



**Kemboy Law Advocates v Narok County Government; Sakau & 5 others  
(Interested Parties) (Environment and Land Miscellaneous Application  
E019 of 2023) [2025] KEELC 8234 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8234 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E019 OF 2023  
LN GACHERU, J  
NOVEMBER 27, 2025**

**BETWEEN**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**AND**

**NAROK COUNTY GOVERNMENT ..... CLIENT**

**AND**

**MUTUARA OLE SAKAU ..... INTERESTED PARTY**

**WILLIAM KAYIOK KAIGIL ..... INTERESTED PARTY**

**JOHNSON SHAPARA KARIA ..... INTERESTED PARTY**

**TONKE OLE TAKI ..... INTERESTED PARTY**

**PASHAR OLOLOSO ..... INTERESTED PARTY**

**LEMAYIAN KANYONI MARIMA ..... INTERESTED PARTY**

**RULING**

1. The matter for determination herein is the Chamber Summons Application dated 27<sup>th</sup> January 2025, filed by the Client/Applicant and a Preliminary Objection dated 9<sup>th</sup> May 2025, filed by the Advocate/Respondent. The Chamber Summons Application filed by Maina Ngaruiya & Co advocate for the Client/Applicant seeks for orders that;
  - i. The court be pleased to set aside the Ruling and Order of the Taxing Officer, Hon. Daniel Ngayo delivered on 21<sup>st</sup> December 2024 in which he taxed the Advocate/Respondent’s Bill of Costs dated 4<sup>th</sup> October 2023 at Kenya Shillings Five hundred and Nineteen thousand,



Eight Hundred and Twelve and fifty cents (519,812/50=) and the Advocate/Respondent's Advocate-Client Bill of Costs be taxed afresh.

- ii. That this court be pleased to issue appropriate directions for the re-taxation/assessment of the Advocate/Respondents Advocate-Client Bill of Costs dated 4<sup>th</sup> October 2023 to proceed before any other Taxing Officer other than Hon. Daniel Ngayo.
  - iii. That the costs of this Reference be awarded to the Client/Applicant.
2. The Application is premised on the ground that the Advocate/Respondent commenced these proceedings by filing its Advocate-Client Bill of Costs dated 4<sup>th</sup> October, 2023; The said Bill of Costs was assessed and by a Ruling dated 18<sup>th</sup> December 2024, the taxing master taxed Item 1 at Ksh. 250,000/=, and found all the other items were drawn to scale, and also found and held that all the items were not exorbitant and/or unreasonable.
  3. The Client/Applicant was aggrieved by the said Bill of costs, it issued a Notice dated 18<sup>th</sup> December 2024, requesting for written reasons wherein, it received the certified ruling and reasons on 22<sup>nd</sup> January 2025. The Applicant averred that the taxing master misapplied the provisions of Schedule 7 of the Advocates Remuneration Order, as the amounts awarded were extremely high contrary to the provisions of Schedule 7; that the taxing master ought to have been guided by existing laws, and taxing procedures; that the matter was not complex nor novel and thus taxing Item 1 at Ksh.250,000/=, was extremely high;
  4. Further, the Client/Applicant averred that the taxing master disregarded the Law by allowing items Nos 2, 3, 10,11 and 12 on receipt and perusal of documents, yet the law does not provide for perusal of documents under Schedule 7 of the Advocates Remuneration Order.
  5. Further, that the taxing officer disregarded the law by allowing and considering items Nos 4, 9,13 and 18 on drawing documents including correspondence letters, yet Schedule 7 does not provide for such; that the taxing officer disregarded the law when he taxed item No 7 on Service at ksh 5000/=, which amount is excessive; that the taxing officer disregarded the law when he taxed items Nos 15, 19 and 20 at Ksh.1400/=, contrary to the provisions of Schedule 7; the amount taxed under items Nos 16 and 17, being attending court for taxation and for delivery of Ruling are not provided for Under Schedule 7 of the Advocates Remuneration Order, 2014;
  6. Further, the taxing officer misapplied the law and principles, which actions jeopardized the Client/Applicant rights and interest occasioning injustice upon it, and the said Ruling should be set aside
  7. The Client/ Applicant deponed that it filed the instant Application because the Orders are not anchored in law, policy or Court practice, and asserted that the learned Taxing Officer erred in law and in fact by disregarding the provisions of Schedule 7, and failing to appreciate the Court's duty to protect public funds; that the misapplication of law jeopardizes the Client/Applicant's rights and interests, and risks occasioning injustice if the ruling is not set aside.
  8. The Applicant urged the Court to urgently give appropriate directions for the re-taxation/assessment of the bill of costs before any other Taxing Officer other than Hon. Daniel Ngayo; and for the interest of justice the Orders sought should be for granted.
  9. The Application is supported by the Affidavit of John Mayiani Tuya, the Narok County Secretary, who averred that the Advocate/Respondent filed an Advocate-Client Bill of Costs dated 4<sup>th</sup> October 2023, which the Client/Applicant contested. He further deponed that on 21<sup>st</sup> December 2024, the Taxing Officer, Hon. Daniel Ngayo, delivered a Ruling that taxed the Bill of Costs at Kshs. 519, 812/50.



