



**Omambo v Ogutu (Miscellaneous Reference Application
E004 of 2025) [2025] KEHC 5857 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5857 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS REFERENCE APPLICATION E004 OF 2025**

DK KEMEL, J

MAY 9, 2025

BETWEEN

JOHN ONYANGO OMAMBO APPELLANT

AND

JOHN OKELLO OGUTU RESPONDENT

*(Being a reference from the decision of the Taxing officer Hon. T. K.
Nambisia (RM) Ukwala PMCC No. EO80 of 2023 dated 7/1/2025)*

RULING

1. The Applicant herein filed an application dated 13/1/2024 seeking the following reliefs namely:
 1. Spent.
 2. Spent.
 3. Spent.
 4. That the decision of the Taxing Master delivered on 7/1/2025 be set aside and be taxed afresh by this Honourable Court.
 5. That the costs be borne by the Respondent.
2. The application is supported by the affidavit of Mary Ong'onga, learned Counsel for the Applicant sworn on even date as well as grounds set out therein. The Applicant's gravamen is inter alia; that the sums arrived at by the taxing officer is excessive and punitive; that the Applicant is aggrieved with the said ruling; that the taxing officer failed to tax the costs as prescribed under Schedule 7 of the [Advocates Remuneration Order 2014](#); that the learned taxing officer made serious errors in principle and came to a wrong decision; that the said taxation was irregular and should be taxed afresh.



3. The Respondent opposed the application vide a replying affidavit sworn on 21/1/2025 wherein he averred inter alia; that the Applicant's counsel had earlier sought to reach a consent on the issue of costs but later failed to come up with any forcing the court to proceed and direct the parties to file and exchange written submissions; that the Applicant failed to file submissions and that the court went ahead to assess the costs in accordance with the Advocates Remuneration Order; that the Applicant is intent on delaying the final determination of the matter; that the application lacks merit and should be dismissed with costs.
4. The application was canvassed by way of written submissions. Both parties duly complied.
5. I have considered the application and the submissions filed. I find the only issue for determination is whether the application has merit.
6. Setting aside of decisions of a Taxing Master is provided for under paragraph 11 of the [Advocates Remuneration Order](#) which provides as follows:
 1. Should any party object to the decision of the taxing office, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 2. The taxing officer shall forthwith record and forward to the Objector the reasons for the decision on those items and the Objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons which shall be served on all the parties concerned setting out the grounds of the objection.
7. It is noted that the Applicant did file a letter on 7/1/2025 addressed to the taxing officer seeking the reasons for the decision on the assessment of costs dated 7/1/2025. In the said letter, the disputed items were duly identified. Apparently, the taxing officer did not avail the requisite reasons and that the Applicant lodged the present application which is within the stipulated period provided for under Rule 11(2) of the [Advocates Remuneration Order](#).
8. I have perused the ruling of the Taxing Officer Hon. T. K. Nambisia dated 7/1/2025 and find that no reasons were provided and further that none of the items were assessed individually. The decision read as follows:

“Parties were directed to file written submissions by close of business on 3rd January 2025. As at the time of writing my ruling, there were no submissions, particularly from the Defendant's learned counsel, opposing the bill of costs. In the upshot, I find the same is unopposed. I assess the same as proved. Certificate to issue.”

Indeed, the Applicant did not file submissions. However, even if parties failed to file submissions, the taxing officer is under obligation to assess each item in accordance with the provisions of Schedule 7 of the [Advocates Remuneration Order](#) 2014 as the matter related to party and party bill of costs. It is noted that the taxing officer did not allude to the said Schedule or go through item by item before satisfying herself that the items tallied with what Schedule 7 thereof provided. It is clear that the learned taxing officer did not bother to consider the Respondent's bill on merit and went ahead to allow it as prayed. It is also clear that the said learned taxing officer appeared to be punishing the Applicant for failing to file his submissions as directed. I find this was in error.
9. It is noted that the taxing officer was issued with a notice dated 7/1/2025 by the Applicant seeking for reasons behind the decision and that several items therein were listed as being contested by the Applicant. As at the time of filing this application, there seems to be no reasons furnished as requested. Nevertheless, this court will proceed and consider the issues raised. It is trite that a Judge will not



normally interfere with the exercise of discretion by a taxing officer unless the taxing officer erred in principle in assessing the costs and arrived at an award which is manifestly excessive or low. The principles of taxation were enunciated in the case of *Premchand Raichand & Another v Quarry Services of East Africa Ltd & Others* [1972] EA 162 where the court held as follows:

- a) A successful litigant ought to be fairly reimbursed for costs he has had to incur.
- b) That costs be not allowed to rise to such level as to confine access to justice to the wealthy.
- c) That the general level of remuneration of Advocate must be such as to attract recruits to the profession.
- d) That as far as possible, there should be consistency in awards made.
- e) That there is no mathematical formula to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances.
- f) The taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically.
- g) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party”

Again, in the case of *First American Bank of Kenya Ltd v Gulat P. Sha & Others* [2002] EA 65, the taxing master is vested with discretion to increase or decrease instruction fee upon taking into consideration the importance of the case or matter, amount involved, interest of the parties, general conduct of proceedings.

