



**Ochoki & Ochoki Associates (ADVS) v Shah (Being Sued as the Administrator of the Estate of the Late Batul Lakhmshi Lalji Shah) (Miscellaneous Application E273 of 2024) [2025] KEHC 15964 (KLR) (Family) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15964 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**MISCELLANEOUS APPLICATION E273 OF 2024**  
**PM NYAUNDI, J**  
**NOVEMBER 7, 2025**

**BETWEEN**

**OCHOKI & OCHOKI ASSOCIATES (ADVS) ..... ADVOCATE**

**AND**

**MUKTA BATUK SHAH ..... RESPONDENT**

**BEING SUED AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE  
BATUL LAKHAMSHI LALJI SHAH**

**RULING**

1. By Chamber Summons Application dated 27<sup>th</sup> May 2025 presented under Rule Article 159 of *the Constitution* of Kenya, Sections 1A, 3A, 3B of the Civil Procedure Rules and Rule 11 of the Advocates Remuneration Order, the Applicant seeks the following orders-
  1. Spent
  2. Spent
  3. Spent
  4. The ruling of the Honourable Taxing Master delivered on 22<sup>nd</sup> May 2025 in so far as the same relates to the reasoning and determination pertaining the taxation of the Bill of costs dated 5<sup>th</sup> November 2024 be set aside and vacated by way of reference and all the consequential orders be and are hereby set aside.



5. In the alternative to prayer 4 above, this Honourable Court, exercises its inherent jurisdiction and refer the Bill of Costs dated 5<sup>th</sup> November 2024 to a different taxing officer for their consideration and determination with proper directions thereto.
6. The costs of this application be provided.
2. The Application is supported by the Affidavit of Mukta Batuk Shah sworn on the 22<sup>nd</sup> May 2025. The Applicant is aggrieved by the ruling of the taxing master delivered on 22<sup>nd</sup> May 2025 taxing the advocate- client bill of costs dated 5<sup>th</sup> November 2024 at Kshs 1, 906, 963.40.
3. The applicant challenges the ruling on several fronts;
  - a. The finding by the taxing officer that there did not exist an advocate- client relationship between the advocate and the deponent of the replying affidavit, Mr. Shalin Batuk Shah who is a son to the deceased and therefore a beneficiary to the estate.
  - b. The failure of the taxing officer to address itself to the issue of whether there was a valid oral fee agreement between the parties as evidenced by vouchers presented and correspondence, therefore ousting the jurisdiction of the court to tax the bill of costs dated 5<sup>th</sup> November 2024.
  - c. The pegging of the value of the estate at Kshs 50, 000,000 by the taxing officer is without basis and the taxing officer improperly exercised his jurisdiction thereby occasioning a ‘misjustice’. In doing so the taxing officer applied the wrong principles in arriving at the instruction fee.
  - d. The taxing officer further erred in calculation of VAT payable
  - e. The taxing officer erred in the calculation of the amount that the applicant has paid to the advocate, arriving at Kshs 110,000 and not Kshs 110,525.
4. In response to the application the respondent/ advocate has filed a preliminary objection on the basis that the reference was filed out of time without leave. He has also sworn an affidavit in reply on 16<sup>th</sup> June 2025 wherein he avers that the reference is without merit as it merely reiterates the objections to the bill of costs which in his view were correctly determined by the taxing officer.
5. The applicant/ client has filed a further affidavit in response, in which he contends that the reference is duly filed and is meritorious.
6. The Application was canvassed via written submissions. The submissions of the applicant are dated 11<sup>th</sup> July 2025, while those of the respondent are dated 28<sup>th</sup> July 2025.

### **Summary Of Applicant’s Submissions**

7. The Applicant frames the issues for determination as-
  - a. Whether the taxing master erred in law and fact in failing to find an advocate-client relationship between the respondent and Mr. Shalin Batuk Shah and whether Mr. Shalin Batuk Shah had standing to oppose the bill of costs.
  - b. Whether the Taxing Master erred in law and fact in failing to find a valid fee agreement between the parties that ousted the Court’s jurisdiction to tax the Bill of costs under Section 45 of the [Advocates Act](#).
  - c. Whether the Taxing Master erred in law and fact in determining the value of the estate at Kshs 50,000,000 and in applying the wrong principles in awarding instruction fees.



