



REPUBLIC OF KENYA



KENYA LAW
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**Aldermen Limited v Shah & 3 others (Environment and Land Civil Appeal
E004 of 2021) [2025] KEELC 6680 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6680 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CIVIL APPEAL E004 OF 2021
CA OCHIENG, J
OCTOBER 6, 2025**

BETWEEN

ALDERMEN LIMITED APPELLANT

AND

ZAVERCHAND RAMJI SHAH 1ST RESPONDENT

NAIROBI CITY COUNTY 2ND RESPONDENT

LATAL JAYANTILAL SHAH 3RD RESPONDENT

BLOSSOM HILL ESTATE AGENTS CO.LTD 4TH RESPONDENT

RULING

1. What is before Court for determination are two applications. In the 1st Respondent's Chamber Summons application dated the 6th September 2024, the 1st Respondent seeks the following Orders:
 - a. The Ruling of the Taxing Master, Honourable Deputy Registrar Vincent Kiplagat delivered on 28th August, 2024 in respect to the Party-Party Bill of costs dated 14th October 2022 be set aside and /or vacated.
 - b. The Honourable Court be pleased to direct the 1st Respondent's Bill of costs dated 14th October,2022 be taxed a fresh before a different taxing master.
 - c. Costs of this application be in the cause.
2. The application is premised on grounds on its face and on the supporting affidavit of Michael Osundwa Sakwa, Advocate. He avers that the 1st Respondent's Bill of Costs dated 14th October 2022 was necessitated by the judgment delivered by Honourable Justice M.D Mwangi on 27th April, 2022 dismissing the Appellant's appeal and awarding the Respondents' costs. Further, that the 2nd and 4th Respondents' also filed their Bill of Costs dated 19th October 2022 and 25th May 2023 respectively and



- a Ruling on the two Bills was delivered on 16th August 2023 where they were taxed at Ksh.2,019,035, Kshs.2,015,095 and Kshs.2,008.050 for the 1st, 2nd and 4th Respondents respectively.
3. He contends that on a Reference filed by the Appellant, the said Ruling of 16th August 2022 was set aside vide Hon. Judge Wabwoto's Ruling of 15th February 2024 and remitted to a different Taxing Officer for consideration. Subsequently, Hon. Vincent Kiplagat delivered a Ruling on 28th August 2024, taxing the 1st, 2nd and 4th Respondent's Bill of costs at ksh.69,036/=, Ksh.65, 095/= and ksh.58,050/= respectively.
 4. He avers that the Ruling by the Hon. Vincent Kiplagat did not consider any of the documents filed on behalf of the 1st Respondent and neither did it address itself to the fact that the value of the subject matter could be determined from pleadings filed thus he erred in principle. Further, that the Taxing Officer did not tax the Bill of Costs dated 14th October 2022 afresh, but opted to only tax item 1 of the Bill thus occasioning a miscarriage of justice to the 1st Respondent.
 5. The application is opposed by the Appellant vide the replying affidavit of Leo Masore Nyang'au, Advocate. He avers that the Notice of taxation dated 29th August 2024 does not specify the items of taxation to which the 1st Applicant objects to, thus it is in breach of Rule 11 (1) of the Advocates Remuneration Order. Further, that the Taxing Officer based his decision within the confines of the directions of Hon. Wabwoto J in his Ruling in which, he directed at paragraph 17 that the minimum instruction fees is kshs.25, 000/= under Schedule 6.
 6. The second application is the Appellant's Notice of Motion dated 16th September 2024 where the Appellant seeks the following Orders:
 - a) That the Honourable court be pleased to strike out the 1st and 2nd Respondents notices of objection to taxation both dated 29th August 2024.
 - b. That the Honourable Court be pleased to declare that the time for filing a Reference to a Judge in this case has expired.
 - b. That the costs of this application be borne by the 1st and 2nd Respondents and the Honourable court be pleased to assess the same.
 7. The application is premised on grounds on its face and on the supporting affidavit of Leo Masore Nyang'au, advocate. He avers that the taxation of 28th August 2024 was on the successful Reference of the Appellant and it contained the reasons for the decision. Further, that the 1st and 2nd Respondents purported to object to the Ruling through letters dated 29th August 2024, which should be struck since the Reference is filed out of time.
 8. The application is opposed by the 1st Respondent vide the replying affidavit of Michael Osundwa Sakwa, Advocate who reiterates that the Reference was filed within the requisite timelines and produced receipts indicting that the Chamber summons were filed and paid for on 6th September 2024.
 9. Both applications were canvassed by way of written submissions.

