Havi & Company Advocates v Purma Holdings Limited & 2 others (Miscellaneous Civil Cause E032 of 2023) [2024] KEHC 3690 (KLR) (Anti-Corruption and Economic Crimes) (18 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3690 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

ANTI-CORRUPTION AND ECONOMIC CRIMES

MISCELLANEOUS CIVIL CAUSE E032 OF 2023

EN MAINA, J

APRIL 18, 2024

BETWEEN

HAVI & COMPANY ADVOCATES ..... ADVOCATE

AND

PURMA HOLDINGS LIMITED ..... 1ST CLIENT

MARY WAMBUI MUNGAI ..... 2ND CLIENT

PURITY NJOKI MUNGAI ..... 3RD CLIENT

RULING

Introduction

1. The Advocate/Applicant represented the Respondents in a criminal case in the Chief Magistrates Anti-Corruption Court which was withdrawn before it could go for trial. The Respondents were charged with eight (8) counts of offences under the *Tax Procedures Act*. The offences pertained to omission to include certain sums of monies in the tax returns filed by the Respondents. Upon withdrawal of the case the parties could not agree on the fees payable and so the Advocate/Applicant filed a Bill of Costs for a sum of Kshs.90,292,062/49 for taxation pursuant to Rule 49A and Schedule 5 Part II of the Advocates Remuneration Order. After hearing and considering the submissions by both sides the Hon. Deputy Registrar, who is the taxing officer herein, taxed the bill at Kshs.1,182,190.80. Being aggrieved by the decision of the taxing officer the Advocate/Applicant filed this reference by way of the Chamber Summons dated 18th December 2023 which seeks orders that the decision of the Taxing Officer delivered on 14th December 2023 in respect of the instruction fees be set aside and the item be assessed by this court and/or in the alternative the instruction fees be remitted back to the taxing officer for taxation afresh and that the costs of this application be provided for.

2. The application is made under Rule 11 of the Advocates Remuneration Order 2014 and is premised on the grounds inter alia:-

   i. Instruction fee is an independent and static item, chargeable once, and is not affected by the stage of the matter or manner of its termination or conclusion. The Taxing Officer erred in law, in pegging the instruction fee due to the Applicant to the withdrawal of Anti-Corruption Case No E028 of 2021 before hearing;

   ii. Instruction fee is earned and due upon an Advocate accepting to act, and the matter need not have been heard and determined on merit for the Advocate to be entitled to full instruction fee. The Taxing Officer erred in law, in holding that the withdrawal of Anti-Corruption Case No E 028 of 2021 before hearing was a ground for the reduction of instruction fee by Kshs.76,482,909.91;

   iii. An Advocate is entitled to the increase of instruction fee by 50%, a principle that is not excluded in criminal matters. The Taxing Officer erred in law, in failing to increase instruction fee due to the Applicant for services rendered in Anti-Corruption Case No E 028 of 2021 by 50% on account of Advocate and Client costs; and

   iv. The instruction fee of Kshs 900,000.00 is so disproportionate in the circumstances of the case, and the value for money in the provision of legal services that it does not accord with the principle set out in Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd (1972) E A 162 that:

   That the general level of remuneration of advocates must be such as to attract recruits to the profession.

   v. The Taxing Master did not exercise discretion judiciously in the assessment of instruction fee at Kshs 900,000.00 in that:-