- d. Whether the Taxing Master erred in law and fact in relation to the arithmetic calculations of the final taxed amount, including the failure to tax off VAT and the incorrect summation of payments made by the applicant
  - e. Whether the Applicant is entitled to a stay of execution of the decree emanating from ruling dated 22<sup>nd</sup> May 2025 pending the determination of this reference.
8. It is submitted that the impugned ruling discloses multiple errors of principle and fact warranting the reference.
  9. On whether there is a client / advocate relationship with Mr. Shalin Batuk Shah, the deponent of the replying affidavit in response to the Bill of Costs, it is submitted that there is evidence that he paid the fees and that the advocate communicated with him directly. Reference is made to the decision in Stephen Aluoch K'Opot t/a K'Opot Company Advocates v Cornel Rasanga Amoth [2017] eKLR and Joreth Limited v Kigano & Associates [2002] 1 EA 92.
  10. On the 2<sup>nd</sup> issue, it is submitted that the oral fee agreement is evidenced by the payments made to the respondent/ advocate and these constitute a binding agreement under Section 45 (1) of the Advocates Act. Reference is made to the decision in Mereka & Co. Advocates vs Zakhem Construction (Kenya) Ltd [2014] eKLR, Court of Appeal decision in Ali Abdi Mohamed vs Kenya Shell & Co. Limited [2017] eKLR, Majanja Luseno and Co. Advocates v Leo Investments Ltd and Another [2017] eKLR and Ahmed Nasir Abdikadir & Co. Advocates vs National Bank of Kenya Limited [2006] eKLR.
  11. On the 3<sup>rd</sup> issue, the applicant challenges the taxing officer's determination on the value of the estate. It is submitted that the Court failed to apply the principles set out in the decisions of Joreth Limited vs Kigano & Associates (Supra); Republic vs Ministry of Agriculture & 2 Others Ex Parte Muchiri W' Njuguna & 6 Others, HC Misc 621 of 2000; [2006] eKLR.
  12. On the 4<sup>th</sup> issue, it is submitted that there were arithmetical errors in calculation of VAT and amount paid by the applicant to the advocate.
  13. The 5<sup>th</sup> issue, is moot so I will not consider the submissions on it.

### **Summary Of The Respondent's Submissions**

14. The respondent reiterates the averments in the replying affidavit and preliminary objection and therefore I will not set out the submissions herein save to state that reference is made to the decision in Amuga & Co. Advocates vs Arthur Githinji Maina [2013] eKLR to submit that the Court was correct in principle in providing for VAT.

### **Analysis And Submission**

15. Having carefully considered the pleadings herein, along with submissions filed and the relevant law, I frame the issues for determination as follows;
  - a. Whether the Preliminary Objection dated 16<sup>th</sup> June 2025 is merited?
  - b. If the answer to (a) above is in the negative, whether-
    - i. The reference dated 27<sup>th</sup> May 2025 is merited
    - ii. What if any are the consequential orders the Court should make
  - c. Who should pay costs herein?



16. The Preliminary Objection is framed thus-
- a. That the Chamber Summons dated 27<sup>th</sup> May 2025 offends paragraph 11(1) and 12 of the Advocates Remuneration Order since the said Chamber Summons was filed out of time
  - b. That no leave of extension of time has been sought on the said Chamber Summons dated 27<sup>th</sup> May 2025 vide all the prayers
  - c. That there was no justifiable given for the delay hence further offends paragraph 11 (1) of the Advocates Remuneration Order.
  - d. That there are is no Notice of Objection in writing done to the taxing master detailing the specific items that Applicant disagrees with as such the Chamber Summons further offends paragraph 11(1) of the Advocates Remuneration Order.
  - e. That the Chamber Summons dated 27<sup>th</sup> May 2025 be dismissed with costs.
17. Order 11 of the Advocates Remuneration Order establishes the procedure for an aggrieved party to object to a taxing officer's decision on the taxation of a bill of costs. It provides-
11. Objection to decision on taxation and appeal to Court of Appeal
    - (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.
    - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
    - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
18. Order 11(1) must be read alongside Order 11(2) so as understand why under Order (1) it is optional for the party objecting to write to the taxing officer indicating the items of taxation to which he objects. Order 11(2) places an obligation on the taxing officer to forthwith record and forward to the objector the reasons for his decision on those items.
19. It follows therefore that the notice is in those instances that the party objecting requires reasons or where the taxing officer has not provided the reasons. Where, as in the instant case, the taxing officer has provided reasons in the decision Order 11(1) is rendered unnecessary and the party is at liberty within 14 days of the decision to apply to a judge by chamber summons, setting out the grounds of his objection. The preliminary Objection will therefore fail on that limb.
20. The advocate/ Respondent also contends that the application was filed out of time without leave. The ruling of the Court was delivered on 22<sup>nd</sup> May 2025, the reference was filed on 27<sup>th</sup> May 2025, on the



face of it, it is evident that the reference was filed on time and the preliminary objection must therefore fail on this limb too.