10. He deponed that he has been informed by their advocate that the Taxing Officer misapplied Schedule 7 of the Advocates Remuneration Order, resulting in excessive awards. He argued that the matter was neither complex nor novel, and the instruction fees of Ksh 250,000/= was extremely high contrary to the provisions of Schedule 7 of ARO; Furthermore, the Taxing Officer allegedly disregarded the explicit provisions of Schedule 7, and the taxation guidelines provided therein, by allowing certain items to exceed capped amounts.
11. The deponent further averred that the misapplication of the law and principles jeopardizes the Applicant's rights, and risks injustice. Consequently, the Applicant urged the Court to set aside the Taxing Officer's decision and direct the re-taxation of the Advocate-Client Bill of Costs before a different Taxing Officer.
12. This Reference is opposed by the Advocate/Respondent, vide a Notice of Preliminary Objection, dated 9<sup>th</sup> May 2025, and averred that the Chamber Summons Reference Application dated 27<sup>th</sup> January 2025, is incompetent having been filed outside the timelines expressly provided for under Paragraph 11(2) of the Advocates (Remuneration) Order; that based on this reason, the Application is bad in law, and an abuse of the process of this Court, and therefore the Court lacks jurisdiction to hear and determine it.
13. The Chamber Summons is also opposed vide the Replying Affidavit sworn by Julius K. Kemboi Advocate, who averred that the instant Chamber Summons Application is not only frivolous and vexatious but is also without merit and should be struck out.
14. Further, the Advocate/Respondent averred that the Advocate-Client Bill of costs is in respect of essential services provided to the Client by his Law Firm between 3<sup>rd</sup> June 2021 and 12<sup>th</sup> October 2022 in connection with instructions to defend the Client/Applicant in Narok ELC No. E058 of 2021, Further, that the Advocate-Client relationship came to an end on account of refusal by the Client/Applicant to honour payment of legal fees, and thus the filing of the said Bill of Costs.
15. Consequently, the Advocate/Respondent urged the Court to dismiss the instant Chamber Summons Reference dated 27<sup>th</sup> January, 2025, with costs in limine.
16. The Chamber Summons Application and the Preliminary Objection were canvassed together by way of written submissions. In response to the Preliminary Objection, the Client/Applicant submitted that it had complied with Paragraph 11(1), by filing a letter to the Deputy Registrar on 18<sup>th</sup> December 2024, within the stipulated 14 days, expressing dissatisfaction with the Taxing Officer's ruling, and requesting written reasons and a Certified copy of the ruling.
17. The Client/Applicant averred that they received the certified copy and written reasons on 22<sup>nd</sup> January 2025, and filed the instant Chamber Summons Application on 27<sup>th</sup> January 2025, within the 14-days timeline under Paragraph 11(2) of the ARO.
18. The Client/Applicant submitted that the instant Preliminary Objection lacks merit and it ought to be dismissed with costs, since the Applicant filed the instant Reference within the stipulated timelines under the law. Reliance was sought in the case of D.T Dobie & Co(K) Ltd vs Joseph Muchina & Another( 1980) eklr.
19. In support of the Chamber Summons, the Client/ Applicant raised this issue; Whether the Learned Taxing Officer erred in Law and principle when taxing the Respondent's Bill of Costs.
20. The Client/Applicant submitted that this Reference is anchored within the provision of Rule 11(1) of the Advocates Remuneration Order, 2014. Reliance was sought in the Cases of Bank Uganda vs



Sudhir Ruparalia & another (Taxation Reference 1 of 2023) [2023] UGSC 12(5 May 2023) and Keziah Gathoni Supeyo vs Yano t/a Yano & Co. Advocates [2019] eklr.