      No due consideration and regard was made to the nature or importance of the matter, being the Respondents' liability to conviction in Anti-Corruption Case No E028 of 2021, long jail sentence and their payment of a fine of double the tax they were alleged to have evaded being Kshs 3,417,573,774.00 multiplied by two;

   vi. No due consideration and regard was made to the value of the subject matter of Kshs 3,417,573,774.00 which was self-evident in the charge sheet in Anti-Corruption Case No E 028 of 2021;

   vii. No due consideration and regard was made to the interest of the parties to wit, acquittal of the charges in Anti-Corruption Case No E 028 of 2021 irrespective of whether through a hearing or otherwise early termination of the case, the latter outcome of which was attained;

   viii. No due consideration and regard was made to the complexity of the matter and all other circumstances of the case namely, a voluminous, documented and weighty tax evasion criminal charge in Anti-Corruption Case No E 028 of 2021; and

   ix. No precedent was cited or comparative decisions on taxation referred to as a guide for arriving at Kshs 900,000.00 as fair and reasonable instruction fee due to the Applicant in the conduct of Anti-Corruption Case No E 028 of 2021.

x. There is a paucity of precedent in the assessment of instruction fee in criminal matters, and it is imperative that guidance on the subject be given by the High Court for the benefit and the growth of law, and guidance to legal practitioners and judicial officers in this field.

xi. It is just and lawful that the decision of the Taxing Officer delivered on 14th December, 2023 in respect to item 1 (instruction fee) in the Applicant Bill of Costs dated 15th September, 2023 be set aside, instruction fee assessed by the High Court or in the alternative, the Bill of Costs remitted for taxation afresh.

3. The application is supported by the affidavit of NELSON HAVI, an Advocate in the Applicant firm, sworn on 18th December 2023 which reiterates the grounds on the face of the application and further deposes that the Advocate was instructed and acted for the Respondents in the criminal proceedings until the withdrawal of the case and acquittal of the Respondents on 10th January 2023; that the value of the subject matter was ascertainable from the charge sheet dated 6th December 2021 as the amounts stated in count I to Count VIII amounted to a sum of Kshs. 3,417,573.774.

4. He deposed that the charges against the Respondents were based upon Sections 97(a), 104(3), 94(1), 104(1), and 95 of the *Tax Procedures Act* where the prescribed sanctions under Section 104(3) was a fine not exceeding ten million shillings or double the tax evaded or imprisonment for a term not exceeding ten years, or to both.

5. Counsel deposed that on 5th September 2023, he raised an itemized fee note for settlement by the Respondents which was not responded to or acted upon. He therefore filed the Bill of Costs dated 15th September 2023 seeking instruction fees of Kshs.77,382,909.91. however, on 14th December 2023, the Taxing Officer assessed the instruction fee at Kshs. 900,000 and taxed off Kshs. 76,482,909.91 on grounds that the value of Kshs. 3,417,573,774 was erroneous and further that the case was withdrawn before hearing.

6. He deposed that he verily believes that the Taxing Officer made an error of principle in the assessment of instruction fees as the value of the subject matter is a factor for consideration in the assessment of instruction fees in criminal matters; that it was erroneous to hold that the value of the subject, Kshs.3,417,573,774, was erroneously applied as the case was not a recovery suit.

7. He further deposed that instruction fee is an independent and static item, earned and due upon an advocate accepting to act, chargeable once, and it is not affected by the stage of the matter or manner of its termination or conclusion. The taxing officer had errored in law, in pegging the instruction fees due to the withdrawal of the case before hearing.

8. He further deposed that an advocate is entitled to the increase of instruction fees by 50%, a principle that is not excluded in criminal matters.

9. He asserted that the taxing Master did not exercise her discretion judiciously in the assessment of the instruction fees as no due consideration was made to the nature or importance of the matter, being a conviction, long jail sentence and payment of double the tax allegedly evaded. No due regard was made to the value of the subject matter which was evident on the charge sheet or the interest of the parties to wit and eventual acquittal of the charges irrespective of whether it was through a hearing or termination. No consideration was made to the voluminous, documented and weighty tax evasion criminal charge. No comparative decision or precedent was cited as a guide to arriving at Kshs. 900,000 as fair and reasonable instruction fees.

10. He deposed that he believes that it is just and lawful that the decision of the Taxing Officer delivered on 14th December 2023 in respect of the instruction fee in the Applicant's Bill of Costs dated 15th

September 2023 be set aside and that item be assessed by the High Court or in the alternative, the Bill of Costs be remitted for taxation afresh.

