



**Guandaru Thuita & Co Advocates v Kinuthia & another (Anti-corruption and Economic Crimes Miscellaneous E040 of 2024) [2025] KEHC 17021 (KLR)
(Anti-Corruption and Economic Crimes) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES MISCELLANEOUS E040 OF 2024
LM NJUGUNA, J
NOVEMBER 19, 2025**

BETWEEN

GUANDARU THUITA & CO ADVOCATES APPLICANT

AND

DESMOND IRUNGU KINUTHIA 1ST RESPONDENT

NELSON KARANJA KINUTHIA 2ND RESPONDENT

RULING

1. This ruling relates to two applications. One is dated the 30th July, 2025 and the other one is dated the 29th September, 2025. (herein referred as the 1st and the 2nd applications respectively)
2. The application dated the 30th July 2025, is brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the Civil Procedure Rules, and Rule 11 of The Advocates' Remuneration Order. The application is premised on the grounds set out on its face and it is supported by the annexed supporting affidavit sworn by Guandaru Thuita. Through the application, the applicant sought the following Orders;
 1. That the decision of the taxing master delivered on 16th July 2025 in regard to items Number 1 and 42 on the Applicant's Advocate-Client Bill of Costs dated 22nd August 2024 be varied or set aside.
 2. That this Honourable Court does proceed to re-tax Items 1 and 42 of the Advocate-Client Bill of Costs dated 22nd August 2024 or in the alternative, the Applicant's Advocate-Client bill of Costs dated 22nd August 2024 be remitted back for taxation before another Taxing Officer.
 3. That this Honourable Court do make any additional orders as the demands of justice dictate.



4. That the costs of this application be provided for.
3. In the 1st application, the applicant avers that he was instructed to take over the conduct of Anti-Corruption case No. 5 of 2018 EACC Vs Stephen Ndungu Kinuthia & 16 others from the firm of Nyachoti and Company Advocates in which EACC was seeking recovery of Ksh.36, 089,966/00 among other prayers, being public funds lost through an alleged scheme aimed at defrauding the Office of the Auditor General.
4. That upon withdrawal of instructions, the respondents failed to make payment of the final fee-note thus prompting the applicant to file the Bill of costs dated the 22nd August, 2024 for the total sum of Ksh. 1,872, 624/00 and the same was ultimately taxed on the 16th July, 2025 for Ksh. 507, 969,99.
5. He states that the assessment of items 1 and 42 being the instruction and getting up fees in the sum of Ksh.200,000 and Ksh. 66,666/66 respectively, was made in error and is inordinately low due to amongst other reasons;
 - a. Once the value of the subject matter has been ascertained the taxing Master's discretion on the instruction and getting up fees is restricted to only increasing the amount, due to factors such as complexity but not to reduce the instructions fees below the amount prescribed
 - b. That the taxing Master erred in law in purporting to reduce the instruction fees below what is prescribed under the Advocates Remuneration Order
 - c. The taxing Master contradicted herself when she on one hand held that instruction fees is based on the value ascertained from the pleadings and earned fully upon instruction, while on the other hand she ruled that instruction fees cannot be based on value of the pleadings where the defence has been prepared by a previous counsel on record.
 - d. The finding by the taxing Master to the effect that an Advocate who takes over from another would not be entitled to instruction fees based on the pleadings has no basis in either written or common law.
 - e. The taxing Master failed to appreciate that the work of the advocate went beyond mere perusal and robotic attendance to court, but exceeded to analyzing all the pleadings, giving the client considered opinion on the same, formulating a case study, holding meetings with the client, and co-counsel as well as keeping the client updated on the progress.
 - f. The Taxing Master erred and misdirected herself in considering and holding that awarding the applicant an amount based on the law (Advocates' Remuneration Order) would be punitive and act as a bar to access justice.
 - g. The taxing Master ought to have appreciated that while the respondent had liberty to change Advocates as many times as they wished, that liberty was to, in no way, be used to diminish the instruction fees of any of those Advocates.
6. The application is opposed vide a replying affidavit sworn by Desmond Irungu. He avers that the applicant's contention that the value of the subject matter could be ascertained from the pleadings and would then be the basis upon which the instruction fee would be based is baseless and utterly misleading.
7. That the advocate took over the matter from the firm of Nyachoti & Company when the Statement of defence and other accompanying pleadings had already been filed and the hearing had already