21. Further, the Client/Applicant submitted that the cited case law and statutory provision empower court to vary and/or set aside the award by the Taxing Officer on the errors of law, and principles of fair remuneration to a party.
22. The Client/Applicant further submitted that the Taxing Officer misdirected himself in ascertaining the instruction fees, in complete disregard of the clearly set law and principles of fair remuneration, and thus the instruction fees was grossly exaggerated, excessive and gratuitous taking into account that the matter is still pending in court.
23. The Client/Applicant relied on various decided cases being; Joreth Limited vs Kigano & Associates (2002) 1 EA 92 at 99, Kyalo Mbobu T/A & Associates Advocates vs Jacob Juma [2015] eklr, Ramesh Naran Patel vs Attorney General & another (2012)eklr and Republic vs Minister for Agriculture & 2 others ex-parte Samuel Muchiri W'Njuguna & 6 others[2006]eklr.
24. Additionally, the Client/Applicant submitted that the Taxing Officer was not able to ascertain the value of the subject matter, and therefore, he was called upon to exercise discretion to determine the instruction fees. However, the taxing officer generalised the conditions as set out and failed to give specifics as expected and thus proceeded to give excessive instruction fees . therefore, the taxing officer departed from the well settled principles of taxation and fair remuneration for work done, and awarded exorbitant and unreasonable instruction fees, which warrants the court's intervention.
25. The Client/Applicant further submitted that the decision to increase the instruction fees by 50%, was erroneous, as such an increase is only applicable where Party and Party costs have already been determined, which was not the case. The Client/Applicant relied on the cases of Nyangito & Co. Advocates vs Doinyo Lessos Creameries Ltd. (2014)eklr and Tom Ojienda & associates Advocates vs County Government of Narok(Misc. App No. E608 of 2019)eklr.
26. The Client / Applicant did not submit on why that the Taxing Officer was wrong to tax items Nos 2, 3,10,11,12 and 4, 9,13 and 18, as stated in the grounds in support of the Reference.
27. The Client/Applicant urged the court to dismiss the Preliminary Objection with costs, since its Chamber Summons Application was filed within the stipulated timelines, and has strong grounds for success. Therefore, the Client/Applicant sought for court's intervention to either assess, quantify, and award the Respondent's Bill of Costs or remit the matter to another Taxing Officer for re-taxation.
28. The Advocate/Respondent, Kemboy Law Advocates, in opposition to the Chamber Summons and support of the Preliminary Objection submitted that the principles for setting aside a Taxing Officer's decision are well-established, and courts generally do not interfere with a Taxing Officer's discretion, unless there is an error in principle.
29. Further, the Advocate/Respondent argued that the Taxing Officer followed the established authorities, considered all relevant factors including the nature, importance, and complexity of the matter, care and labour required, and value of the subject matter, and therefore acted within his discretion.
30. The Advocate/Respondent further submitted that the background of the matter involves legal services rendered to the Client from 3<sup>rd</sup> August 2021 to 12<sup>th</sup> October 2022, in connection with Narok CMC ELC Case No E058 of 2021, wherein the Plaintiffs had claimed that the 1<sup>st</sup> Defendant in cohort with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants fraudulently and secretly transferred the suit property and registered it the Name of Narok County Council, without the consent of its members.



31. Further, when the Advocate/Client relationship came to an end on 12<sup>th</sup> October 2022, following non-payment of Legal fees, the Advocate filed the Bill of Costs dated 4<sup>th</sup> October 2023, served it on the Client/Applicant on 26<sup>th</sup> October 2023; and despite the service, the Client/Applicant was absent when the matter came for taxation. Consequently, the Taxing Officer taxed the Advocate/Respondent's Bill of Costs at Ksh 519,812/50, which the Client/Applicant now disputes.
32. The Advocate/Respondent further submitted that the Client's Reference Application is unfounded, and it merely raises unsubstantiated claims. With regard to instruction fees, the Advocate/Respondent submitted that the Taxing Officer properly exercised his discretion based on established principles, taking into account all relevant factors including the complexity and significance of the case.
33. The relevant authorities cited, included *Premchand Raichand Limited v. Quarry Services of East Africa*, *Kenya Airports Authority v. Otieno Ragot*, and *Jeremiah Muku v. Methodist Church in Kenya Trustees*, which underscore that instruction fees encompass the taking of instructions, preparation, legal application, and the hearing, and that the Taxing Officer may increase fees where the subject matter is complex or not easily valued. The Advocate/Respondent further submitted that the Client/Applicant failed to provide evidence to challenge the taxation.
34. Regarding the specific items in the Bill of Costs, the Advocate had averred in his Replying Affidavit in Para 24(d), that he had attached a list and bundles of documents dated 4<sup>th</sup> October 2023, which showed all the documents and records to justify the billing of every items in the Bill of costs. Further, that his representing the Client/Applicant necessitated staff from his office including Advocates to travel to and from Nairobi to Narok which came with considerable costs.
35. Further, that the 50% increase applied to the Advocate-Client Bill is also proper under Schedule 6, Part B, as recognized in multiple authorities including *Kinyua Muyaa Co. Advocates v. Kenya Ports Authority*, *Dennis KN Magare vs Armajit Singh Gahir*, and *Havi & Co. Advocates vs Purma Holdings Limited*, where the court held that instruction fees may be increased to reflect fair remuneration for the work involved.
36. Finally, the Advocate/Respondent submitted that costs should follow the event, and that all items in the Advocate-Client Bill of Costs were appropriately taxed. Consequently, the Advocate/Respondent urged the Court to dismiss the Client's Reference Application with costs and uphold the Taxing Officer's ruling.
37. Further, Kemboy Law Advocates filed written Submissions on in support of their Notice of Preliminary Objection (P.O), dated 9<sup>th</sup> May 2025, and challenged the competence of the Client/Applicant's Reference Application dated 27<sup>th</sup> January, 2025.
38. The Advocate/Respondent submitted that the background of the Reference involves legal services provided by the Advocate between 3<sup>rd</sup> August 2021 and 12<sup>th</sup> October 2022, in connection with instructions to represent the Client /Applicant in Narok CMC ELC Case No. E058 OF 2021, wherein the Plaintiffs had sued the Defendants for fraudulent and secret transfer of the suit property to Narok County Council without the consent of the members, and this dispute culminated in an Advocate-Client Bill of Costs dated 4<sup>th</sup> October, 2023.
39. It was further submitted that the Client/Applicant failed to settle the Legal fees, which failure prompted the Advocate/Respondent to file for taxation, which was scheduled and subsequently determined by the Taxing Officer, Hon. Daniel Ngayo, on 18<sup>th</sup> December, 2024, at Kshs. 519,812/50.
40. Further, the Advocate/Respondent submitted that the Client/Applicant filed the instant Chamber Summons Reference Application outside the statutory 14-days timeline prescribed under Paragraph



