



**THE JUDICIARY**



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAROK**  
**ELC MISC APPL. NO. E017 OF 2023**

**KEMBOY** **LAW**  
**ADVOCATES.....ADVOCATE/RESPONDENT**

**VERSUS**

**NAROK** **COUNTY**  
**GOVERNMENT.....CLIENT/APPLICANT**

**ARISING FROM**

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAROK**  
**ELC CASE NO. 34 OF 2019**

**WILDLIFE** **LODGES**  
**LIMITED.....PLAINTIFF**

**VERSUS**

**THE COUNTY COUNCIL OF NAROK.....1<sup>ST</sup>**  
**DEFENDANT**  
**WILDERNESS LODGES LIMITED.....2<sup>ND</sup>**  
**DEFENDANT**

**RULING**

1. By a Chamber Summons Application/Reference pursuant to **Paragraph 11(2)** of the Advocates Remuneration Order 2014, the Client/Applicant herein, Narok County Government has sought for these orders;

1. ***That the court be pleased to set aside the Ruling and Order of the taxing master Hon Daniel Ngayo delivered on 21<sup>st</sup> December 2024, in which he taxed the Advocates/Respondent Bill of costs dated 4<sup>th</sup> December 2023, at ksh seventeen Million Nine hundred and seventy two , four hundred and sixteen and fifty cents( ksh 17,972,416/50) and the Advocate/Respondent Advocate-Client Bill of Costs be taxed afresh.***

2. ***that the court be pleased to issue appropriate directions for the taxation/assessment of the Advocate/Respondent Advocate client Bill of Costs dated 4<sup>th</sup> October 2023 to proceed before any other taxing Officer other than Hon Daniel Ngayo.***

3. ***That all costs of this Reference be awarded to the Client /Applicant.***

2. This Chamber Summons Application is premised on various grounds, and on the Supporting Affidavit of **John Mayiani Tuya**, the County Secretary for Narok County Government. Among the grounds in support of the Chamber Summons are; the Advocate /Respondent filed Advocate/ Client Bill of costs dated **4<sup>th</sup> October 2023**, which Bill of costs was contested, by the Client/applicant herein.

3. However, on **21<sup>st</sup> December 2024**, the taxing master delivered a ruling over the said contested Bill of Costs, wherein he taxed the said Bill of Costs at **Ksh**

- 17,972,416/50**, which Bill of costs aggrieved the Client/Applicant herein. Therefore, vide a Notice dated **18<sup>th</sup> December 2024**, the Client/Applicant through its advocate requested the taxing master for written reasons for the taxed items, with intention to file a Reference before this court.
4. That the Client /Applicant received the **Certified** copy of the Ruling and the reasons for the said taxation on **22<sup>nd</sup> January 2025**; From the said Ruling, the taxing master misapplied the provisions of **Schedule 6** of the **Advocate Remuneration Order**; And consequently, the amount awarded was extremely high contrary to the provisions of the said Schedule 6 of the Advocates Remuneration Order.
  5. Further, even if the Client/Applicant did not file any response, the taxing master ought to have been guided by the existing laws on taxation and the procedures /guidelines as enshrined under **Schedule 6** of the said **Advocates Remuneration Order 2014**, since the matter was not complex nor novel in any way and an award of **ksh 10,000,000/=** as **instruction fees** was **misguided** and **extremely high**.
  6. Further, that the taxing master disregarded the law when he allowed items No **36, 40 and 44** on Service , yet the said items are capped at **ksh 1400/=** as per **ARO of 2014**; Further items **Nos 54, 56, 58, 60, 62, 64, 67, 69, 71, 74, 76, 78, 80, 80, 84, 86, 90, 93, 99 and 100** of the said Bill of costs for the hearing of applications , taxation and rulings were only capped were **ksh 1900/** under **Schedule 6A(7)**

of **Advocates Remuneration Order 2014**, and therefore the taxing master disregarded the law.

