

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT KERICHO**

**CAUSE NO. E010 OF 2023**  
***(Before Hon. Lady Justice Anna Ngibuini***  
***Mwaure)***

**JENIFFER MUTHONI WACHIURI..**

.....**CLAIMANT**

**VERSUS**

**KAISUGU**

**LIMITED.....RESPONDENT/APPLICANT**

**RULING**

**Introduction**

1. The Respondent/Applicant filed a Chamber Summons dated 4<sup>th</sup> April 2025 under Certificate of Urgency seeking the following orders that:

***1. Spent***

***2. This Honourable Court be pleased to issue a Stay of Execution of the Taxed Costs arising from the ruling of Hon. Japheth Cheruiyot Bii dated and delivered on 2<sup>nd</sup> April pending the hearing and determination of this reference.***

***3. The decision of the taxing master Hon. Japheth Cheruiyot Bii delivered on 2<sup>nd</sup> April 2025 on the Bill of Costs dated 22<sup>nd</sup> August 2024 with respect items***

**1,2,7,9,11,12,14,16,20,17,18,19,21,22,23,31,33,34,35,37, 38, 39, 40, 41, 42, 43, 44 and 45 be set aside and taxed afresh by this Honourable Court.**

**4. In the alternative to prayer 3 above, this Honourable Court be pleased to remit the aforementioned items for re-taxation before a different Taxing Officer or provide directions as it may deem just.**

**5. Costs of this application be provided for and borne by the Respondent.**

2. The application is expressed to be brought under **Paragraph 11(2) and (4) of the Advocates (Remuneration) Order 2014.**

**Respondent/Applicant's supporting affidavit**

3. The application is supported by the affidavit sworn by Mutai K. Owen, the Respondent/Applicant's Advocate, dated the same date as the application.
4. The Respondent/Applicant contests the Taxing Officer's ruling dated 2<sup>nd</sup> April 2025, which taxed the Claimant's Party and Party Bill of Costs at Kshs.314,650/=.

5. The Respondent/Applicant avers that a Notice of Objection dated 4<sup>th</sup> April 2025 has been filed, and a reference under Paragraph 11 of the Advocates Remuneration Order is currently pending before the court.
6. The Respondent/Applicant seeks a stay of execution to prevent injustice while the reference is heard.
7. The Respondent/Applicant avers that the objection specifically challenges several items as follows:
  - a. Item 1-Instruction Fees: Kshs.120,000/= was allowed based on a claim of Kshs.967,704/=, yet the actual net award was Kshs.557,716/=, which has already been paid. The correct fee should be Kshs.90,000/= under Schedule 6(1)(b).
  - b. Item 2 (Getting Up Fees): Should be adjusted to Kshs. 30,000/= if instruction fees are revised.
  - c. Items 17, 19, 21 & 23 (Drawing Notices and Affidavits): These were unnecessary as both parties were present in court when dates were taken, making the charges duplicative.
  - d. Items 7, 9, 12, 14, 18, 22, 31, 34 & 35 (Service of Process): charged at Kshs.10,465/= per instance without supporting affidavits or

receipts. Items 7, 12, and 35 did not occur, and Item 22 was unnecessary. Under Schedule 6(9), service within 3 km of court should be charged at Kshs.1,400/=, with only four valid instances totalling Kshs.5,600/=.

- e. Items 38, 39, 40, 44 & 45 (Court Attendances): These were brief mentions under 30 minutes and should be taxed at Kshs.1,100/= each per Schedule 7(d).
- f. Item 41 (Court Attendance): Due to adjournment on medical grounds, lasted less than 30 minutes and should also be taxed at Kshs.1,100/=.
- g. Item 42 (Court Hearing on 16<sup>th</sup> April): Five witnesses testified briefly; hearing lasted one hour and should be taxed at Kshs.2,300/=.
- h. Item 43 (Court Hearing on 23<sup>rd</sup> May): One witness testified in less than 30 minutes; should be taxed at Kshs. 1,100/=.
- i. Items 11, 16, 20 & 37 (Commissioning of Affidavits): Not recoverable under the Advocates Remuneration Order and should be disallowed.
- j. Item 33 (Making Copies): Kshs.6,000/= claimed for three copies of submissions without receipts.