11(2) of the Advocates Remuneration Order (ARO), without leave from the Court as required by Paragraph 11(4).

41. The Advocate/Respondent also submitted that the instant Reference is time-barred, procedurally defective, and an abuse of the Court's process, therefore depriving the Court jurisdiction to hear it.
42. The Advocate/Respondent relied on the established case law, including *Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors*(1969)EA 696; *Quick Enterprises Ltd vs Kenya Corporation, Kisumu* HCCC No. 22 of 1999(unreported and, *Dismas Wambola vs Cabinet Secretary, Treasury & 5 others* [2017]eklr, which cases stated that a Preliminary Objections should raise pure points of law, capable of disposing of a matter without examining factual disputes.
43. The other authorities relied on are; *Aoro v. Were* (Miscellaneous Reference Application E019 of 2022)[2022]KEHC 14628(KLR)(31 October 2022), *Muturi Mwangi & Associates vs Mwangi*(ELC Misc App. E163 of 2021 [2024]KEELC 1604(KLR), and *Evans Thiga Gaturu, Advocate vs Kenya Commercial Bank Limited* (2012)eklr Nairobi HC Misc. APP No.343 of 2011, to underscore strict compliance with Paragraph 11 timelines, noting that failure to file within 14 days or seek an extension renders the Reference incompetent.
44. Ultimately the Advocate/ Respondent submitted that the Preliminary Objection herein is meritorious, and the instant Reference should be struck out for being filed out of time and without leave, and the Advocate/Respondent is entitled to costs.
45. The above are the grounds in support of the instant Reference dated 27<sup>th</sup> January 2025, and the grounds in opposition to the same. Further, the reasons in support of the Preliminary Objection and opposition to the same, and the rival written submissions, which this court has carefully read and considered. The court finds the issues for determination are;
  - i. Whether the Preliminary Objection dated 9<sup>th</sup> May 2025 is merited;
  - ii. Whether the Chamber Summons Application dated 27<sup>th</sup> January 2025 is merited;
  - iii) who should pay costs of this Reference?

#### **I. Whether the Preliminary Objection dated 9<sup>th</sup> May 2025 is merited**

46. In its Preliminary Objection, the Advocate/ Respondent averred that the instant Chamber Summons Reference is incompetent having been filed outside the timelines expressly provided for under Para 11(2) of the Advocates Remuneration Order. Therefore, the instant Reference is bad in law, is an abuse of the court process and thus the court lacks jurisdiction to hear and determines the same.
47. Before delving into the merits and demerits of the instant Preliminary Objection, the court will first determine whether what has been filed herein fits into the description of what amounts to a Preliminary Objection.
48. Preliminary Objection is a legal argument that raises a pure point of law, which is solely based on the pleadings, and the objector raises it to have a case dismissed before trial. It is similar to a demurrer and cannot involve disputed facts or require the presentation of evidence. The Common grounds for a Preliminary Objection include lack of jurisdiction, such as this one raised herein by the Advocate / Respondent.



49. In the case of Mukisa Biscuits Ltd Vs West End Distributors Ltd (1969) EA 696, the court described the Preliminary Objection as follows:-

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

50. Further, in the case of Oraro vs Mbaja 2005 1 KLR 141, the court described a preliminary objection as follows;

“A ‘Preliminary Objection’, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seek to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

51. The same issue was discussed in the case of in Aytar Singh Bhamra & Another vs. Oriental Commercial Bank, Kisumu High Court Civil Case NO. 53 of 2004, where the Court held that:

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

52. The Advocate/Respondent objection is based on lack of jurisdiction, due to the fact that the Client/Applicant failed to comply with the provisions of Para 11(2) of the Advocates Remuneration Order. It is trite that jurisdiction is everything and without it, the court has no option but to down its tools, and the issue of jurisdiction is a point of law.

