



**Asige Keverenge & Anyanzwa Advocates v Zubedi (Miscellaneous Application
E023 of 2024) [2025] KEHC 10653 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E023 OF 2024**

**G MUTAI, J
JULY 9, 2025**

BETWEEN

ASIGE KEVERENGE & ANYANZWA ADVOCATES APPLICANT

AND

BADAR MOHAMED ZUBEDI CLIENT

RULING

1. What is before the court is a Chamber Summons application dated 13th February 2025, vide which the respondent/applicant seek the following orders: -
 1. Spent;
 2. Spent;
 3. That the Ruling dated 14th January 2025 of the taxing master Honorable Hon. Noelyne Reuben, Deputy Registrar High Court Family Division, be set aside entirely or in the alternative re-assessment be done in respect of items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 85, 86 of the Client Advocate Bill of Costs dated 19th June 2024;
 4. That the court be pleased to remit the Client Advocate Bill of Costs dated 19th June 2024 to another Taxing Officer for re-taxation of items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 85, 86 of the Client- Advocate Bill of costs dated 19th June 2024; and
 5. That the Costs for this Application and Reference be granted to the Applicant.



2. The respondent/applicant is aggrieved by the decision of the taxing officer, in particular, her findings on the instruction fees payable by him to the applicant/respondent on account of the objection to the confirmation of grant which was filed on his instructions and at his behest, which he contends is contrary to paragraph 1(f) of Schedule 10 of the Advocates Remuneration Order. He argued that the taxing officer wrongly applied paragraph 1(a) of the said Schedule and hence arrived at fees which, in his view, are colossal. The taxing officer assessed the instruction fees at Kes 42,000,000/-.
3. Although the respondent/applicant objected to items 1 to 11, 13, 26, 27, 28, 29, 36 to 43, 48 to 58, 68, 69, 71, 72, 74, 75, 77, 78, 79, 85 and 86, the objection in respect of the said items was abandoned as the parties opted to submit on the instruction fees only. A consent to that effect was entered into on 26th February 2025. The respondent/applicant contended that, based on the wrong application of the law, the quantum of costs assessed by the taxing master was erroneous. That being the case, there was a valid reason for the court to intervene and reverse the decision reached by the taxing officer. Furthermore, it was in the interests of justice and fairness to grant the sought orders.
4. The matter was canvassed by way of written submissions. The submission of the respondent/applicant is dated 24th March 2025. That of the applicant/respondent is dated 22nd April 2025.
5. In his submissions, Mr Hassan, learned counsel for the respondent/applicant, submitted that the taxing officer ought to have assessed the bill under paragraph 1 (f) of Part A of the 10th Schedule. Which provides that: -

“To lodge an objection to grant, or a citation or other application or proceedings under the law not otherwise provided for in this Schedule; such As the taxing officer shall consider reasonable, but not less than Kes.10,000.”

This, it was urged, was because the objection filed in the succession proceedings involving the respondent/applicant amounted to other “other application or proceedings under the law not otherwise provided for.”

6. Counsel relied on the decision of the court in *Mutai t/a Mutai Kipkemoi Advocates v Cheruiyot* (Miscellaneous Reference Application E065 of 2023) [2024] KEHC 5879 (KLR), where the court held as follows: -

“Schedule 10 of the Advocates (Remuneration) (Amendment) Order, 2014 part A 1 (f) provides that; to lodge an objection to grant, or a citation or other application or proceedings under the law not otherwise provided for in this schedule; the taxing officer shall award a reasonable sum, but not less than Kes.10,000/-. Whereas part B provides that in an advocate-client bill of costs, the fees prescribed in part A in a contested matter under the law as between an advocate and client, shall be increased by 50%. In the contested bill of costs, the taxing master exercised her discretion and awarded a sum of Kes.50,000/- which is reasonable in the circumstances of this case, whereby the respondent’s instruction to the applicant was limited to lodging an objection to the grant by filing summons for revocation and/or annulment of the grant.”

7. Counsel urged that there were grounds to interfere with the discretion of the taxing officer as she based her decision on error of principle and did not establish the basic amount of instruction fees before increasing it by half. Counsel relied on the case of *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] KEHC 1277 (KLR) and that of *Brampton Investment Ltd v Attorney General & 2 others* (2013) eKLR.



