

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLMISC NO. E253 OF 2024

CHARLES WANDUTO KIHORO.....
APPLICANT

VERSUS

SAMUEL KIGATHI
GACHARA.....RESPONDENT

RULING

1. Before this court is the chamber summons dated 14th November, 2024 filed by the applicant, and it is expressed to be brought under **Sections 1A, 3B and 3A** of the **Civil Procedure Act** and **Regulation 11(2)** of the **Advocates Remuneration Order** seeking the following orders:-

1. *The ruling of the court delivered on 31st October 2024 pertaining to the assessment of the Bill of Costs dated 30th January 2024 be set aside and/ or vacated.*
2. *The Honourable court be pleased to refer back the bill of costs dated 30th January, 2024 for re-assessment by a different magistrate other than Hon. Judith Omollo.*
3. *In the alternative to prayer 3, the Honourable court be pleased to re-tax the Bill of Costs dated 30th January 2024.*
4. *Costs of this application be provided for.*

2. The application is premised on the grounds that following the ruling on the party to party bill of costs dated 30th January, 2024, the taxing officer erred in assessing an unreasonable and inordinately high amount causing injustice to the applicant.
3. The application was supported by the affidavit of the applicant sworn on even date. The applicant deposed that the respondent filed his bill of costs dated 30th January, 2024 which he responded to vide an affidavit sworn on 9th July, 2024. He deposed that on 31st October 2024, a ruling was delivered which the taxing officer erred in awarding a sum of KShs.250,000/- as instruction fees.
4. The applicant deposed that under the 2006 Remuneration Order, the instruction fees where none has been provided cannot be less than KShs.6,300. Further, that the taxing officer awarded the sum which is 40 times higher than the minimum amount which is disproportionate. He deposed that the taxing officer erred in principle by considering irrelevant factors such as duration it took to conclude the matter, which was already accounted for in the interest.

5. The applicant deposed that the taxing officer erred in applying the wrong principles in assessing getting up fees arriving at a wrong sum of KShs.83,333/-, which should not exceed 15% of the instruction fees. Further, that applying a 30% rate would result in an inflated fee. He deposed that the amount awarded is not commensurate with the work undertaken by the respondent which amounts to improper exercise of the taxing officer's discretion.
6. The respondent did not file a response to the application. The application was canvassed through written submissions. The applicant filed his written submissions dated 26th March, 2025. The respondent filed his written submissions dated 23rd April, 2025.
7. I have considered the application, and the written submissions filed by both parties. The issue for determination is *whether the taxing officer erred in awarding the instruction fees and getting up fees.*
8. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case

of **Premchand Raichand Ltd Another -vs- Quarry services of East Africa Ltd and Another No. 3 (1972) EA 162**. The principles laid out are:-

- i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.***
- ii. The taxing master was expected to tax each bill on its merits;***
- iii. The value of the subject matter had to be taken into account;***
- iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;***
- v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had 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.***
- vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly***

extravagant, a misdirection of principle may be a necessary inference.”

- 9.** In applying the above principles to the instant application, this court will confine itself to the instruction fees and getting up fees which the applicant finds to be inordinately high and unreasonable in the circumstance. I have looked at the impugned ruling, where the taxing officer noted that the bill of costs covered the period between 1st February, 2002 to 2019 and thus schedule 6 of the 1997, 2006 and 2014 Remuneration should apply, and the duration taken in court before the determination was considered. While noting that the subject matter was not ascertainable from the pleadings, as I have seen from the plaint, it was within the law for the taxing officer to exercise her discretion.
- 10.** In awarding instruction fees in the sum of KShs.250,000/-, I find the same reasonable and not manifestly high as argued by the applicant. Further, the claim that it is 40 times is misplaced. There is absolutely no reason to disturb the findings of the taxing officer.

- 11.** From the above, the chamber summons dated 14th November, 2024 lacks merit and it is hereby dismissed. I make no orders as to costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 27TH DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
27/11/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Kabaila holding brief for Mr. Mutiso for the Applicant

Ms. Mshila holding brief for S.M. Chege for the Respondent