53. Further, the allegation that the Client/Applicant failed to comply with Para 11(2) of the Advocates Remuneration Order, is a pure point of law, and thus the Instant Preliminary Objection meets the criteria of what amounts to a Preliminary Objection, because if the same is upheld, it is capable of disposing this matter preliminarily. See the case of Quick Enterprises Ltd v Kenya Railways Corporation, Kisumu High Court Civil Case No 22 of 1999,

54. Having found that the instant Preliminary Objection is a pure point of law, is it merited? Para 11(1) & (2) of the Advocate Remuneration Order, provide as follows;

- 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.

55. The Advocate/Respondent has averred that the decision of the taxing master was issued on 18<sup>th</sup> December 2024, and the instant Reference was filed on 27<sup>th</sup> January 2025, which is way after the fourteen days stipulated in the Para 11 of Advocates Remuneration Order.



56. However, the Client /Applicant averred that after the ruling was delivered on 18<sup>th</sup> December 2024, it was aggrieved by the said Ruling, and it gave a Notice to the Taxing master and requested for the written reasons with respect to taxation of each item. This Notice was given the same day that the Ruling was delivered and was within 14 Days as stipulated by Para 11(1) of Advocates Remuneration Order.
57. It is evident that the taxing master supplied the certified copy of the Ruling which contained reasons for taxation on 22<sup>nd</sup> January 2025, and the instant Reference was filed on 27<sup>th</sup> January 2025, within a period of 5 Days after receipt of the Certified copy of the Ruling.
58. Para 11(2) of the Advocates Remuneration Order, states that upon receipt of the said Notice, the taxing master shall forthwith supply the reasons for the taxation. In the instant case, the certified copy was not supplied until 22<sup>nd</sup> January 2025. Further, it is clear that after receipt of the certified copy of the Ruling, the Client/Applicant filed the instant Reference within the stipulated period of 14 Days.
59. Though the Advocate/Respondent submitted that the Ruling supplied to the Client /Applicant was the same one uploaded in the CTS portal of the court, but the law is clear that a Notice has to be issued to the taxing master, and the taxing master has to supply reasons for the taxation forthwith, and after receipt of such reasons, then the Aggrieved party has 14 Days to file Reference to the Judge.
60. The Client/Applicant did not receive the reasons or certified copy of the Ruling until 22<sup>nd</sup> January 2025, and it cannot be faulted for failure to file the Reference after 14 days from the date of receipt of the reasons for taxation.
61. Consequently, this court finds and holds that the Preliminary Objection herein is not merited, and the same is dismissed entirely with costs to the client/Applicant.

## **II. Whether the Chamber Summons Application dated 27<sup>th</sup> January 2025 is merited?**

62. In the instant Reference, the client /Applicant has sought for setting aside the Advocate/Respondent's Bill of costs assessed at Ksh 519,812/50, for being extremely high, and that the court do re-tax /assess the said Bill of costs and/or refer it to another taxing officer other than Hon. Daniel Ngayo.
63. In the Reference and submissions, the Client/Applicant averred and submitted that the taxing master misapplied the provisions of Schedule 7 of Advocates Remuneration Order, and arrived at a wrong figure. Further, that some items were taxed in total disregard of the law. To the Client/Applicant, the matter herein was not complex nor was it novel, and an award of Ksh 250,000/= instruction fees was extremely high.
64. This allegation and submissions were disputed by the Advocate /Respondent who submitted that the taxing master correctly used his discretion to arrive at the taxed amount. From their Client/Advocate Bill of costs, the amount sought was Ksh 693,812/50, but the taxing master taxed off most of the items and the cumulative taxed amount was Ksh 519,812/50, which amount was reasonable given the time taken and amount of work put in defending the suit.
65. The court has carefully considered the instant Chamber Summons Application, the reply to the same, and the rival written submissions, and this court will be guided by the principles set out by various court when considering a reference from the decision of the taxing master.
66. In the case of Kipkorir, Tito & Kiara Advocates vs Deposit Protection Fund Board (2005) eKlR, the court held;

“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.”

67. Further in the case of *Kamunyori & Company Advocates v Development Bank of Kenya Limited* (2015) Civil Appeal 206 of 2006, the court held;

“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.”

68. The Court of Appeal in the case of *Peter Muthoka & Another vs. Ochieng & 3 Others*, Civil Appeal No. 328 of 2017; [2019] eKLR, the Court of Appeal held;

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court. Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.” We concur and approve of the foregoing findings by the Court of Appeal on the factors to take into consideration when determining the value of the subject matter.”