8. The applicant/respondent, on the other hand, contended that what counsel filed was an objection proceedings and not a protest. He urged that objection proceedings under Rule 40 (6) of the *Probate and Administration Rules* were not simple proceedings and that to refer to the matter, the subject of taxation as a protest was to trivialise it. He urged that the proceedings were hotly and extensively contested and lasted for over 2 years.
9. Counsel for the applicant/respondent set out the principles applicable when the High Court is reviewing the assessment of costs by a taxing officer. He contested that the award of a taxing officer should not be interfered with unless it was based on an error of principle or that there were otherwise good grounds to do so. Counsel referred to the decision of the court in *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others* [2006] eKLR, *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR), *Ochieng, Onyango, Kibet & Ohaga Advocates V Adopt A Light Limited* [2007] KEHC 1453 (KLR), *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] KEHC 1277 (KLR) and *Mount Elgon Beach Properties Limited v Mwanongo & another* [2023] KECA 277 (KLR).
10. Mr Asige submitted that the taxing officer applied the right principles and reached a correct decision. In particular, she considered the subject matter or the instructions and gross capital value of the subject estate, which she reckoned was Kes.1,000,000,000/-, and noted all other relevant matters. He prayed that this court should not interfere with the decision.
11. Regarding the quantum of applicable fees, it was urged that Part A of Schedule 10 applied to uncontested matters and that no provision was made for contested matters. Counsel urged that paragraph 1 (f) provided for the minimum amount of fees and that the court was bound to consider, when exercising its discretion, a figure that is, in the circumstances of the case, just and appropriate.
12. Counsel therefore prayed that the reference be dismissed.
13. I have considered the reference and the submission by the parties. Does the reference have merit? What orders should be issued in this case?
14. What then are the principles applicable when a taxing officer is assessing an advocate’s bill of costs? In *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR), the Court stated as follows:-

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”
15. A similar holding was made in the case of *Ochieng, Onyango, Kibet & Ohaga Advocates V Adopt A Light Limited* [2007] KEHC 1453 (KLR).
16. It isn’t in dispute that the proceedings herein were succession proceedings. The applicant/respondent was instructed to file an objection to the grant being made. In my view, such proceedings could not be assessed under paragraph 1 (a) of Part A of the Schedule 10 as the said provision relates to a petition for the grant of probate or letters of administration, nor 1(b), 1(c), 1(d) or 1 (e). The applicable provision is 1 (f), which we have already referred to.



17. The said provision states that the taxing officer may allow any amount she considers reasonable, provided that it is not less than Kes.10,000/-.
18. In exercising her discretion under paragraph 1 (f), the taxing officer may not make up figures from thin air. She must tax the bill based on sound considerations and reason, and not whimsically or capriciously. She will consider the labour required to carry out the instructions, the nature and importance of the matter, the interests of the client, and the complexity of the dispute. Given the foregoing, was the taxing officer correct in assessing the instruction fees at Kes 42,000,000?
19. As I have indicated, the taxing officer used paragraph 1 (a) of Part A of Schedule 10, rather than paragraph 1(f), as she should have. In any case, even if she had been right, 1% of Kes.1,000,000,000/- cannot be Kes 28,000,000. In my view, the taxing officer made an error of both tabulation and principle.
20. Having so determined, is the error so grave that this court should interfere? The law is that the court should not interfere with the exercise of discretion whimsically.
21. In the case of *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] KEHC 1277 (KLR), Ringera, J, as he then was, held as follows:-

“I have considered the above submissions. 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 an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle. (See *Steel & Petroleum (e.a) 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.“
22. The Supreme Court of Uganda in *Bank of Uganda v Banco Arabe Espaniol*, civil application No 29 of 2019 stated that:-

“...[S]ave in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs, are matters which the taxing officer is particularly fitted to deal, and which he has more experience than the judge. Consequently, a judge will not alter a fee allowed by a taxing officer, merely because in his opinion, he should have allowed a higher or lower amount...Even if it is shown that the taxing officer erred in principle, the judge should interfere only if satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties.”
23. In this case, it is clear that the taxing officer used the wrong principles and made an assessment of the instruction fees payable that was inordinately large. The said assessment was manifestly excessive. An inference can be drawn that it was based on an error of principle and did not consider relevant factors.
24. In the circumstances, it is my view that this court is justified in interfering with the assessment by the taxing Officer by setting it aside and substituting it with a different figure that is consistent with the applicable principles and is not excessive or unreasonable. In my view, taking into account the nature of the matter, the interest of the respondent/applicant, the kind of effort and time that the applicant/ respondent put in, the large volume of documents that counsel, Kes.300,000/- would be sufficient consideration, as the instruction fees.



25. In the circumstances, I set aside the assessment of Kes.42,000,000/- as the instruction fees and assess the instruction fees at Kes.300,000/-, which pursuant to Part B of the Schedule 10 I increase by 50% to Kes.450,000/-.

26. It is so ordered.

DATED AND SIGNED IN MOMBASA THIS 9TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Hassan, for the Applicant;

Mr Asige, for the Respondent; and

Arthur - Court Assistant.