- commenced. That the advocate came on record after the case had been certified ready for hearing, and he only filed a notice of change and attended court for mentions, hearings and rulings.
8. He contends that as noted by the Taxing Master, the applicant's work was minimal, limited to perusal of documents and attending court. That since the statement of defence was filed by a different firm of Advocates, the applicant is not entitled to instruction and getting up fees. He avers that instruction fees is an independent and static item charged only once and it's not affected or determined by the stage the suit has reached.
 9. He has stated that instruction fees is only paid to an advocate in respect to the work done, and that the advocate who draws a plaint/statement of defence, as the case may be, is the one entitled to full instruction fees, notwithstanding the progress of the matter and hence the subsequent advocate can only be paid for the actual work done.
 10. That, to the extent that the Taxing Master allowed instruction fees and getting up fees of Ksh. 200,000 and Ksh. 66,666.66 under items 1 and 42 respectively, the same is a manifest error and hence the cross-reference.
 11. The other application is dated the 29th September, 2025 brought under Sections 1A, 1B and 3A of the Civil Procedure Act, and Rule 11 of the Advocates Remuneration Order. It is premised on the grounds on the body of the same, and it is supported by the annexed affidavit sworn by Desmond Irungu Kinuthia, on even date. Through the application, the applicant has sought the following Orders; THAT
 1. The honorable court be pleased to set aside and/or vary the decision of the taxing officer (Hon. Evelyn Gaithuma) delivered on 16/7/2025 in regard to items Number 1 and 42 on the Advocate's Bill of Costs dated 22/8/2024.
 2. The Honourable court be pleased to proceed to re-tax Items 1 and 42 aforesaid and tax them off or in the alternative, the Advocate's Bill of Costs dated 22/8/2024 be remitted back for taxation.
 3. Such orders and/or directives that the Honourable court may deem just and appropriate in the circumstances of this case.
 4. Costs of this application be awarded to the respondent.
 12. The applicant avers that he is aware that the advocate took over the conduct of the matter from the firm of Nyachoti & Company Advocates when the statement of Defence and other accompanying pleadings had already been filed on behalf of the respondents/applicants and the hearing had already commenced. That the advocate came on record after the case had been certified ready for hearing, and upon coming on record, he only filed a Notice of Change of Advocates and attended court for mentions, hearings and ruling. He did not draft any applications or pleadings.
 13. That as correctly noted by the taxing Master, the Advocate's work in the matter was minimal, limited to document perusal and court attendances, and that since the Statement of Defence was filed by a different firm of Advocates, the Advocate is not entitled to instructions and getting up fees.
 14. He contends that instruction fees is an independent and static item charged only once and is not affected or determined by the stage the suit has reached.
 15. In opposition to the application, the respondent filed a replying affidavit which he swore on the 23rd October, 2025. He states that there is nothing in law known as a cross refence in Taxation, and that,



the client ought to have filed a reference within 14 days prescribed by the Advocates' Remuneration order, and hence, the Cross reference is misconceived and fatally defective.

16. That the basis of the Cross reference being that only the first advocate on record for a party is entitled to instruction fees, is misguided as he is failing to appreciate that the mischief that was to be cured by that principle was to prevent a party in a Party & Party Bill of costs raising instruction fees for multiple items, and for multiple Advocates who may be appointed and removed along the way.
17. That an advocate appointed in an ongoing matter is entitled to instruction fees distinct from any other who previously or subsequently acted, and that there must be instructions and corresponding instructions fees and as such, the Client's argument is absurd and inapplicable.
18. He contended that there is no law, rule or other provisions that prohibits the charging of instruction fees by an advocate who takes up a matter from another, and each Advocate appointed along the way is entitled to instruction fees.
19. Both applications were disposed of by way of written submissions.