The Respondents' case

11. The Respondents opposed the application through a Replying Affidavit dated 5th February 2024, sworn by Mary Wambui Mungai, where she deposed that indeed the Respondents had instructed the Applicant to act for them in the criminal proceedings.

12. She deposed that the taxing officer had properly and judiciously exercised her discretion in assessing the instruction fees, having considered all the factors of the criminal proceedings, and correctly applying Schedule V of the Advocates Remuneration Order and that this court can only interfere with the decision if it was outrightly wrong or improper.

13. She further deposed that the taxing officer had applied the correct principles in arriving at her decision, being that there was no identifiable legal criteria applied by the Applicant to arrive at the instruction fees sought on the Bill of Costs, no substantive hearing was ever conducted as the case was withdrawn by the prosecution before it was set out for hearing and that the Applicant was only involved in plea-taking, bail hearing and five applications, four of which were similar and not complex.

14. She also deposed that the fees charged by the Applicant are manifestly excessive, and would prejudice the Respondents resulting in an injustice. Further, that allowing such exorbitant fees would hinder access to legal services and limit legal representation only to the wealthy thus the application is without merit and ought to be dismissed with costs to the Respondents.

The Advocate/Applicant's submissions

15. Learned Counsel for the Applicant, submitted that Rule 11 (1) and (2) of the Advocates Remuneration Order is the enabling law on the procedure for challenging the decision of a Taxing Officer while the Principles upon which a reference is made taxation are formulated in texts and case law. He relied on Judicial Hints on Civil Procedure, Richard Kuloba, 2nd Edition, where the author underscored the principles relevant to the determination of the reference. It states: -

> " Another consideration is that the general level of remuneration of advocates must be such as to attract worthy recruits to an honourable profession . . . court will not interfere in such matters save in the exceptional case where the sum allowed is so large or so low, having regard to the nature of the suit or proceedings, that the court is driven to the conclusion that the taxing officer must have acted upon a wrong principle."

16. He also relied on the court's finding in the case of Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd (1972) EA 162 where the court held: -

> " The general level of remuneration of advocates must be such as to attract recruits to the profession, and 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."

17. He submitted that Kshs. 900,000 is so low an amount given that the value of the subject matter was Kshs. 3,417,573,774. Further, that the Taxing Officer's findings that the criminal case was not a recovery suit thereby rendering irrelevant the value of the subject matters and that the withdrawal of the case before hearing had a bearing on the instruction fees, were errors in principle.

18. Counsel further relied on Paragraph 1, Part II of Schedule 5 of the Advocates Remuneration Order which provides:-

> " Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule." (emphasis Applicant's)

19. The Applicant contended that the value of the subject matter in the criminal proceedings is ascertainable and was relevant in the assessment of instruction fees. The finding that it was not a recovery suit and thus irrelevant was an error of principle.

20. Counsel further asserted that the consideration that the matter was withdrawn before the hearing date was not supported by law as instruction fee is not reduced by the stage or manner of termination of the case. He relied on the case of First American Bank of Kenya Ltd V Gulab P Shah & 2 Others (2002) eKLR where the court held:

> " . . . full instructions fees to defend a suit is earned the moment a defense has been filed and the subsequent progress of the matter is irrelevant to that item of fees. In the premises, I don't consider that the taxing officer erred in not taking into account that the suit was withdrawn only three days after it was filed and that no hearing had taken place."

21. Counsel thus submitted that the instruction fee is not affected by the stage of the matter or manner of its termination or conclusion. He conceded however that there is shortage of precedent of ascertaining the instruction fees in criminal cases. Nevertheless, he submitted that there is no prohibition in applying a comparative approach with the decisions made in respect of civil claims and judicial review proceedings. He further relied on the case of Otieno Okeyo & Co. Advocates v Stone Contractors Limited & Anor (ACEC Appeal 7 of 2020)(2022) KEHC 11418 (KLR)(Anti-Corruption and Economic Crimes)(12 May 2022) where the taxing officer relied on the value of the subject matter of Kshs. 130,000,000 to award an instruction fee of Kshs. 2,045,000. He contended that based on the above reasoning, the instruction fee awarded in the present matter was low.