21. Having found that the Preliminary Objection lacks merit, I will proceed to consider the 2<sup>nd</sup> Issue, which is whether the reference has merit.
22. The first issue for determination is whether the taxing master erred in finding that the deponent to replying affidavit who is a son to the deceased and Administrator lacked standing to participate in the proceedings.
23. The bill of costs before the taxing master was an advocate-client bill of costs. Section 2 of the [Advocates Act](#), defines Client as  
includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ an advocate and any person who is or may be liable to pay to an advocate any costs;
24. The bill in question was in relation to application for grant of probate of a written will. The applicant was the nominated executrix of the will. It is evident that the Bill was presented to her in her capacity as the administrator. Section 83 of the [Law of Succession Act](#) is clear on the duties and powers of an administrator.
25. Her son swore the affidavit as a beneficiary and therefore an interested party. He was never and could never be in the position of a client as provided for under the [Advocates Act](#). For this reason, I concur with the taxing master that it did not rest with him to challenge the Bill as the client. The relationship of advocate-client was between the advocate and the administrator. The beneficiary has a financial interest in the estate but this does not extend to an advocate-client relationship with the advocate. I therefore find that the taxing officer was right on the law in finding that the deponent did not have the requisite locus standi to challenge the bill of costs on the grounds he pursued.
26. I note that notwithstanding that the taxing officer found that the respondent lacked locus he proceeded to determine the bill of costs on its merits.
27. The taxing officer also considered whether there was a fee agreement as provided for under Section 45 of the [Advocates Act](#), therefore ousting the jurisdiction of the taxing master. In *Omulele & Tollo Advocates v Mount Holdings Limited* [2016] eKLR, the Court of Appeal interpreted Section 45 (5) of the [Advocates Act](#) as follows:  

“As with any other agreement, the onus of proving the existence of the retainer agreement lies with he that wishes to enforce it. This is in line with the ordinary rules of contracts and evidence. (See *Kenya National Capital Corporation Limited v. Albert Mario Cordeiro & Another* [2014] eKLR and Section 107 of the [Evidence Act](#) Cap 80). Under the proviso to Section 45 (5) of the Act, an advocate who is a party to a retainer agreement and who has acted diligently for the client is entitled to sue and recover for the whole retainer fee should his client default in payment thereof. In fact, as long as the advocate has been diligent, his entitlement to the fixed sum is so outright that he need not tax his costs nor give statutory notice to the client prior to his pursuit of the said fee. Consequently, it behooves such advocate to ensure that the retainer agreement once made, is reduced into writing....”
28. As stated the son of the applicant not being the client was not in a position to speak to as the existence of a fee agreement, especially in this case where it was alleged that it was an oral agreement.



29. The applicant also challenges the decision by the taxing master to peg the value of the estate at Kshs 50,000,000 absent a valuation report on the properties comprising the estate. The issue of how a court should exercise its discretion in determining the value of an estate when it is not discernible has been the subject of numerous decisions by courts. I will refer to the decision in Peter Muthoka & another v Ochieng & 3 others [2019] KECA 597 (KLR), where the Court of Appeal expressed itself as follows-

“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.”

What we have said is in direct harmony with what this Court stated in Joreth Limited v Kigano & Associates (Supra),

We would at this stage, point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable the taxing officer is entitled to use his discretion to assess Instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, and direction by the trial judge and all other relevant circumstances. (Emphasis Supplied)

30. At paragraph 16 of the impugned decision the taxing master lays the basis upon which he deduced the value of the estate. The reasons fall within those set out in the Joreth Ltd v Kigano & Associates [2002] eKLR decision. Accordingly, I find that there is no basis upon which I can interfere with the discretion of the taxing master on the assessment of the value of the estate and the applicability of Schedule 10 of the remuneration order.
31. The applicant has raised issue on how the VAT was calculated and the calculations as to the payment that were made and ought to be offset. In his Submissions the advocate seeks to impugn the vouchers by disowning them. This is not available to him at this stage of the proceedings having not challenged the vouchers before the taxing master and in his replying affidavit. I will however, remit the file to the taxing officer to determine the correct application of VAT payable based on the taxed Bill of Costs and also correct summation of the amounts paid by the applicant to the advocate/ respondent.
32. Accordingly, these are the final orders-
- a. The Preliminary Objection is dismissed in its entirety
  - b. The Reference dated 27<sup>th</sup> May 2025 only succeeds to the extent that the file will be remitted to the taxing master to calculate the VAT payable based on the Bill of costs as taxed and to confirm the summation of the payments made by the applicant to the advocate.
  - c. Each party will bear their own costs.



It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 7<sup>th</sup> DAY OF NOVEMBER, 2025.**

**M. NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:-

Fardosa Court Assistant

Sausi for Respondents

No appearance for Applicant