7. Further, the taxing master disregarded the law by **raising the Bill of costs by 50%** ; and thus the instant Bill of costs should be **set aside**, as it is not anchored in law, policy or court practice, since the taxing master erred in law and fact by disregarding the known provisions of **Schedule 6** of the **Advocates Remuneration Order 2014**; He also erred in law in failing to appreciate that the court has a duty to protect public funds
8. Therefore, in disregarding the law and principles of taxation, the said action of the taxing master jeopardised the Client/Applicant's rights and interest, thus occasioning injustice upon it, if the impugned Ruling is not set aside.
9. Consequently, the Client/Applicant urged the court to allow the instant Chamber Summons Application/Reference by setting aside the taxing officer decision of **18<sup>th</sup> December 2024**, and by giving appropriate directions. And for the interest of justice and fairness, the prayers sought herein should be allowed.
10. In his supporting Affidavit, **John Mayiani Tuya**, the Narok County Secretary reiterated most of the grounds in support of the Chamber Summons Application, and also averred that an award of **ksh 17, 972, 416/50** as Advocate/Client Bill of costs was **extremely high** and is contrary to the existing

laws on taxation; Further, since the matter was not complex, an award of **ksh 10, 000,000/=** as **instruction fees** was not justifiable.

11. He urged the court to allow the instant Chamber Summons in the interest of justice and fairness and to protect the public funds, and the taxation should be ordered afresh.
12. The Application is opposed by the Advocate/Respondent who filed its Replying Affidavit through **Julius K.Kemboy Advocate** dated **8<sup>th</sup> February 2025**, and also a **Preliminary Objection** dated **9<sup>th</sup> May 2025**; wherein the Advocate/Respondent averred that the instant Chamber Summons Reference is **incompetent** for having been filed outside the timelines as provide by **para 11(2 )** of the **Advocates Remuneration Order 2014**;
13. That for the above reasons, the said Chamber Summons Reference is not only bad in law, but also an abuse of the process of the court, and thus the court has no jurisdiction to determine the said Reference, and Advocate /Respondent urged the court to dismiss the Chamber Summons Reference with costs *in limine*.
14. In his Replying Affidavit, **Julius K. Kemboy Advocate**, averred that he was the one in personal conduct of this matter, being **Narok ELC No. 34 of 2019 (Formerly Nairobi HCCC NO 1248 of 2003)**, and his Law Firm prosecuted the disputed Bill of Costs.

15. It was his contention that the instant **Chamber Summons** is **frivolous, vexatious** and an **abuse of the court process**, and an attempt by the Client/Applicant to escape his obligations.
16. He also contended that the court lacks jurisdiction to hear the instant Reference Application since it is fatally defective and incompetent, and should be dismissed.
17. The advocate averred that he rendered his services over the matter in issue from **11<sup>th</sup> July 2013** to **12<sup>th</sup> October 2022**, which was a period of over **10 years**, but the relationship came to an end when the Client/Applicant herein refused to honour payments of duly earned legal fees.
18. Further, that his Law Firm filed the Advocate-Client Bill of costs dated **4<sup>th</sup> October 2023**, which was duly served upon the Client/Applicant herein. The said Bill of costs was assessed and taxed by the taxing master, who delivered a ruling on **18<sup>th</sup> December 2024**.
19. He also reiterated the contents of the Preliminary Objection on failure to adhere to the time lines set in **Para 11** of the Advocates Remuneration Order, and therefore contended that this court lacks jurisdiction to entertain this Reference, as no leave of the court was sought to file the Reference out of time.
20. Further, he reiterated that the taxing master correctly considered the provisions of **Schedule 6B** of **Advocates**

**Remuneration Order**, in his assessment of the instruction fees, as he took into account the complex nature of the matter, time taken, its weight, interest of the parties, care and labour required.

21. He alleged that the matter in question was **complex** in terms of the issues and law, and it took close to over **10 years**, and since the value of the subject matter was not ascertainable from the pleadings, the taxing master used his discretion well to assess and arrive at the instruction fees.
22. It was his contention that the taxing master rightfully had unlimited discretion to assess the instruction fees, and considered all factors.
23. In regard to items **Nos 36, 40, and 44**, he relied entirely on **Schedule 6(9)** of **Advocates Remuneration Order**, and the proviso on sub-para b, on every additional kilometres.
24. On items No **54, 56, 58, 60, 62, 64, 67, 71, 74, 76, 78, 80, 82, 84, 88, 90, 93, 99** and **100** of the Bill of costs, he relied on **Schedule 6A (7)**, which provides charging of up to **ksh 15, 000/=** for attendance in court.
25. He urged the court to dismiss the instant Chamber Summons Reference as it is not merited with costs to the Advocate/Respondent.

