



Owino Kojo & Company Advocates v Bell Estate Agency Limited (Miscellaneous Application E374 of 2022) [2025] KEHC 6974 (KLR) (Commercial and Tax) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E374 OF 2022**

NW SIFUNA, J

MAY 22, 2025

BETWEEN

OWINO KOJO & COMPANY ADVOCATES ADVOCATE

AND

BELL ESTATE AGENCY LIMITED CLIENT

RULING

1. This ruling is on the Chamber Summons Application dated 9th November 2022. It is a Taxation Reference by an Advocate against his Client; seeking the following orders:
 - a. That decision of the taxing officer on item numbers 1, 2, 3, 4, 5, 6, 7, and 8 of the Advocate-Client Bill of Costs dated 11th May 2022 be set aside and the items be allowed as drawn.
 - b. That in the alternative to prayer number 1 above, the taxing officer's decision in respect of item numbers 1, 2, 3, 4, 5, 6, 7, and 8 of the Advocate-Client Bill of Costs dated 11th May 2022 be set aside and the bill of costs be remitted to such other taxing officer as the Court might direct for exercise of his/her discretion and reassessment of the aforementioned items ab-initio.
 - c. That the Certificate of Costs dated 1st November 2022 be set aside and the same be replaced with a Certificate of Costs for Ksh 1,054,530/86.
 - d. That the costs of this Application will be awarded to the Applicant.
2. The Application is premised on the grounds that the taxing officer erred in law and fact in her taxation of item numbers 1,2,3,4,5,6,7, and 8 of the Advocate-Client Bill of Costs dated 11th May 2022; that the decision of the taxing officer to lump item numbers 1,2,3,4,5,6,7, and 8 together and to tax them as one item was unfair to the Advocate, and that the taxing officer erred in law and fact in failing to consider the Client's admission that the advocate drew several lease agreements on behalf of the Client.



3. That the taxing officer erred in law and fact in failing to consider the Client's admission that the Advocate's services "were retained on the basis of drafting lease agreements which were to be registered" and that the Advocate saved precious judicial time and costs on the part of the client by filing just 1 bill of costs instead of 8 separate bills of costs for the 8 separate transactions which were admitted by the Client.
4. Based on the foregoing, the Advocate has in this reference prayed that it is in the interest of justice that the orders sought be granted.
5. In opposition, the Client filed a Replying Affidavit sworn on 5th April 2023 by its director, one PAUL GOGO. In that affidavit, Mr. Gogo has stated that the Advocate's claim for Ksh 1,497,433/83 is unjustified and excessive, as the leases were never finalized. The respondent supported the taxing officer's decision and prayed for the dismissal of the Application.

Analysis and Determination

6. The Reference proceeded by way of written submissions. The Advocate's submissions are dated 22nd April 2023, while the Client's submissions are dated 18th April 2023.
7. The Reference is challenging the taxation decision/ruling that the taxing officer delivered on 27th October 2022. Which taxed this Advocate's Bill of Costs at Ksh 63,660/80. In which decision, the taxing officer noted that the Advocate was instructed to draft the lease agreements referred to in items 1 to 8 of the bill of costs and that the Advocate did indeed draft the same as confirmed in paragraph 13 of the Client's submissions. She noted however, that since the leases were not registered nor signed, the transactions remained incomplete. The taxing officer proceeded to tax item 1-8 in the Bill of Costs collectively.
8. It is not in dispute that the Advocate was instructed to draft the lease agreements referred to in items 1 to 8 of the Bill of Costs. However, the leases were only drafted but not registered nor signed. Thus the transaction remained incomplete.
9. Rule 18 (f) of the Advocates (Remuneration) Order provides as follows:

"In respect of any business referred to in this paragraph which is not completed, and in respect of other deeds or documents, including settlements, deeds of gift inter vivos, assents and instruments vesting property in new trustees, and any other business of a non-contentious nature, the remuneration which has otherwise not been provided for, the remuneration is to be that prescribed in Schedule 5."
10. The taxing officer taxed items 1-8 in the Bill of Costs in accordance with this legal provision. Upon perusing the subject ruling of the taxing officer, I find no reason to interfere with the decision. It is an established position of the law. that the court will only interfere with the decision of a taxing officer in cases where there has been shown to be an error of principle. This was held in the Court of Appeal case of Kipkorir, Tito & Kiara Advocates v. Deposit Protection Fund Board [2005] eKLR. Where this Court observed as follows:

"On 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."
11. I find that the taxing officer correctly addressed herself on the principles of taxation in arriving at her ruling. Consequently, this Reference is hereby dismissed with costs.



DATED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF MAY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

