



**Bell Estate Agency Limited v Owino Kojo & Co. Advocates (Commercial Case E036 of 2023)
[2025] KEHC 15586 (KLR) (Commercial and Tax) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E036 OF 2023
JWW MONG'ARE, J
OCTOBER 28, 2025**

BETWEEN

BELL ESTATE AGENCY LIMITED APPLICANT

AND

OWINO KOJO & CO. ADVOCATES RESPONDENT

RULING

1. On 18th March 2025 the Client/Applicant by a Chamber Summons application moved this Honourable Court filed under Order 40 Rules 1 and 4(a) of the Civil Procedure Rules and Rule 11(2) & (4) of the Advocates Remuneration Order, Section 1A, 1B and 3A of the *Civil Procedure Act* seeking to stay the execution of the taxation Ruling by the Deputy Registrar, Hon. C. Adisa on 10th March 2025. The Application further sought to challenge the entirety of the entire taxation on the basis that the Advocate/Respondent has claimed party and party costs arising from a taxation of his Advocates-Client Bill of costs for which the said firm was fully paid.
2. Subsequently and on 8th April 2025, the Applicant filed a Notice of Motion Application under a certificate of urgency seeking to stop the auction that was scheduled to take place on 9th April 2025 pursuant to the proclamation. As a measure of good faith, the Applicant went ahead and deposited the full decretal amount with the court pending the hearing and determination of the Reference Application.
3. The Chamber summons was opposed and the Advocate/Respondent filed a replying affidavit sworn by the advocate Owino Kojo on 23rd April 2025 alongside his own Notice of Motion application dated 8th April 2025 urging the court to consolidate the various applications filed by the Client/Respondent. Pursuant to the directions of this Honourable Court the both parties have filed written submissions which I have carefully considered.



Analysis and Determination

4. I have carefully considered the pleadings by the parties and the rival submissions herein and note that what really is available for consideration and determination is the reference filed herein by way of the Chamber Summons dated 18th March 2025. I note the subsequent applications by the Client and the Motion filed by the Advocate are spent.
5. In its application the client has urged this court to find that the Advocate, acting on his behalf in a taxation for Advocates-Client Bill of costs is not entitled to party and party costs and or instructions fees for prosecuting an advocate-client bill of costs. The Applicant has urged the Court to set aside the Deputy Registrar’s taxation Ruling of 10th March 2025 in its entirety. The Applicant has urged the Court to assess such reasonable disbursement costs supported by evidence payable to the Advocate for prosecuting his Advocates-Client Bill of Costs.
6. Other than the question that this court should answer on what was the quantum of costs assessed by the Deputy Registrar, this court is being invited to determine if a party appearing in person is entitled to party and party costs. Specifically, the Applicant has asked the Court to determine if the Advocate can collect party and party costs incurred while defending his own Advocates-Client’s bill of costs for which he was fully paid. The Applicant argues that a challenge to the jurisdiction of the taxing master to determine if the party and party bill of costs before her was one where she had jurisdiction to determine was placed before her but she ignored and or declined to determine the said question on jurisdiction. The Applicant argues that the Deputy Registrar committed an error of principle in proceeding to carry out the taxation on the party and party bill of costs since she lacked the requisite jurisdiction to do so. The Applicant has urged this court to set aside the said taxation for want of jurisdiction.
7. I have looked at the response filed by the Advocate and I note that the Advocate argue that the present application does not qualify as a reference in that the Applicant/Client has not specified the items that it takes issue with in line with Regulation 11(2) of the Advocates Remuneration Order. The Advocate further avers that the reason for the difference in the taxed amount and the decree being executed is because it consolidates an unpaid portion of the previous decree and the taxed amount. The Advocate has asked the court to find that the present application as filed is incompetent and urges the Court to dismiss the same and allow the Advocate to proceed with the execution process already commenced.
8. Rule 13 (3) of the Advocates Remuneration Order provides as follows; - “13. Taxation of cost as between advocate and client on application of either party –
 - (1) The taxing officer may tax costs as between advocate and client without any order for the purpose upon the application of the advocate or upon the application of the client, but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation, and in such event the advocate shall not be bound by or limited to the amount of the bill rendered in summarized or block form.
 - (2) Due notice of the date fixed for such taxation shall be given to both parties and both shall be entitled to attend and be heard.
 - (3) The bill of costs shall be filed in a miscellaneous cause in which notice of taxation may issue, but no advocate shall be entitled to an instruction fee in respect thereof.”
9. The Court interpreted the above Rule 13(3) in the case of Juliet Akinyi Dima t/a Juliet Dima Akinyi & Associates Advocates v JRS Group Ltd (Miscellaneous Application No E093 of 2023) KEELRC 882 (KLR) as follows;-“This court’s understanding of the provision is that an advocate-client bill of



costs shall be presented by the Advocate through a miscellaneous application and that in presenting the bill for taxation, the Advocate would not be entitled to claim instructions fees for presenting the bill. This is so because the bill belongs to the advocate and is not presented at the behest of the client.”

10. I note from the record that indeed the Advocate did file an Advocate - Client Bill of costs and it is not in dispute that he was indeed paid his fees upon taxation of the same. The Applicant argues, and the same is not contested by the Advocate, that after the filing of the said Advocate Client Bill of costs, the Advocate was paid his fees amounting to Kshs.465,233.28/=. The present bill of costs already taxed at Kshs.169,625/= relates to the taxation of the Party and Party Bill of Costs for which the Advocate is claiming costs for having attended to the taxation of his own Client- Advocate Bill of Costs. I agree with the Applicant that indeed by failing to determine the question of jurisdiction and proceeding to carry out the taxation of the party and party bill of costs, the Honourable Deputy Registrar committed an error of principle and went against the provisions of Rule 13(3) that makes it clear that the Advocate would not be entitled to claim instructions fees for presenting the bill.
11. In sum I find the present application is merited. I hold that the Deputy Registrar committed an error of principle in proceeding with the taxation of the Party and Party Bill of Costs and hereby set aside the Deputy Registrar’s ruling on the same dated 10th March 2025 in its entirety. The funds so deposited in court by the Applicant pursuant to the orders of this court should forthwith be refunded to the Applicant. Costs of this application are awarded to the Applicant and are assessed at Kshs.50,000/=. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF OCTOBER 2025

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J.W.W. MONG’ARE

JUDGE

In The Presence Of:-

Ms. Kamau holding brief for Mr. Wachira for the Client/Applicant.

Mr. Wesonga for the Advocate/Respondent.

Amos - Court Assistant