26. The court directed the parties to canvas the Preliminary Objection and the Chamber Summons Reference together through written submissions. In compliance, **Maina Ngaruiya &Co Advocates** filed the written submissions dated **13<sup>th</sup> August 2025**, on behalf of Client/Applicant. **Kemboy Law Advocates** on behalf of the Advocate/Respondent filed the written submissions dated **16<sup>th</sup> September 2025**, in support of the **Preliminary Objection** and opposition to the Chamber Summons Reference.
27. Though the Advocate /Respondent filed the Preliminary Objection, it did not file any elaborate written submissions in support of the said Preliminary Objection. However, **Julius K. Kemboy Advocate** in his Replying Affidavit dwelt on the issue of failure to comply with **Para 11** of **Advocates Remuneration Order** and this court will consider the same.
28. In opposition to the Preliminary objection, the Client /Applicant submitted that the Ruling on the Advocate-Client Bill of costs and taxation was delivered on **18<sup>th</sup> December 2024**, wherein an award **of ksh 17, 972,416/50**, was given by the taxing master. Being dissatisfied with the said award, the Client/Applicant wrote to the taxing master on **18<sup>th</sup> December 2024**, the same date of the Ruling, requesting for written reasons with respect to the taxation of each items in the Bill of costs and **Certified** copy of the ruling, to enable them file a Reference.

29. The Client/Applicant submitted that the **written reasons** vide a **Certified ruling** was delivered on **22<sup>nd</sup> January 2025**, and the instant Chamber Summons was filed on **30<sup>th</sup> January 2025**, which was within the **fourteen days** stipulated in **Para 11(1)&(2)** of the Advocates Remuneration 2014. It was its further submissions that it complied with the law, and cannot be faulted, and thus the instant Chamber Summons Reference is properly before this court, and the court has jurisdiction to hear and determine same, and should not dismiss it. Reliance was sought in the case of **D.T Dobie & Co (k) Ltd vs Joseph Muchina & Ano( 1980) eklr.**
30. In respect to the instant **Chamber Summons Reference**, the Client /Applicant raised one issue for determination being **;Whether the taxing officer erred in law and principles when taxing the Respondent's bill of costs as he did.**
31. For this submissions, the Client/Applicant relied on various decided case among them **Bank of Uganda vs Sudhir Ruparalia &Another( Taxation Reference 1 of 2023( 2023) UGSC 12( 5<sup>TH</sup> May 2023)**, where the court extensively discussed the principles that a taxing officer should apply when assessing legal fees and whether a judge can interfere with that discretion.
32. The Client/Applicant also relied on the case of **Keziah Gathoni Supeyo vs Yano t/a Yano & Co Advocates ( 2019)** where the court settled the principles for taxation as follows;

***“Having considered all these there is no dispute that taxation of costs rests on the principles stated in the case of Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others No.3 (1972 EA 162 where the court stated as follows on the principles on taxation:***

- a. successful litigant ought to be fairly reimbursed for costs he has had to incur***
- b. That costs be, not allowed to rise to such level as to confine access to justice to the wealthy.***
- c. that the general level of remuneration of advocates must be such as to attract recruits to the profession and***
- d. that as far as practicable there should be consistency in the awards made.***
- e. that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances***
- f. the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically***
- g. the court will only interfere when the award of the taxing officer is so high or***

***so low as to amount to an injustice to one party.”***

33. On instruction fees, the Client/Applicant submitted that the taxing officer misdirected himself in assessing the instruction fees in total disregard of the clearly laid down law and principles of fair remuneration. It was argued that the said award was grossly exaggerated, excessive and gratuitous. Reliance was sought in the cases of **Jorethe Ltd vs Kigano & Associates ( 20020 1 EA 92; Kyalo Mbobu T/A Kyalo & Associates Advocates vs Jacob Juma( 2015) eklr; Rvs Minister for Agriculture & 2 others Exparte Samuel Muchiri W’ Njuguna & 6 Others ( 2006) eklr** among others.
34. The Client/Applicant also submitted that since the taxing master was not able to ascertain the value of the subject matter, then he was called upon to exercise discretion, and he needed to take into account the nature and importance of the cause of the matter, the interest of the parties, the general conduct of the proceedings, any directions by the trial court and all other relevant circumstances.
35. The Client/Applicant further submitted that the taxing master departed from the well known and settled principles of taxation and fair remuneration for work done, and proceeded to award exorbitant and unreasonable instruction fees, which warrants intervention of this court, taking into account that the matter had not been concluded and is still pending in court.

