



Bruce Odeny & Co. Advocates v Pride Kings Services Limited (Civil Miscellaneous Application E101 of 2023) [2025] KEHC 9771 (KLR) (7 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL MISCELLANEOUS APPLICATION E101 OF 2023**

A MABEYA, J

JULY 7, 2025

BETWEEN

BRUCE ODENY & CO. ADVOCATES APPLICANT

AND

PRIDE KINGS SERVICES LIMITED RESPONDENT

RULING

1. This ruling determines the Chamber Summons dated 14/3/2025. The same was brought under Schedule 6 and Paragraph 11 (1) of the Advocates Remuneration Order. It is a reference against the ruling of the taxing master dated 27/2/2025. It sought to set aside the said ruling and substitute therefor an order taxing the applicant's bill in the sum of Kshs. 1,006,990/- as sought in the Bill of Costs dated 27/7/2023.
2. The application was grounded on the grounds set out in the body thereof and in the supporting affidavit of Bruce Odiwuor Okombo Odeny, Advocate.
3. It was the applicant's case that the taxing master erred in principle in taxing down the instruction fees in its Bill of Costs dated 27/7/2023 from Kshs. 518,297/- to Kshs. 144,396/-. That this scaled down the getting up fees which is one third of the instruction fees from Kshs. 172,766/- to Kshs. 48.132/-.
4. The parties filed submissions in the determination of this matter. The applicant submitted that the taxing master misdirected herself in reducing its instruction fees inordinately merely because the matter was settled by a consent judgment before the first hearing whereas it was entitled to instruction fees notwithstanding the stage at which the suit was concluded. Reliance was placed on section 6 Rule 1 (c) of the Advocates Remuneration Order as well as the case of Njogu & Co. Advocates v Panafcom Engineering Ltd (2006) eKLR.



5. That the value of the subject matter was Kshs. 21,219,795/-. That in view of the fact that the matter was concluded before the first hearing, the instruction fees due to it was 85% of the same being Kshs. 440,552.39. That it was not entitled to getting up fees.
6. The applicant further submitted that he was entitled to the award under item 20 as the taxing master ought to have taken judicial notice of the necessity for communication between an advocate and his client. That in the premises, this court ought to set aside the decision of the taxing master and substitute the same with an order for Kshs. 571,100.15 or other appropriate orders.
7. On the other hand, the respondent submitted that the applicable schedule in this matter is Schedule 7 of the Advocates Remuneration Order that provides for remuneration on High Court matters and as such the taxing master correctly directed her mind in arriving at the conclusion she did.
8. I have considered the record and the submissions of the parties. The principles applicable in such an application are well settled. In *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the Court of Appeal held: -

“The learned judge like the taxing officer was exercising judicial discretion when he allowed the reference. This Court cannot interfere with the exercise of that discretion unless it is shown that the learned judge acted on the wrong principles of law. The appeal to this Court from the decision of a judge on reference from a taxing officer is akin to a second appeal and should be governed by Section 72 (1) of the *Civil Procedure Act*. In our view, such an appeal can only be allowed on any of the three grounds specified in Section 72 (1) of the *Civil Procedure Act*, that is to say, if the decision is contrary to law or some usage having the force of law; or the decision has failed to determine some issue(s) of law or usage having the force of law or where there is a substantial error or defect in the procedure provided by law which may possibly have produced error or defect in the decision on the case upon merits.”

9. Further, in *Peter Muthoka & another v Ochieng & 3 others* [2019] eKLR, the Court of Appeal held: -

“It is not lost to us ... that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the 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 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 in mis-justice, to borrow the holding in *Mbogo -vs- Shah* (Supra), then the decision though discretionary, may properly be interfered with. See also *Attorney General Of Kenya -vs- Prof. Anyang' Nyong'o & 10 Others*, EACJ App. No. 1 OF 2009.”

10. And in *Republic v Competition Authority Ex Parte Ukwala Supermarket Ltd & Anor* [2017] eKLR, the court held: -

“25. The circumstances under which a Judge of the High Court interferes with the taxing officer's exercise of discretion are now well known. These principles are,

- (1) that 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 was manifestly



excessive as to justify an inference that it was based on an error of principle;

- (2) it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or 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;
- (3) if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;
- (4) it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;
- (5) the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
- (6) the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;
- (7) the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of *First American Bank of Kenya vs. Shah and Others* [2002] 1 EA 64.”

11. The applicant has faulted the taxing master for reducing its instruction fees inordinately merely because the matter was settled by a consent judgment before the first hearing whereas it was entitled to instruction fees notwithstanding the stage at which the suit was concluded.
12. It is not disputed that the value of the subject matter in this matter was Kshs. 21,219,795. A defence was filed to the claim. In their oral submissions, the parties were agreeable that the applicable schedule was Schedule 6(1) (c) of the Advocates Remuneration Order.
13. That Order provides the applicable instruction fees where a suit is settled prior to confirmation as 85% of the fee chargeable under item 1 (b) of the Schedule.
14. Bearing the aforementioned principles in mind and guided by the provisions of Schedule 6 1 (c) of the Advocates Remuneration Act, I am of the finding that it was an error of principle on the part of the Taxing Master in the calculation of the instruction fees payable where the value of the subject matter is ascertained as Kshs. 21,219,795.



15. The Applicant conceded that he was not entitled to getting up fees as awarded and I am in agreement as the matter was settled prior to commencement of hearing.
 16. As regards, Item 20, the same is a disbursement and the applicant ought to have produced evidence to support the same.
 17. The upshot of the above is that with the result that the Taxing Master's decision on the instruction fee and getting up is set aside. All other findings on the taxation are upheld. The matter is remitted back for taxation by any other Taxing Master other than G.N. Barasah. Each Party is to bear its own costs.
- It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