Under Schedule 6(5)(d), only actual costs with proof are recoverable.

8. The Respondent/Applicant avers that the Taxing Officer erred in principle and fact, resulting in an excessive award.
9. The Respondent/Applicant requests the court to set aside the taxed amount, remit the contested items for fresh taxation, or vary the award accordingly.
10. The Respondent/Applicant avers that the application is made in good time, good faith, and in the interest of justice, with no prejudice to the Claimant/Respondent.
11. The Respondent/Applicant urged the court to allow the application as prayed.

**Claimant/Respondent's replying affidavit**

12. The Claimant/Respondent filed a replying affidavit dated 18<sup>th</sup> July 2025.
13. The Claimant/Respondent opposes the Respondent/Applicant's Chamber Summons dated 4<sup>th</sup> April 2025, which seeks to stay execution and

challenge the Taxing Officer's ruling of 2<sup>nd</sup> April 2025 that awarded taxed costs of Kshs.314,650/=.

14. The Claimant/Respondent maintains that the taxation was proper, lawful, and in accordance with the ***Advocates (Remuneration) Order 2014***, particularly under Schedule 6 and Schedule 7, which govern instruction fees, getting up fees, service of process, drawing documents, court attendances, and other disbursements.

15. Specifically, the Claimant/Respondent defends the taxation of the following items:

a. Item 1 (Instruction Fees): properly taxed based on a subject value of Kshs.1,795,856/=, in line with Schedule 6(1)(b) of the Advocates (Remuneration) Order 2014.

b. Item 2 (Getting Up Fees): correctly assessed at one-third of the instruction fee, as provided under Schedule 6(2) of the Advocates (Remuneration) Order 2014.

c. Items 17, 19, 21 & 23 (Drawing Notices and Affidavits): Taxed under **\*\*Schedule 6(4)** of the Advocates (Remuneration) Order 2014, which allows for drawing of documents at High Court rates.

- d. Items 7, 9, 12, 14, 18, 22, 31, 34 & 35 (Service of Process): Taxed under Schedule 6(9) of the Advocates (Remuneration) Order 2014, which permits Kshs. 1,400/= for service within 3 km of the court and Kshs. 35/= per additional kilometre. The Claimant provides proof of service for Items 7, 12, and 35.
- e. Items 38–45 (Court Attendances): Taxed under Schedule 7(d) of the Advocates (Remuneration) Order 2014 which provides for court attendances based on time and complexity.
- f. Items 11, 16, 20 & 37 (Commissioning of Affidavits): Justified as necessary and properly costed.
- g. Item 33 (Making Copies): Allowed under \*\*Schedule 6(5)(d) of the Advocates (Remuneration) Order 2014, which permits recovery of actual photocopying costs for court and service copies.

13. The Claimant/Respondent argued that the Respondent's reference is an attempt to re-litigate the taxation without demonstrating any error of principle or misdirection.

14. The Claimant/Respondent urged the court to dismiss the application with costs, asserting that the Taxing Officer acted within the law and applicable schedules.
15. Parties canvassed the reference by way of written submissions.

### **Respondent/Applicant's submissions**

16. The Respondent/Applicant submitted the court's jurisdiction to review a taxing officer's decision, citing the case of ***First American Bank of Kenya v Shah & Others [2002] 1 EA 64***, where Ringera J held that interference is warranted only if there's an error of principle or manifest excess.
17. In this case, the Respondent/Applicant challenges several items from the taxed Bill of Costs as follows:
  - a. Item 1 Instruction Fees: the Respondent/Applicant submitted that it was allowed at Kshs.120,000 based on a pleaded sum of Kshs.967,704/=, yet the actual net award was Kshs.557,716/=, already settled, and under Schedule 6(1)(b) on the Advocates (Remuneration) Order 2014, the proper fee should be Kshs.90,000/=.