36. On increasing instruction fees by 50% the Client /Applicant submitted that taxing master misapprehended the law, as the Bill of costs was **An Advocate-Client Bill of Costs** and **50%** is only applicable where **Party and Party costs** have already been determined. Reliance was sought in the case of **Nyagito & Co Advocates vs Doinyo Lessos Creamaries Ltd( 2014) eklr; Tom Ojienda & Associates Advocates vs County Government of Narok( Misc Appli No E608 of 2019).**
37. On the services and hearing of Applications, it was submitted that the same is capped at **ksh 1400/=, and KSH 3000/=** and not as awarded by the taxing master being **ksh 15,000/=** for hearing of Applications.
38. The Client/Applicant urged the court to allow the instant Chamber Summons Application by setting aside the award of the taxing master dated **18<sup>th</sup> December 2024**, and proceed to assess/ quantify the same, and or remit it back to another taxing master for re-taxation.
39. On behalf of Advocate /Respondent, it was submitted that the court will **not interfere** with the exercise of discretion by the taxing master unless the taxing master erred in principles in assessing costs. Reliance was sought in the cases of **Bank of Uganda vs Banco Arabe Espanol ( Civil Application 23 of 1999) ( 2000) UGS 3( 19<sup>th</sup> April 2000; Lucy Waithira & 2others vs Edwin Njagi T/A**

**E.K.Njagi & Co Advocates ( 2017) eklr;** where the court held;

**“It is evident from the aforestated paragraph that the taxing officer exercises a discretionary power in taxing the Bill of Costs. Such power has to be exercised judiciously in that it must be done in accordance with the scale provided in the Remuneration Order, and where discretion is given for variation, justification must be given for such variations. Thus, is a reference one of the reasons that can justify interference with the decision of the taxing officer is if the discretion has not been exercised judiciously. It is trite that the taxing officer’s decision is not exercised judiciously where relevant consideration has not been taken into account, or irrelevant considerations have been taken into account and this would amount to an error of principle.”**

40. Therefore, the Advocate/Respondent submitted that the taxing master assessed all the items in the Advocate/Client Bill of costs dated **4<sup>th</sup> October 2023**, properly and applied the principles of taxation as provided by **Schedule 6** of the Advocates Remuneration Order 2014,

41. On instruction fees, the Advocate/Respondent submitted that the Client/Applicant did not demonstrate how the taxing master erred in exercise of his discretion, and there was no evidence of how the said taxing officer **misdirected** himself in ascertaining the instruction fees, in complete

disregard of the clearly set law and principles of fair remuneration.

42. For the above submissions, reliance was sought in the cases of ***Premchand Reichand vs Quarry Services Of East Africa & Others(1972) EA 162***, which was also relied upon by the taxing officer in his ruling; ***Peter Muthoka & Another vs Ochieng & 3 Others Civil Appeal No.328 of 2017( 2019)eklr***; ***Jeremiah Muku vs Methodist Church in Kenya Trustees Registered & Aother ( 2015) eklr***, among others.
43. On the increase of 50% of the instruction fees, the Advocate/Respondent submitted that as was held in the case of ***Joreth Ltd Vs Kigano & Associates ( 2002)eklr***, the taxing officer has discretion to increase the scale with regards to instruction fees based on the nature and importance of the matter, the complexity of the issues, the general conduct of the case , the time taken and the impact of the same on the parties.
44. On taxation of items **36, 40, 44, 54, 56, 58, 60, 62, 64, 67, 69, 71, 74, 76, 78, 80, 82, 84, 86, 88, 90, 93, 99 and 100**, the Advocate/Respondent submitted that on service, the same is not capped **on ksh1400/=** as **Schedule 6(9)** of the Advocates Remuneration Order provides **“Service within three kilometers of the High Courtor district registry of the High Court Kshs 1,400.”**

