. 3 to 27 and 30 to 40, the Taxing Officer found that they were taxable under paragraphs 4 to 9 of the 6<sup>th</sup> Schedule of the *Advocates Remuneration Order*. She found that they were drawn as per the scale. The defendant's contention is that the taxing officer did not confirm if the folios indicated in the Bill of Costs were correct.
13. A folio statutorily consists of 100 words or any part thereof. I have looked at the Plaintiff for example, the bill indicated 15 folios. I have counted the same and found the same to be the same in the actual Plaintiff. The defendant did not indicate to the taxing officer the actual discrepancies between the figures shown in the Bill of Costs and the actual documents. In my view, by taxing those items as she did, the taxing officer did not exercise her discretion wrongly.
14. The same reasoning applies to the Items 80, 82, 83 and 90. From the record, it is clear that the dates indicated 19<sup>th</sup> January, 2021, 24<sup>th</sup> May, 2021 and 25<sup>th</sup> May, 2021 the trial proceeded on all those days. The record does not indicate the time spent in Court. As for the 16<sup>th</sup> February, 2023, the parties are indicated to have appeared in open Court at 10.30am when the highlighting of the submissions took place.
15. The defendant has not shown that the amount taxed is not the one which is provided for in the *Advocates Remuneration Order*. It was also not contended that the hearing did not take place on the noted days. I see no reason to fault the taxing officer.
16. In the premises, I find that there was no error in principle on the part of the taxing officer and I dismiss the Reference with costs.

It is so ordered.

**SIGNED AT KISUMU THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2025.**

**F. GIKONYO**

**JUDGE**