- b. Item 2 getting up fees, the Respondent/Applicant submitted that it should therefore be Kshs.30,000/=, being one-third of the revised instruction fee.
- c. Items 7, 9, 12, 14, 18, 22, 31, 34 & 35 service of Process) the Respondent/Applicant submitted that the items were taxed at Kshs.10,465/= each, totalling Kshs.94,185/=, which contradicts Schedule 6(9) of the Advocates (Remuneration) Order 2014 that allows only Kshs.1,400/= for service within 3 km of court.
- d. Items 11, 16, 20 & 37 Commissioning of Affidavits were awarded Kshs.500/= each, though such costs are not recoverable under the Remuneration Order.
- e. Item 33 making copies, was taxed at Kshs.6,000/= without supporting receipts, contrary to Schedule 6(5)(d) of the Advocates (Remuneration) Order 2014 which requires proof of actual photocopying costs.
- f. Lastly, Items 38, 39, 40, 44 & 45 court attendance involved brief mentions for compliance and filing, and the Respondent

argues they could not have lasted over an hour as claimed.

### **Claimant/Respondent's submissions**

18. The Claimant/Respondent opposed the Chamber Summons dated 4<sup>th</sup> April 2025, where the Claimant/Respondent defends the Taxing Officer's ruling of 2<sup>nd</sup> April 2025, which taxed the Bill of Costs at Kshs.314,650/=.
19. The Claimant/Respondent submitted that that the court should not interfere with the Taxing Officer's discretion unless there is an error of principle or the award is manifestly excessive, citing ***Premchand Raichand Ltd V Quarry Services of East Africa Ltd [1972] EA 162, Joreth Ltd V Kigano & Associates [2002] 1 EA 92***, and ***First American Bank of Kenya V Shah & Others [2002] 1 EA 64*** in support of that proposition.
20. In this case, the Claimant/Respondent defends several items from the taxed Bill of Costs as follows:
  - a. Instruction Fee (Item 1) was properly assessed under Schedule 6(1)(b) of the Advocates Remuneration Order based on the pleaded sum of Kshs.967,704/=;

- b. Getting Up Fee (Item 2) was correctly calculated as one-third of the instruction fee under Schedule 6(2) of the Advocates Remuneration Order 2014.
- c. Service of documents (Items 7, 12, and 35) was substantiated with proof of service, and
- d. Commissioning of affidavits (Items 11, 16, 20, and 37) was properly costed.

21. The Claimant relied on the cases of ***Nyangito & Co. Advocates V Doinyo Lessos Creameries Ltd [2014] eKLR, Odiya & Associates Advocates V Mairura [2024] KEHC 4840***, and ***Non-Governmental Organisations Coordination Board V Eric Gitari & 5 Others SC Petition No. 16 of 2019***, where courts reiterated that interference is only justified upon demonstration of error of principle or manifest excess.

22. The Claimant/Respondent concluded that the reference is meritless and should be dismissed with costs.

### **Analysis and determination**

23. The court has considered the application, the replying affidavit, together with the submissions. The court is called to determine whether the

application for stay of execution of the taxed costs delivered on 2<sup>nd</sup> April 2025 by Honourable Japheth Cheruiyot Bii should be stayed.

24. The Applicant avers there were errors in respect of items 1, 2, 7, 11, 12, 14, 16, 20, 17, 18, 21, 22, 23, 31, 35, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

The Applicant in his supporting affidavit deponed by Mutai Owen Advocate states that the Taxing Master based his instruction fees on Kshs.967,704 instead of Kshs.557,716.

The decree indicates clearly the instruction fees were based on Decretal amount awarded by Honourable Justice Hellen Wasilwa less statutory deductions of Kshs.574,720/= and less amount paid being Kshs.557,716/=. The instruction fees were therefore taxed at Kshs.120,000/=. According to The Advocates Remuneration Act Schedule 6(1)(b) Taxing Master based his figures on the sum of Kshs.967,704/= which is as it should be. The same therefore also applies to the getting up fees.

25. The court reiterates the case of ***Premchand Raichand Ltd V Quarry Services of East Africa Ltd (supra)***, which states that the court should not interfere with the Taxing Officer's discretion unless there is an error of principle or the award is

manifestly excessive. The Ruling by the Taxing Master demonstrate that he considered the respective submissions of the parties and relied on directions of the Advocates Remuneration Act. The court does not find an error of the principle or that the fees awarded was excessively high or ruling was exercised injudiciously.

26. Flowing from the foregoing, the court finds the reference is unmerited and is dismissed.

27. Each party to bear its costs.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru  
this 11<sup>th</sup> Day of November, 2025.**

**ANNA NGIBUINI MWAURE  
JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email.

They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**