45. Further sub- para (b) provides that **“every additional kilometer over three, such amount as is reasonable, not exceeding per kilometre Kshs 35.”** Since the service was in Narok from Nairobi, the amount awarded was proper and within the parameters of fair remuneration.
46. On hearing of Applications, it was submitted that **Schedule 6A(7) of Advocates Remuneration Order, 2014** provides for charging of **ksh 15,000/=**, and the taxing master was within his discretion when he awarded the said amount.
47. On increase of half of taxed amount, the Advocate/Respondent relied on **Part B of Schedule 6**, which provides **“it is provided that as between an Advocate and Client, the minimum fees as set out in part A of the same schedule shall be increased by 50%. Such increase includes all proper attendances on the client and all necessary correspondences.”**
48. Reliance was sought in various decided cases among them **Dennis KN Magare & Another vs Armajit Singh Gahir & 5 others**, where the court held;
- “In the case at hand, the applicants presented an advocate and client bill of costs to the taxing officer who proceeded to tax the same and increase it by 50% as required. She cannot now be faulted for proceeding that way in circumstances where the applicants did not ask her to simply increase the already taxed**

***party and party bill of costs by 50%. In any case the party and party bill of costs is presented to the court by the party awarded costs and the costs of the successful party cannot be exactly the same with that of the party on the other side. Therefore, the best way to arrive at a just award of costs is to tax the advocate and client bill of costs presented to the taxing officer by the advocate, as was done in this case, and increase the taxed amount by half as required by Part B of Schedule 6. In the circumstances I find that the taxing officer did not commit any error in proceeding in the manner she did.”***

49. In conclusion, the Advocate/Respondent submitted that the Advocate /Client Bill of costs dated **4<sup>th</sup> October 2025**, was properly taxed, and urged the court to dismiss the instant Chamber Summons Application or Reference dated **30<sup>th</sup> January 2025**, with costs, for lack of merit.
50. The above are the pleadings in regard to the Chamber Summons Application dated **30<sup>th</sup> January 2025**, the grounds for and against it; the rival written submissions and the cited authorities. The court too has considered the Notice of Preliminary Objection and the reply to it by the Client/Applicant, and finds as follows-

51. The court will first determine the Preliminary Objection since a Preliminary Objection can determine a matter preliminarily without having to go to the merit of the case. See the case of **Quick Enterprises Ltd vs Kenya Railways Corporation; Kisumu HCCC No 22 of 1999**; where the court held:

***“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings.”***

52. Before determining the merit or demerit of this Preliminary Objection, the court will first determine whether what has been raised herein is a pure point of law, falls within the description of Preliminary Objection as stated in the case of **Mukisa Biscuits Manufacturing Co. Ltd-v- West End Distributors Limited (1969) EA. 696**, where the court held:-

***“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.”***

53. Further, in the case of ***Oraro vs Mbaja 2005 1 KLR 141*** the court held;

***“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.”***

54. It is evident that a Preliminary Objection should stem from the pleadings , See the case of ***Avtar Singh Bhamra & Another vs Oriental Commercial Bank, Kisumu HCCC 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.”***

55. In the instant case, the Advocate /Respondent has averred and submitted that the Chamber Summons herein offends the provisions of **Para 11(1) & (2)** of **Advocates Remuneration Order, 2014**, as it was filed outside the stipulated **14 days** period. This Paragraph outlines the procedure for objecting to a taxing officer's decision, and it specifies that a party who is aggrieved by such decision must give written notice of their objections to the taxing officer within **14 days**, after which the taxing officer must provide the written reasons for the decision. The objecting party can then apply to a judge in chambers within **14 days** of receiving these reasons.
56. It was further submitted that failure to comply with the clear provisions of law renders this court without jurisdiction. Jurisdiction is everything, and without it, the court cannot do much, but down its tools. Consequently, since the Advocate /Respondent **Preliminary objection** is on Jurisdiction, and failure to comply with the law, then the court finds and holds that the said Preliminary Objection is a pure point of law, and this it fits the description of what amounts to a PRELIMINARY Objection as described in the **Mukisa Biscuits Case( supra)**.
57. Is the instant Preliminary Objection merited? From the court record, it is evident that the ruling in issue was delivered on **18<sup>th</sup> December 2024**, and the Client/Applicant wrote to the taxing master requesting for written reasons on the taxed items.