69. Further, the principles applicable when the court is called upon to interfere with a taxing master decision were settled in the case of *Republic vs Competition Authority Ex Parte Ukwala Supermarket Ltd & Ano* ( 2017) eKLR, where the court held;

“The circumstances under which a Judge of the High Court interferes with the taxing officer’s exercise of discretion are now well known. These principles are,

- (1). that the Court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle;
- 2). it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the



interest of the parties, the general conduct of the proceedings and any direction by the trial judge;

- (3). if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;
- (4). it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;
- (5). the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
- (6). the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;
- (7). the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of *First American Bank of Kenya vs. Shah and Others* [2002] 1 EA 64.”

70. Being guided as above, it is clear that courts will not interfere with the exercise of discretion unless of the taxing master exercised the said discretion not judicially or exercised it improperly or wrongly, by disregarding factors which should have been considered, or considered matters which were improper for him to have considered, or he failed to bring his mind to bear on the question in issue, or he had acted on the wrong principles. See the case of *KANU National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR
71. Further, this court will interfere where in its opinion, the taxing master was clearly wrong or in the circumstances where it is in the same position as, or better position than the taxing master to determine the very issues, see the case of *Fredrick Otieno Outa vs Jared Otieno Odoto & 3 Others SC Petition No. 6 of 2014*[2023]KESC 75(KLR).
72. Bearing in mind the above holdings of the superior courts, the court will proceed and determine whether the instant Reference is merited, and whether the taxing officer erred in taxing the Advocate-Client Bill of Costs as he did.
73. The Client/Applicant is disputing the Advocate/Client bill of costs which was taxed at Ksh 519,812/50, on allegation that it is extremely high and was arrived by misapplication of the principles of taxation.
74. The matter in issue that brought about this impugned taxation was *Narok CMC ELC NO E058 of 2021*, which matter was not heard to conclusion, since the Advocate -Client relationship came to an end, and the Advocate ceased acting for the Client, and this matter is still on going.
75. The parties herein are in agreement that the costs of the subject matter was not ascertainable, and therefore the taxing master used his discretion. It is trite that where value of the subject matter is not ascertainable, the taxing officer discretion is paramount, and the Judge would not simply interfere with



that discretion simply because he does not agree with the amount/figure. See the case of Joreth Ltd v Kigano & Associates [2002] KECA 153.

76. 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),”

77. Since the value of the subject was unascertained, the taxing master used his discretion while relying on the case of Premchand Raichand vs Quarry Services E.A Ltd and awarded Ksh 250,000/= as instruction fees while taking into account the nature of the matter, interest of the parties and the labour required. The taxing master taxed off Ksh.100,000=.

78. The Narok CMC ELC NO E058 OF 2021, was filed on 23<sup>RD</sup> July 2021, and the Advocate/ Respondent was appointed to Appear for Narok County Government on 3<sup>rd</sup> August 2021. Apart from that Notice of Appointment filed by Kemboy Law Advocates, this court has not seen any other action or Pleadings by the said Law Firm. The matter proceeded in court severally for an Application for Joinder of some other parties, which Application is dated 15<sup>th</sup> September 2021, having been filed by Tuya Kariuki & Co Advocates. However, the Advocate/Respondent did not file any Pleadings, nor ant response to the said Application.

79. Further, the Advocate/Respondent did not file a list of any correspondences between itself and the Client/Applicant giving updates to the Client/Applicant on the progress of the case. Further, the Narok CMC ELC CASE NO E058 OF 2021, is still on going, and will come up for mention on 28<sup>th</sup> January 2026, and thus is not a concluded matter.

80. It is evident that during the time the Advocate/Respondent represented the Client/Applicant, no Defence was filed and the suit did not go the full trial. However, the taxing master in assessment of costs held that he took into account the necessary considerations while arriving at the instruction fees of ksh 250,000/= and taxed off ksh 100,000/=.

81. In his Ruling, the taxing master stated;” considering the foregoing principles, the importance , nature of the matter, interest of the parties, duration taken, the weight, care and labour required, I am of the considered view that instruction fees of ksh 250, 000/= is fair and reasonable. However, this court finds this are general considerations and principles, and the taxing master did not go into specifics as held in the case of Republic v Ministerfor Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others [2006] KEHC 3504 (KLR),

82. In the case of Kenya Ports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR) the Supreme Court, upon analysing the provisions of the Advocates Remuneration Order which relates to the Remuneration of advocates, and specifically assessment/taxation of instruction fees under schedule VIB of the Advocates Remuneration Order which relates to Advocate and client costs held inter-alia;

“Bearing the above in mind, we find that the proper interpretation of schedule VI Part B is that in assessing fees thereunder including instruction fees, a taxing officer is required to



exercise his/her discretion guided by the prescribed scale of fees in part A. To our minds, ... that does not mean ... that a Taxing officer is simply to apply the mathematical formula to the instruction fees ascertained in the taxed party – party costs. Failure to evaluate a disputed item under taxation and determine it judiciously is contrary to the clear provisions of the Advocates Remuneration Order. Besides, a Taxing officer being a Judicial officer exercising a Judicial mandate cannot be said to be performing such mandate mechanically or merely as a formality...”