22. Counsel also submitted that the taxing officer did not exercise due discretion in the assessment of instruction fees. No due consideration was made to the nature and importance of the matter being that the Respondents were liable upon conviction to long jail sentences and a high fine; no due regard was made to the value of the subject matter and no regard was made to the interest of the parties; no regard was given to the complexity of the matter, the voluminous documents and weighty tax evasion criminal charges; no precedent or comparative decisions on taxation were cited as a guide for arriving at Kshs. 900,000 as being fair and reasonable instruction fees and the decision of the taxing officer is thus liable to challenge if the formula of arriving at the figure is not explained as set out above.

23. Counsel urged this Court to set the decision of the taxing officer on the instruction fees aside and re-assess the instruction fee or in the alternative, remit the Bill of Costs for taxation afresh with guidance on the principles to be applied by the Taxing Officer.

24. The Applicant also relied on the following cases in their submissions:Otieno, Ragot & Company Advocates V Kenya Airports Authority (2021) eKLRRepublic v Kenya Revenue Authority Ex Parte Middle East Bank Kenya Limited (2012) eKLRInsurance Regulatory Authority v Waweru Gatonye & Company Advocates

The Respondents' Submissions

25. Learned Counsel for the Respondent, submitted that taxation of costs is a matter of judicial discretion as the taxing officer is bestowed with wide discretion which can only be interfered with in limited circumstances. Counsel submitted that the principles guiding taxation were set out as follows in the case of Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No.3) (1972) EA 162: -

    a. The costs should not be allowed to rise to a level as to confine access to justice as to the wealthy.

    b. That a successful litigant ought to be fairly reimbursed for the cost he has had to incur.

    c. That the general level of remuneration of Advocates must be such that to attract recruits to the profession;

    d. So far as practicable there should be consistency in the award made; and

    e. 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.

26. Counsel submitted that the taxing officer properly applied the principles of taxation and considered all the relevant factors when arriving at her decision when she noted that the applicable provision in the circumstances was Paragraph 49A of the Advocates Remuneration Order which provides: -

> " Costs in criminal cases, whether in the High Court or subordinate courts, if not agreed or ordered, shall be taxed as between advocate and client under Schedule 5."

27. Counsel contended that despite admitting in his submissions that his costs fall under Part II of Schedule V of the Advocates Remuneration Order, the Applicant nevertheless based his costs on Schedule 7 which applies to civil cases before Magistrate's courts and that Counsel relied on civil cases where the value of the subject matter can be discerned from the pleadings, settlement and judgement.

28. Counsel agreed with the taxing officer that, in this case, the instruction fees could not be calculated in the same way as in suits for recovery of money. Counsel noted that recovery proceedings are by their very nature private law whereas criminal proceedings are in the nature of public law. For this Counsel placed reliance on the case of Republic v Minister for Agriculture & 2 Others Ex-Parte Samuel Muchiri W'Njuguna where the Court stated: -

> " authorities from private law claims . . .do not in my opinion, fall in the same class as public law claims . . . such matters are in a class of their own, and the instruction fees allowable in respect of them should not, in principle, be extrapolated from the practices obtaining in the private law domain which may involve business claims and profit calculations."

29. Counsel further submitted that the Applicant's reliance on the amount of money the Respondents would have been liable to pay as a fine in the event of conviction has no foundation. Counsel argued that calculation of fees based on fines would be problematic in view of offenses which are only punishable with a custodial sentence but no fine; that Schedule V of the Remuneration Order envisages that criminal matters do not have a monetary value and the taxing officer must go beyond what appears on the charge sheet, paying due regard to the due care and labour required in a matter, the documents to be perused, the nature and importance of the mater, the value of subject matter, interests of the parties, complexity of the matter and all other circumstances which may be fair and reasonable.