58. The taxing master was supposed to supply the Client/Applicant with the written reasons forthwith, and the Client /Applicant who was aggrieved by the Ruling ought to have filed Reference within **14 Days** of receipt of the written reasons.
59. From the court record, the certified copy of the Ruling was supplied on **22<sup>nd</sup> January 2025**, and the instant Chamber Summons was filed on **30<sup>th</sup> January 2025**. This was **8 days** after receipt of the certified ruling or written reasons. Therefore, the Client /Applicant was within the **14 days'** period after receipt of the written reasons, and cannot be faulted.
60. Though the Advocate/Respondent has averred that the said Ruling was uploaded on the Judiciary CTS portal and the **14 days** expired on **4<sup>th</sup> January 2025**, however **Para 11(1)** provides for request of written reasons, and that is the procedure that the Client /Applicant followed. Consequently, this court finds that the Client/Applicant was within time.
61. For the above reasons, this court finds and holds that this **Preliminary Objection** is **not merited** and the same is dismissed entirely with costs to the Client /Applicant.
62. On the merit of the Chamber Summons Application/ Reference, it is evident that on **4<sup>th</sup> October 2023**, the Advocate/Respondent herein filed a **Advocate- Client Bill** of

costs and requested for a total sum of **ksh 52,773, 616.50**. From the ruling of the taxing master, the Client/Applicant herein as the Respondent did not file any Response.

63. The Advocate/Respondent herein had sought a sum of **ksh 20,000,000/** as **instruction fees**, and after consideration, the taxing master taxed off **ksh 10,000,000/=**, and awarded **ksh 10,000,000/=** as instruction fees. The other costs were awarded as drawn, apart from removal of getting up fees. After taxation, the total bill of costs was assessed at **ksh 17, 972, 416/ 50**, which amount aggrieved the Client/Applicant and thus this Reference.

64. The question now for determination is whether the instant **Chamber Summons Reference** is **merited**, and whether the court should proceed and set aside the said award and / or remit the bill of costs back for taxation.

65. The principles to be considered when a court is determining a Reference have been laid out in several cases. Courts have persistently held that the judge cannot interfere with the exercise of discretion of the taxing officer, unless it is shown that the taxing master acted on the wrong principles of law.

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.”***

67. It is trite that Certificate of taxation issued by the Taxing officer is appealable to the High court/ ELC as provided by **Para 11** of the ARO. This was the legal position taken in the case of ***Machira & Co. Advocates versus Arthur K. Magugu & Another [2012] eKLR.***

68. The Bill of costs having been challenged through this Chamber Summons, the court will be guided by the various decisions cited by the parties herein and by the decision in the case of ***Peter Muthoka & Another vs. Ochieng & 3 Others, Civil Appeal No. 328 of 2017; [2019] eKLR,*** where the court 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. The court too will rely on the case of ***Republic vs Competition Authority Ex Parte Ukwala Supermarkert 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. From the above decisions, it is clear that superior courts will not interfere with the exercise of the taxing officer discretion unless, it appears that such discretion has not been exercised judicially or it was exercised improperly or wrongly, by disregarding factors which he should have considered, or considering matters which were improper for him to have considered or he failed to bring his mind to bear on question in issue or he had acted on the wrong principle.

71. However, courts can only 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 point in issue. See the case of ***Fredrick Otieno Outa vs Jared Otieno Odoto & 3 Others SC Petition No. 6 of 2014[2023]KESC 75(KLR)***.