83. It is also not in doubt Costs for matters in the subordinate courts are generally be assessed or taxed before the subordinate court under Schedule 7 of the Advocates Remuneration Order. The Advocate/ Respondent filed its Advocate-Client Bill of Costs under Schedule 7(B).
84. Schedule 7(B) of the Advocates Remuneration Order provides; B—ADVOCATE AND CLIENT COSTS. As between advocate and either the minimum fees shall be—
- a. The fees prescribed in A above increased by 50%;
  - b. The fees ordered by the court increased by the 50%; or
  - c. The fees agreed by the parties under paragraph 57 increased by 50%, as the case may be and the increase to include all proper attendances on the client and all necessary correspondence.
85. Therefore, while considering the Advocate/Client costs, the court will be guided by Schedule 7(A) which is on Party and Party costs, and then have the said Costs increased by 50% as stipulated above.
86. The court has considered the Instructions fees as sought by the Advocate/Respondent to the tune of ksh 350,000/=which the taxing officer taxed at ksh 250,000/= and taxed off ksh 100,000/=. While taxing the instruction fees, the taxing officer held 'considering the foregoing principles, the importance, nature of the matter, interest of the parties duration taken, the weight , care labour , I am of the considered view that the sum of ksh 250,000/= instruction fees is fair and reasonable.
87. However, the above are general principles, which needed to be applied independently in this case given that no Defence was filed, and the Advocate/Respondent was on record for the Client /Applicant within a very short period from 3<sup>rd</sup> August 2021 to 12<sup>th</sup> October 2021, when the Relationship came to an end. What duration was considered.? What was the care and labour taken into account?
88. The court will be guided by the principles set out in the case of Republic v Ministerfor Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others [2006] KEHC 3504 (KLR), where the court observed that: -

“Discretion, as an aspect of judicial decision-making, is to be guided by principles, the elements of which are clearly stated, and which are logical and conscientiously conceived. It is not enough to set out by attributing to oneself discretion originating from legal provision, and thereafter merely cite wonted rubrics under which that discretion may be exercised, as if these by themselves could permit of assignment of mystical figures of taxed costs... Taxation of costs as a judicial function is to be conducted regularly, on the basis of rational criteria which are clearly expressed for the parties to perceive with ease. Regularity in this respect cannot be achieved without upholding fairness as between the parties; the taxing officers is to provide only for reasonable compensation for work done; the taxing officer should avoid the possibility for unjust enrichment for any party and ought to refuse any claim that ends to be usurious; so far as possible, the taxing officer should apply the test of comparability; the taxing officer should endeavour to achieve objectivity when considering ill-defined criteria



such as public policy, interests affected, importance of matter to parties, or importance of matter to the public; the taxing officer should clearly identify any elements of complexity in the issues before the Court – and in this regard should revert to the perception and mode of analysis and determination adopted by the trial judge; the taxing officer ought to describe accurately the nature of the responsibility which has fallen upon counsel; the taxing officer should state clearly the nature of any novel matter in the proceedings; the taxing officer should determine with a measure of accuracy the amount of time, research and skill entailed in the professional work of counsel.”

89. While arriving at the figure of ksh 250, 000/= the taxing officer did not take into account that no Defence had been filed, and the Advocate/Respondent had not put much labour or care into the said case . Therefore, the assessment ought to have been done on the lower scale. The taxing office did not elaborate how he arrived at ksh 250, 000/= and not any other figure given that taxation of costs is not a mathematical exercise; and is entirely a matter of opinion based on experience., but it has to be arrived on the laid principles.
90. This court finds and holds that the taxing officer did not take into account the guiding principles of taxation when arriving at an award of ksh 250,000/=, as instruction fees. Consequently, this court finds and holds that decision was erroneous, and cannot stand.
91. It is trite that if a party is dissatisfied with the decision of a taxing officer in the subordinate court he/ it can challenge the said decision by filing a Reference to a Judge in the High Court OR ELC, just like what the Client /Applicant has done. Further, the Judge will not interfere with the taxing officer's decision unless it is demonstrated that the taxing officer committed an error of principle. Such an error of principle can be inferred if the fee awarded is manifestly excessive or so low as to cause injustice. Such an error can occur when the taxing officer applies the wrong schedule of the Remuneration Order, or treating the assessment of costs as a mechanical exercise rather than a contextual one.
92. The court finds and holds that the taxing officer herein treated the assessment as a mechanical exercise and did not look at the case independently and keenly to come to a fair remuneration for work done.
93. The Client /Applicant also took issue with items Nos 2,3,10,11 and 12 on receipt and perusal of documents, which it averred the law does not provide for them under Schedule 7 of ARO, yet the taxing officer disregarded the law and allowed them as drawn. However, the taxing master found and held that they were drawn to scale, and were not exorbitant or unreasonable. He allowed them as drawn by the Advocate/Respondent herein
94. Further, the Client/Applicant took issues with Items No 4, 9, 13 and 18 on drawing documents including correspondence letters, which Schedule 7 does not provide for, and thus the taxing master misapplied the laid down principles on taxation.
95. The Advocate/Respondent submitted that Schedule 7 of the Advocates Remuneration Order, provides; When an order has been made in general terms for the payment of costs by either party and an advocate has been employed, those costs, in addition to the court fees, shall be computed under this Schedule, which shall be the minimum fee, and shall include (except' as may be provided) taking instructions, drawing or perusing documents, pleadings or similar documents, engrossing and filing documents, and all necessary attendance at court or chambers.
96. Therefore, it is evident that drawing and perusal of documents is a consideration in Schedule 7. The court will now determine whether what was drawn was up to scale.