10. Looking at the foregoing authorities and Schedule 7 of the [Advocates Remuneration Order](#), I now proceed to consider the items in the bill of costs that were objected to by the Applicant herein.

i. Item 1 (instruction fee)

It is noted that the Respondent/Plaintiff had drawn the same at Kshs95,000/= for an award of Kshs704,300/=. The [Advocates Remuneration Amendment order](#), 2014 at Schedule 7 on instruction fees, provides for an award of between Kshs500,000 – Ksh 1000,000/= to be assessed at minimum costs of instruction fee at Kshs65,000/= -Kshs90,000/=. Thus, the items herein would have been taxed at Kshs90,000/= on the higher scale. There was therefore an excess sum of Ksh5,000/= which ought to have been taxed off.

ii. Item 2,3,4 and 5 (drawing of pleadings)

Looking at the above items, the same are not provided for under Schedule 7 Section A (11) of the [Advocates Remuneration Amendment Order](#), 2014 which governs matters before the subordinate courts. The only document provided for is the drawing and commissioning of affidavit of service. In a party and party costs, the said items are provided for in matters before the High Court. This is not one such case since it is a lower court matter for which such claims are not allowed.

iii. Item 6 (perusal)

Likewise, this is not provided for under Schedule 7 Section A (11) of the [Advocates Remuneration Amendment Order](#), 2014 which governs matters before subordinate courts.



The same is to be covered by the instruction fee as envisaged under Schedule B Section A on the notes as follows:

“When an order has been made in general terms for payment of costs by either party and an advocate has been employed, those costs, in addition to the court fees, shall be computed under this Schedule which shall be the minimum fee, and shall include (except as may be provided) taking instructions, drawing or perusing documents, pleadings or similar documents, engrossing and filing documents, and all necessary attendance at court or chambers 2. Costs exceeding the scales in this schedule may be charged on special grounds arising out of the nature, importance, difficulty or urgency of the case. In that regard, the same ought not to have been allowed by the taxing master.

iv. Item 11, 12 and 13 (Services)

As far as these items are concerned, it is noted that Section A 10 of the Schedule 7 of the [Advocates Remuneration Amendment Order](#) 2014 provides;

Service -

- (i) Within three kilometres of subordinate court or district registry of the subordinate court. Kshs1,400/=.
- (ii) for traveling and subsistence expenses incurred by the process serve, charge the actual expense incurred.
- (iii) where service is by post or by any other mode of Substituted service, charge the actual expense.”

It is noted that there was no evidence as to the actual costs of expenses incurred by the process server in service of the pleadings. In fact, the enumerated services were done via email thus would not warrant the amounts issued indicated by the Respondent and confirmed by the taxing master. In that regard, the taxing officer ought not to have allowed the items as prayed.

v. Item 22, 23, 24, 25 and 27 (disbursements for filing of plaint, procuring attendance of witnesses and filing of bill of costs)

These are the items that ought to be confirmed by proof of receipts which were never provided. It is instructive that the Respondent’s Bill of Costs dated 12/9/2024 does not include the requisite receipts to back the claim and hence the items should not have been allowed to sail through.

vi. Item 14,15,17,19,20 and 20 and 21 (Court Attendance of 5/9/2023, 9/1/2024, 26/7/2024 and 6/8/2024)

The above items should be analyzed in light of the [Advocates Remuneration Amendment Order](#) 2014 at Schedule 7part A which provides:

“ 6 On any necessary application to or attendance on Magistrate in court or chambers Kshs1400/=.

7. Attendance at the hearing:



- (i) for the first whole day Kshs5,000/= where the hearing lasts more than one full day.
- (ii) For each part after the first Ksh2,100/=.

It is clear that the learned taxing officer used the wrong principle in assessing the above items which were clearly excessive.

- 11. As can be seen from the foregoing observations, I find that the taxing master erred in principle when she failed to assess the party and party costs item by item. The Respondent's bill was clearly not drawn to scale as ordered by the taxing master as she did not use the *Advocates Remuneration Order* (Schedule 7) to assess the said bill of costs.
- 12. In the result, it is my finding that the Applicant's application dated 13/1/2025 has merit. The same is allowed. The ruling by the taxing master dated 7/1/2025 is hereby set aside with an order that the Respondent's bill of costs dated 12/9/2024 be assessed afresh before a different taxing officer. Each party to bear their own costs.

DATED AND DELIVERED AT SIAYA THIS 9TH DAY OF MAY, 2025.

D. KEMEI

JUDGE

In the presence:-

N/A M/s Ongonga for Applicant

N/a Maua for Respondent

Okumu Court Assistant