72. The principles to be considered were laid down in the case of ***Premchand Raichand vs Quarry services of East Africa Ltd and others EALR (1972) EA 162*** as follows;

***a) The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.***

***b) The taxing master was expected to tax each bill on its merits;***

***c) The value of the subject matter had to be taken into account;***

***d) The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;***

***e) Though the successful litigant was entitled to a fair reimbursement, the taxing master has to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy."***

73. From the submissions of the parties, the value of the subject matter was unascertainable, and so the taxing officer had the to assess the instructions fees, while bearing in mind the laid

down principles. See the case of **Peter Muthoka & Another v Ochieng & 3 others [2019] eKLR**, where 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),”***

74. The Bill of Costs was being assessed for an advocate who had ceased acting for the Client/Applicant, and the matter is still on going. In determining this matter, the court will also take into account the holding in the case of **Republic Vs Minister For Agriculture & 6 Others (2006) e KLR**; where the court held follows;

***1. the taxation of advocates’ instruction fees is to seek no more and no less than reasonable compensation for professional work done;***

- 2. the taxation of advocates' instruction fees should avoid any prospect of unjust enrichment, for any particular party or parties;**
- 3. so far as apposite, comparability should be applied in the assessment of advocate's instruction fees;**
- 4. objectivity is to be sought, when applying loose-textures criteria in the taxation of costs;**
- 5. where complexity of proceedings is a relevant factor, firstly, the specific elements of the same are to be judged on the basis of the express or implied recognition and mode of treatment by the trial judge;**
- 6. where responsibility borne by advocates is taken into account, its nature is to be specified;**
- 7. where novelty is taken into account, its nature is to be clarified;**
- 8. where account is taken of time spent, research done, skill deployed by counsel, the pertinent details are to be set out in summarised form."**

75. Even if the courts are not supposed to interfere with the exercise of discretion by the taxing officer, the assessment and taxation must be fair and reasonable remuneration under the Advocates Remuneration Order, 2014 which remuneration the party or advocate is entitled to. The taxing officer also need to take into account the above parameters set out in above case.

76. The court has considered the **instruction fees** awarded to the Advocate, at **Ksh 10,000,000/=** . It is evident that the suit that was being taxed is not concluded and is still on going. The taxing master held as follows in taxing the instruction fees at **ksh 10,000,000/=** **“Considering the foregoing principles, the importance, nature of the matter, interest of the parties, duration taken, the weight and labour required, I am of the considered view that a sum of ksh 10,000,000/= as instruction fees is fair and reasonable. Ksh 10,000,000/= is taxed off.”**

77. This court will be guided by the holding of the court in the case of **Republic Vs Minister For Agriculture & 6 Others( Supra)**, where the Court opined that;

**“where complexity of proceedings is a relevant factor, firstly, the specific elements of the same are to be judged on the basis of the express or implied recognition and mode of treatment by the trial judge;**

**where responsibility borne by advocates is taken into account, its nature is to be specified;**

**where novelty is taken into account, its nature is to be clarified;**

**where account is taken of time spent, research done, skill deployed by counsel, the pertinent details are to be set out in summarised form.”**

78. The taxing officer did not detail the specific complexity of the matter, the weight and care referred to and research or skill deployed, as held above, to justify the assessment of the instruction fees. The taxing officer did not elaborate how he arrived at **Ksh.10,000,000/=** what was the complexity? The taxing officer relied on the general considerations but did not attach them to this specific case.
79. This court has considered the rival submissions by the parties herein and the various decided cases, it is not certain whether the taxing officer in his decision while exercising discretion applied the settled principles that have been laid out in various decided cases. The taxing officer did not clearly give reasons as to why he settled on the instruction fees of **Ksh.10,000,000/=** from the **Ksh.20,000.000/=** sought by the Advocate/Respondent. See **Republic Vs Minister For Agriculture & 6 Others( Supra)**
80. It is trite that courts can interfere with a taxing officer's discretion in award of costs if there is an error in principle, if the awarded fee is manifestly excessive or deficient, or if the court is not satisfied that the successful litigant is entitled to fair reimbursement for their costs. See the case of **Ex-parte Muchiri W'Njuguna & others [2006] eKLR** the court held 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. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.....”***

81. Further, in the case of ***Non-Governmental Organizations Coordination Board vs EG & 5 others (2023) KESC 102(KLR)*** where the Supreme Court held as follows:

***“A certificate of taxation will be set aside, and a single Judge can only interfere with the taxing officer's decision on taxation if;***

***i). there is an error of principle committed by the taxing officer;***

***ii), the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy; (and I may add, conversely, if the award is so manifestly deficient as to amount to an injustice to one party).***

***iii). the court is satisfied that the successful litigant is entitled to fair reimbursement for the costs he has incurred, (and I may add, the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the***