97. As provided by Schedule 7(11), the drawing of Affidavits or Return of service is taxed at Ksh 1000/=. The Advocate/Respondent assessed the said drawings in items Nos 4, 13, and 18 at ksh 1100/= and ksh 1250/=:, which was above the given amount, thus excessive.
98. Further, on items Nos 2,3,10,11 and 12, it is on perusal of various documents, which the Client/Applicant averred and submitted are not provided for in Schedule 7, and thus the taxing master was in disregard of the principle of taxation when he held that they were drawn to scale.
99. However Schedule 7(11)(1), has a provision for perusal of documents and pleadings, which shall be minimum fees. The court has seen the various amount charged, and the number of folios allegedly perused, and will not take any issue with that. The said amount in items Nos 2,3,10, 11, and 12 should remain as drawn.
100. The Client/Applicant took issue with item No 7 on Service which was taxed at ksh 5000/=. The items charged as per the Advocate-Client Bill of Cost is Service of Memorandum of Appearance. The Advocate/Respondent Entered Appearance Post Covid 19 Pandemic, on 3<sup>rd</sup> August 2021, and certainly service was via email. As provided by Schedule 7(10), of ARO, the amount chargeable is ksh 1400/= and certainly ksh 5000/= is excessive, and the taxing master erred in holding that the same was drawn to scale. The impugned Advocates- Client Bill of costs was prepared under Schedule 7(B) of the Advocates Remuneration Order 2014., and the taxing master should have taken account on the said schedule on the issue of service. This court finds and holds that an amount of ksh 5000/= charged on service of Memo of Appearance is excessive.
101. The Client/Applicant also took issue with items Nos 16 and 17, wherein the taxing master held that it was drawn to scale, and allowed an amount of ksh 10,000/=. The court has considered the provisions of Schedule 7(7) of ARO, the amount chargeable is ksh 5000/= if the attendance is for the full day, and 2100/= for half day. Certainly, the assessment of attendance fees at Ksh 10, 000/= is against the provisions of Schedule 7(7) of ARO, and therefore excessive and should not be allowed to stand.
102. The Advocate/Respondent submitted that the taxing officer was supposed to tax on the lower scale, where denial of liability has not been filed. Certainly, the Advocate/respondent did not file a defence, and deny liability, and the correct scale was the lower one. The Advocate/Respondent could not charge attendance fees of ksh 10,000/=:, which attendance might have been online. The taxing master erred in finding that the all the other items were drawn to scale. The said findings disregarded the principles of taxation, and was misguided.
103. Ultimately, having considered the instant Chamber Summons Application dated 27<sup>th</sup> January 2025, and the rival written submissions, together with the provisions of Schedule 7(B) of the Advocates Remuneration Order 2014, this court comes to a conclusion that the said Application/Reference is merited, and allowed entirely in terms of prayers Nos 1 and 2 thereon.

### **III). Who should pay costs of this Reference?**

104. On costs, it is trite that costs are awarded at the discretion of the court, but ordinarily costs follow the event. Given the previous relationship between the Client/Applicant and the Advocate/Respondent, the court directs each party to bear its own costs of this Reference. However, the Preliminary Objection dated 9<sup>th</sup> May 2025, by the Advocate/Respondent is dismissed with costs to the Client/Applicant.
105. In a nutshell, the instant Chamber Summons Application/ Reference is allowed entirely in terms of prayers Nos 1 and 2 with an order that each party to bear its own costs. However, costs of the Preliminary Objection are awarded to the Client/Applicant herein



It is so ordered,

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 27<sup>TH</sup> DAY OF NOVEMBER  
2025**

**L. GACHERU**

**JUDGE.**

Delivered on line in the presence of

Elijah Meyoki - Court Assistant

Ms Lyona H/B For Maina Ngaruiya for Client/Applicant

Mr. Kere for Advocate/Respondent