30. Counsel argued that in the instant case, the taxing officer considered that no substantive hearing took place and the Advocate had not spent any time preparing for trial, no time was spent perusing evidence by the prosecution or researching the substantive issues raised by the prosecution; that the Advocate was only involved during plea-taking, bail hearing, and prosecution of five applications out of which four sought leave for the clients to travel out of the country; that there were no complex issues in the applications to justify high and manifestly excessive instruction fees and further, that the Advocate has not demonstrated how the matter was complex; that it did not involve any unique and novel issues and further that the suit was withdrawn in a summary manner without going to full trial.

31. Counsel asserted that the taxing officer was correct in considering other factors other than the figures appearing in the charge sheets and the fine to be imposed in the event of conviction. Counsel stated that this reference seeks to interfere with the quantum of taxation which is within the province, competence and judicial discretion of the taxing officer; that the Applicant has not demonstrated exceptional circumstances to warrant the interference by this court and that the taxing officer correctly exercised her discretion; further that access to justice is constitutionally guaranteed under Article 48 of *the Constitution* and that one of the tenets of that right is that costs should be reasonable and should not impede justice. Counsel for the Respondents asserted that allowing such high and exorbitant fees to be charged by advocates in criminal cases would hinder access to legal services and limit legal representation only to the wealthy. Counsel urged this court to dismiss this application with costs to the Respondent.

32. The Respondents also placed reliance on the following cases:-Ngatia & Associates Advocates V Interactive Gaming & Lotteries Ltd (2017) eKLR.Republic v Minister for Agriculture & 2 Others Ex-Parte Samuel Muchiri W'NjugunaFirst American Bank of Kenya Ltd V Gulab P Shah & 2 Others (2002) eKLR.Kanu National Elections Board & 2 Others V Salah Yakub Farah (2018) eKLR.Republic V Ministry of Agriculture & 20 Others ex-parte Samuel Muchiri w'Njuguna (2006) eKLR.Rachuonyo & Rachuonyo Advocates v National Bank of Kenya Limited (2020) eKLR.Muriu Mungai Advocates v New Co-operative Creameries Ltd (2010) eKLR.Peter Muthoka & Another v Ochieng & 3 Others (2019) eKLR.Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board (2005) eKLR.

Analysis and Determination

33. The principles that guide the High Court when considering a reference from the decision of a taxing officer are fairly settled. In the case of Kipkorir, Tito & Kiara Advocates vs. Deposit Protection Fund Board [2005] eKLR the Court of Appeal stated: -

> " 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."

34. Similarly in the case of Kamunyori & Company Advocates vs. Development Bank of Kenya Limited (2015) Civil Appeal 206 of 2006, the court stated: -

> " Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside." (underlining mine)

35. Further, in the case of 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."

36. In this case the taxing officer based her decision, on the instruction fees, on the fact that the subject matter was a criminal case which was withdrawn. She rejected the submission by the Applicant that the instruction fees should have been taxed based on the amount, to wit Kshs.3,417,573,774/=, in the seven counts with which the Clients/Respondents were charged in the Chief magistrates Anti-Corruption Court but rightly stated that the figure was appreciated as it went to show that the charges facing the Clients/Respondents were indeed serious.

37. In regard to costs in criminal cases, paragraph 49A of the Advocates Remuneration Order provides that: -

> " Costs in criminal cases, whether in the High Court or subordinate courts, if not agreed or ordered, shall be taxed as between advocate and client under Schedule 5."

38. Since there was no agreement between the parties the fees in this case are to be assessed under Schedule 5 Part II of the Advocates Remuneration Order which states:-

> " Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule."