***expenses to which he had been subjected by the other party);***

82. Further, it is trite that the discretion of a Taxing Officer is a judicial one. It is to be judicially and judiciously exercised. It is not to be exercised whimsically or capriciously according to personal inclination. The matters considered by the taxing officer should be apparent from the reasons given in the decision. This is the indicator whether or not the Taxing Officer exercised the discretion properly.
83. Where the Taxing Officer has properly considered the parameters applicable and exercised his discretion, the Court is not entitled to upset a taxation merely because it is of the opinion that the award is too high or too low. In the case ***of Premchand Raichand Limited and Anor vs Quarry Services of East Africa Limited and Anor, [1972] 562***, which was also relied by the taxing master, the Court held as follows;-

***“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low***

***as to amount to an injustice to one party or the other.***

84. The value of the subject matter was unascertained herein, and the basis for determining subject matter value is for the purposes of ascertaining instruction **fees**, which is also dependent on the stage at which the fees is taxed. If taxation comes before judgment, the pleadings will form the basis for determining subject value. If Judgment has been entered, recourse will be to the judgment since it determines conclusively the value of the subject matter. In this matter, the suit is still on going, and the taxing officer ought to have taken into consideration such factor, and give reasons as to why he settled at **Ksh 10,000,000/=** and not any other amount.

85. The Taxing Officer has discretion to increase or reduce instruction fees after considering the basic fee or the principles for taxation. In the case of ***Kamunyori & Company Advocates Vs. Development Bank of Kenya Ltd, Civil Appeal No. 206 of 2006***, the Court held that where the sum awarded on taxation is so manifestly excessive, an error of principle can be inferred. The Court stated as follows:

***“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 in 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 instruction fee is arrived at on the wrong Principles, it will be set aside."**

86. Having considered the instant Chamber Summons Application/ Reference, and the rival written submissions, this court finds and holds that the taxing officer ignored the fact that the matter was on going and failed to apply the principles of taxation as established in various decided cases, and did not give elaborate reasons as to why he arrived at the **ksh 10,000,000/=** as instruction fees.
87. This court finds and holds that the **instruction fees** being **manifestly excessive**, given that the case is not yet concluded ,and for the above reasons, this court cannot allow that award or on taxation on **instruction fees** stand. Given that the court finds and holds that the **instruction fees** is **manifestly high**, the court will not at this stage determine on the other items for service and attendance, but will leave it to the taxing officer who will **re-tax or re-assess** the Bill of costs.
88. However, relying on the case of **Dennis KN Magare & Another vs Armajit Singh Gahir & 5 others( supra)**, it is evident that 50% is added on the instruction fees when **Party and Party** costs has been assessed. The ruling of **18<sup>th</sup> December 2024**, also assessed the **Party and Party Bill of Costs**, and this court will not fault the taxing officer

for additional 50% on instruction fees. However, since the same has been set aside, it is neither here nor there.

89. Consequently, the taxing officer Ruling of **18<sup>th</sup> December 2024**, is **set aside**, and the Chamber Summons Application dated **30<sup>th</sup> January 2025** is allowed in terms of prayers **No1 and 2**.
90. Ultimately, this court proceeds to **set aside** the Bill of costs as assessed vide the Ruling of the taxing master dated **18<sup>th</sup> December 2024**. The court further directs the Bill of costs dated **4<sup>th</sup> October 2023**, be placed before the another taxing officer other than **Hon Daniel Ngayo** for **re-taxation** and assessment of costs, based on the laid down principles.
91. In conclusion, the court **dismisses** the **Notice of Preliminary Objection** dated **9<sup>th</sup> May 2025**, with costs to the Client/Applicant. Further, the court allows the **Chamber Summons Application** dated **30<sup>th</sup> January 2025**, with an order that each party to bear their own costs.

***It is so ordered***

***Dated, signed and delivered virtually at Narok this 27<sup>th</sup> Day of November 2025***

***L. Gacheru  
Judge***

***Delivered online in the presence of  
Elijah Meyoki - Court Assistant***

**Ms Lyona holding brief for Mr. Maina Ngaruiya for  
Client/Applicant**

**Mr. Kere for Advocate/Respondent.**

**L. Gacheru  
Judge**