Submissions

10. The 1st Respondent reiterates that he filed a Notice of Objection dated 29th August 2024 a day after the Ruling that is subject of the instant Reference, was delivered. Further, that he filed the Reference within fourteen (14) days in compliance with Rule 11 (2) of the Advocates Remuneration Order.



11. He also submits that the Taxing Officer erred in principle since he failed to apply the formula for taxation as per Schedule VI of the Advocates Remuneration Order and for failing to determine the adequate and appropriate instruction fees to be paid to the 1st Respondent, pegged on the value of the subject matter. He contends that the value of the subject matter was ascertainable from pleadings and points out that at page 189 of the Record of Appeal, there is a document entitled certificate of sale dated 8th January 2014 wherein it is alleged that the suit property was sold on auction at the purchase price of Kshs.30 million and owing to the inflation rate ten (10) years later, it is worth over 450 million.
12. To support his arguments, he relied on the following decisions: Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] eKLR; Joreth Ltd v Kigano and Associates [2002] 1EA 92; Phemchand Raichand Ltd v Quarry Services of East Africa Ltd and Another [1972] EA; Maisore Nyangau & Co. Advocates v Kensalt Limited [2019] eKLR and KTK advocates v Baringo County Government [2017] eKLR.
13. On his part, the Appellant submits that the 1st Respondent did not demonstrate that the Taxing Officer committed any error in principle in his assessment of instruction fees on item 1 of the Bill of Costs because once there is a judgement in a suit, it determines the value of the subject matter thus one does not need to go to pleadings. Further that the judgement of Judge D. Mwangi simply dismissed the Appeal with costs, it did not award any monetary sum to any party thus Wabwoto J properly found that the value of the subject matter in the suit would only have been charged under Schedule 6 of the Advocates Remuneration Order, which contemplates fees of not less than Kshs.25, 000/= . He placed reliance on the case of Peter Muthoka & Joseph Mumo Kivai v Ochieng Onyango Kibet Advocates: Nairobi Civil Appeal No. 328 of 2017.
14. He also submits that the 1st Respondent served the Appellant’s Counsel with the Chamber Summons dated 6th September 2024 on 18th January 2025 without the payment receipt indicating when it was filed. Further, that had it been served sooner, the Appellant would not have filed the Notice of Motion application dated 16th September 2024 thus the 1st Respondent should pay costs.

Analysis and Determination

15. Upon consideration of the two instant applications including the respective affidavits and rivalling submissions, the following are the issues for determination: Whether the Reference filed by the 1st Respondent was competent and filed within time. Whether the Ruling of the Taxing Officer delivered on 28th August, 2024 in respect to the Party-Party Bill of Costs dated 14th October 2022 should be set aside and the said Bill of Costs taxed by a different Taxing Officer.
16. This is the second Reference emanating from the Bill of Costs dated 14th October 2022. Vide a Ruling dated 16th August 2023, the Bill of Costs was first taxed at Kshs. 2,019,035. The Appellant filed a Reference on the basis that the instruction fees taxed was excessive. Justice Wabwoto vide his Ruling dated 15th February 2024 opined that the Taxing Officer ought to have taxed the Bill of Costs in accordance with Schedule 6 of the Advocates Remuneration Order, 2014, on Appeals, which provides that:

“ Appeals

 - a. To present or oppose and appeal in any case not provided for above, such sum as be reasonable but not less than ksh.25,000/=”
17. The Learned Judge then remitted the Bill of Costs back to a different Taxing Officer for fresh taxation limited only to item (1), (instruction fees) and on 28th August 2024, Hon. Vincent Kiplagat taxed the



said Bill of Costs at Kshs. 69,036/=. The 1st Respondent claims that the Taxing Officer ignored his supporting documents and failed to assess the instruction fees properly, as he did not factor in the value of the subject matter, which was ascertainable from pleadings.

18. On the first issue, the Appellant claims that the 1st Respondent's reference is filed out of time. Paragraph 11 of the Advocates (Remuneration) Order provides that:

“(1) Should any party object to the decision of the taxing officer, he may within fourteen 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 his 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 his objection.”

19. From the Court record, I note there are two letters dated the 29th August, 2024 addressed to the Deputy Registrar, ELC seeking for reasons that informed the impugned Ruling of 28th August, 2024. Further, the chamber summons was also filed on 6th September 2024. Since the reasons were sought one day after the impugned Ruling; and reference filed in fourteen (14 days), I hence find that the Respondents indeed adhered to the Advocates Remuneration Order in respect to seeking reasons for an objection and filed reference within time, and will disregard the Appellant's claim that the Reference should be struck off; and I will decline to do so.

20. On the second issue, it is trite that the Court can only interfere with the decision of a Taxing Officer if it is demonstrated that the said Officer erred in principle. In *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR it was stated;

“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.”

21. The 1st Respondent claims that the Taxing Officer did not consider the value of the subject property while taxing item (1) of the Bill of Costs, which refers to instruction fees. First, I note *Wabwoto J* in his Ruling of 15th February 2024 in respect to the impugned Bill of Costs directed that instruction fees ought to have been taxed in accordance with Schedule 6 on Appeals Prayer (a) and his decision was not appealed against. Further, I note the Taxing Officer proceeded to tax the Bill of Costs as directed.

22. In *Peter Muthoka and Another v Ochieng and 3 Others* NRB CA Civil Appeal No. 328 of 2017 [2019] eKLR and in *Joreth Ltd v Kigano & Associates* NRB CA Civil Appeal No. 66 of 1999 [2002] eKLR the Court of Appeal had directed that instruction fees are to be ascertained from the value of the subject matter which is in turn ascertained from the pleadings/judgement/settlement. Further, that it is only where it is not ascertainable that the Taxing Officer is to use his discretion to assess instruction fees.

23. In *Peter Muthoka & Another v Ochieng & 3 Others* [2019] KECA 597 (KLR), the Court of Appeal proceeded to state thus:

“It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what



he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.”

24. In this instance, I note the Taxing Officer proceeded to tax Instruction Fees in the Bill of Costs as follows: 1st Respondent’s party and party Bill of Costs dated 14th October, 2022 at Kshs. 69,036. 2nd Respondent’s party and party Bill of Costs dated 19th October, 2022 at Kshs. 65,095. 4th Respondent’s party and party Bill of Costs dated 25th May 2023 at Kshs. 58,050.
25. It is not in dispute that the Appeal emanated from a Ruling. Further, there was no indication of the value of the suit property in the decision which dismissed the Appeal.
26. Based on the facts as presented while associating myself with the decisions cited and relying on Schedule 6 of the Advocates Remuneration Order, I find that the Taxing Officer did not err in principle by taxing the Bill of Costs as presented and will decline to set aside his Ruling.
27. In the circumstances, I find the 1st Respondent’s Chamber Summons application dated the 6th September 2024 and Appellant’s Notice of Motion dated 16th September 2024 unmerited and will dismiss them.
28. Each party to bear their own costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Sheunda for Osundwa for 1st Respondent

Masore for Appellant

Court Assistant: Joan