39. The next question then is how the instruction fees in a criminal matter are calculated. The taxing officer rejected the argument that the fees should be based on the value derived from the amounts stated in the charges facing the clients or on the fine prescribed for the offences. I am fully in agreement with her finding. I do also agree with her that the value or the sum named in the charges is only a factor in assessing the nature and or importance of the matter, the complexity of the case and the interest

of the parties. It is also instructive that in assessing the instructions fees the taxing officer is required to give due allowance for the other charges raised under the schedule. Such other charges would be attendances, drawing, copies, perusal and other disbursements.

40. Other than failing to mention whether she had given due allowance for the other charges I do find that the taxing officer carefully and properly applied her mind to the principles set out in the case of Premchand Raichand Limited & Another v Quarry Services of East Africa Limited and another [1972] EA 162 and the other cases cited by the parties.

41. However, I fault the taxing officer for failing to take into consideration that before the case was withdrawn the Advocate/Applicant had taken considerable time and effort on the case given the volume of the documents placed before the court. Indeed, the Respondents admit that the Advocate made an application for bail/bond and three other applications where the Client/Respondents were seeking permission to travel out of the country. These are not trivial but weighty applications and the Advocate/Applicant must have expended a lot of his time and effort on the same not just in drawing the applications but in arguing them and doing so carefully and the same should have been taken into account.

42. It is also important to note that the requirement for disclosure in criminal matters necessitates the need for an Advocate to peruse, before the trial, not just the charge sheets but the evidence the prosecutions intends to rely on to prove its case. Such evidence comes in the form of witness statements and documents and depending on the nature and volume of the documents perusal can be time consuming. The Advocate/Applicant has provided this court with two volumes of the documents he either drew or perused and while drawing and perusal are charged and have indeed been charged separately the taxing officer ought to have considered the time taken to peruse the documents in assessing the instruction fees. It is for the above reasons that I find that the taxing officer misdirected herself which resulted in her awarding instruction fees which were too low. I am however not persuaded that the work done ought to attract instruction fees in the sum of Kshs.77,382,909 sought by the Applicant. In my considered view a sum of Kshs. 2,000,000/= (two million Kenya shillings) would be a reasonable amount considering that the case was eventually withdrawn but also taking into account the applications prosecuted. In the premises the instruction fees of Kshs.900,000 is set aside and it is hereby substituted with a sum of Kshs. 2,000,000 (two million Kenya Shillings).

43. On the increase by 50%, Section 5(2) of the Advocates Remuneration Order, states that in assessing such special fee regard may be had to—

> "(a) the place at or the circumstances in which the business or part thereof is transacted;
>
> (b) the nature and extent of the pecuniary or other interest involved;
>
> (c) the labour and responsibility entailed; and
>
> (d) the number, complexity and importance of the documents prepared or examined."

44. In the case of Republic v Minister for Agriculture & 2 others Ex-Parte Samuel Muchiri W'njuguna & 6 others [2006] eKLR The Court held that:

> "The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must

be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs."

45. In the current reference, the Applicant claims that the matter was complex necessitating increment of the instruction fees by a further 50%. I am persuaded that indeed a matter involving tax evasion is one that requires mathematical calculations, scrutiny and careful research and although I appreciate that the matter never proceeded to full hearing, I take cognizance of the fact that an advocate starts to prepare for a matter as soon as he receives instructions and not when a hearing date is set and that therefore the increment of 50% of the instruction fees is meritous and I thus allow it. Accordingly, the instructions fees of Kshs. 2,000,000/- is increased by 50% (1,000,000/-) to bring it to Kshs. 3,000,000/-.

46. In the upshot, the application therefore succeeds to the extent that the decision of the taxing officer in respect of the instructions fees is set aside and it is hereby substituted with a sum of Kshs.3,000,000 (Three million Kenya shillings).

47. The costs of the application shall be borne by the Respondents.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 18TH DAY OF APRIL 2024.

.....**.....**

E. MAINA

JUDGE