



**Bonyo v Ademba & 4 others (Miscellaneous Application
E001 of 2025) [2025] KEHC 7510 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS APPLICATION E001 OF 2025**

OA SEWE, J

MAY 22, 2025

IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER, 2014

AND

IN THE MATTER OF TAXATION OF ADVOCATE/CLIENT BILL OF COSTS

BETWEEN

MICHAEL ONYANGO BONYO ADVOCATE

AND

JOSEPH OTIENO ADEMBA 1ST RESPONDENT

JAPHETH OCHIENG OKECH 2ND RESPONDENT

THE ESTATE OF JOHN OWILI RAMBE 3RD RESPONDENT

THE LAND REGISTRAR, RACHUONYO REGISTRY 4TH RESPONDENT

HON ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. Before the Court for determination is the Chamber Summons application dated 24th December 2024. It is a Reference filed by the Advocate, Mr. Michael Onyango Bonyo, in respect of the Ruling delivered by Taxing Officer on 4th November 2024 in Homa Bay Chief Magistrates Environment and Land Case No. E080 of 2024. The applicant prayed that:
 - (a) The decision of the Taxing Officer be reviewed and set aside in respect of Item 1 of the Advocate/Client Bill of Costs.



- (b) In the alternative, the Respondent's Bill of Costs in Homa Bay Chief Magistrates Environment and Land Case No. E080 of 2024 in respect of Item 1 be taxed afresh by another Taxing Officer.
- (c) Costs of the application be provided for.
2. The application was premised on the grounds that on the 4th November 2024, the Taxing Officer delivered her ruling wherein the respondent's Bill of Costs was taxed and allowed in the sum of Kshs. 54,700/=; and that in allowing the said amount, the Taxing Officer erred by awarding the basic instructions fees of Kshs. 50,000/= to the 1st and 2nd respondents herein whereas the amount that ought to have been allowed was Kshs. 20,000/=. The applicant contended therefore that the instructions fees awarded by the Taxing Officer was manifestly and unreasonably high, excessive and unjustifiable and therefore constitutes an error or principle.
3. It was further the contention of the applicant that the Taxing Officer failed to take into account the principles applicable under Schedule 7 Paragraph 2 as read with Paragraph 7(1)(b) of the *Advocates Remuneration Order, 2014*, thereby resulting in an erroneous award. The applicant also posited that the Taxing Officer failed to consider relevant factors such as the value of the subject matter, the industry put in and time spent in executing the client's instructions, and therefore failed to exercise her discretion judiciously.
4. The application was supported by the Replying Affidavit sworn by the applicant on 24th December 2024 in which he reiterated the grounds aforementioned. The applicant averred that the Taxing Officer did not specify or offer any explanation justifying the raising of instructions fees from Kshs. 20,000/= to Kshs. 50,000/=.
5. Having considered the application, the affidavits filed in respect thereof and the submissions made by Learned Counsel for the parties, the key issue for the Court's determination is whether the amount awarded by the learned magistrate, namely, Kshs. 54,700, is so manifestly excessive as to amount to an error on principle to warrant a review as sought herein. I say so because it is now trite that a Judge ought not to interfere with the decision of a Taxing Officer merely because the amount awarded was high. It has to be demonstrated that the fee awarded was so manifestly excessive as to justify interference. One of the leading authorities on this principle is the case of *First American Bank of Kenya v Shah & Others* [2002] 1 EA 64, in which it was held thus:
- "The High Court was not entitled to upset a taxation merely because in its opinion, the amount awarded was high and it would not interfere with a Taxing Officer's decision unless the decision was based on an error of principle or the fee awarded was so manifestly excessive as to justify an interference that it was based on an error of principle (*Steel Construction Petroleum Engineering (EA) Limited vs. Uganda Sugar Factory* [1970] EA 141 followed). Under the Advocates (Remuneration) Order, some of the relevant factors to be considered were the nature and importance of the matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge."
6. It was the contention of the Respondent that the Taxing Officer erred in principle by awarding the sum of Kshs. 50,000 for Instructions Fees, granted that the Sale Agreement was drafted by the Purchasers Advocates. Paragraph 7(1)(b) of the *Advocates (Remuneration) Order*, was relied to support the proposition that where the advocate for the vendor does not prepare an agreement for sale, the scale fees should be reduced by one-third, and that this is a factor that was not taken into consideration by the Taxing Officer. Accordingly, it was the Respondent's contention that the Applicant expended



little labour in this matter granted that the transaction was stopped soon after the Sale Agreement was approved.

7. Having perused the record of the proceedings of the lower court, and in particular the impugned ruling dated 4th November 2024. It is manifest that the learned magistrate considered the provisions of the applicable scale, the submissions made by counsel for the parties as well as the cases of *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No. 3)* [1972] EA 162 and *Joreth Ltd v Kigano & Associates* [2002] 1 EA 92 before arriving at her decision. She likewise took into consideration that the value of the subject property was not indicated in the pleadings. Granted that the suit was struck out at the threshold level, the learned magistrate may not have had the benefit of the background information, particularly as to who prepared the agreement.
8. In the premises, I find and hold that the Respondent has failed to demonstrate that the learned magistrate erred in principle in making the award of Kshs. 54,700 as she did. In the result, I find no merit in the Chamber Summons dated 24th December 2024. It is hereby dismissed with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 22ND DAY OF MAY, 2025

OLGA SEWE

JUDGE