Applicant/Advocates submissions

20. The applicant submitted on the jurisdiction of this court to intervene in the decision of Taxing Master and referred to the case of Kipkorir, Tito & Kiara Advocates Vs Deposit Protection Fund Board (2005) eKLR.
21. Relying on the case of Kenya Tea Development Agency Limited Vs J.M N jenga & co advocates ML Misc.App no. 6161 of 2006 (2008) eKLR, he submitted that a new advocate coming onto a matter somewhere in the middle of the proceedings in the High court, will be entitled to the full instruction fee prescribed in part A of schedule V1 of the order, subject to the taxing officer's discretion to increase or (unless otherwise provided) reduce it and as augmented by the formula in part B (increase by one-half)
22. The applicant also relied on, among other decisions;
 - a. Mumias Sugar Company Limited Vs Tom Ojienda & Associates Advocates (2021) KEHC 9051(KLR)
 - b. George Arunga Sino T/A Jone Brooks Cons Ultants Limited Vs Patrick J.O & Geoffrey D.O Yogo T/A Atieno, Yogo & Co. Advocates (2012) KECA 68 (KLR)
 - c. Monaco Engineering Limited Vs Njeru Nyaga & company Advocates (2021) KEHC 9(KLR)
 - d. Zadok Furniture Systems Limited vs Lubulellah & Associates Advocates (2022) KEHC 15997 (KLR)
 - e. Owino Kojo & Co. Advocates Vs Sifa Insurance Brokers Limited (2023) KEHC 24591 (KLR)
23. Based on the above authorities, the applicant submitted that he is entitled to full instructions fees, and that it was an error of principle for the Taxing Master to reduce the applicant's instructions fees on the basis that costs must be prevented from rising too high. That it was wrong for the Taxing Master to belittle the work done by the advocate and call it mere perusals and court attendances and he had to study the file, familiarize himself with the proceedings, and take all necessary steps to continue with the matter.
24. The applicant submitted that the Taxing Master contradicted herself when she on one hand held that instruction fees is based on the value ascertained from the pleadings and earned fully upon instruction,



while on the other hand she ruled that instruction fees cannot be based on the value of the pleadings since the defence had been prepared by a previous counsel on record.

25. That the finding by the Taxing Master to the effect that an Advocate who takes over from another would not be entitled to instruction fees based on the pleadings if he didn't draft the said pleadings has no basis in either written or common law and was an error in principle. Further, that getting up fees is earned by an advocate when he prepares for trial and there is no doubt that the advocate herein conducted the hearing which means that he must have prepared for the trial and is entitled to getting up fees.

Respondents' Submissions

26. The respondents submitted on the principle of taxation as espoused by the Court of appeal in the case of Premchand Raichand Limited vs Quarry Services of East Africa Limited (No.3) E.A 162 in which the court held that costs should not be allowed to rise to a level as to confine access to justice to the wealthy.
27. It was the respondents' submission that the Advocate took over the conduct of the matter from the firm of Nyachoti & Company Advocates when the statement of Defence and other accompanying pleadings had already been filed on behalf of the respondents and the hearing had already commenced.
28. The respondents relied on among other authorities;
 - a. Joreth Limited Vs Kigano & Associates (2002) KECA 153 (KLR).
 - b. Kenyariri & Associates Advocates Vs Salama Beach Hotel Limited & 4 others (2014) KEELC 214 (KLR).
 - c. Isaak Vs Githogori & Harrison Associates Advocates (2023) KEHC 27306 (KLR).
29. They contended that there was no justification for the Taxing Master to award the Advocate Ksh. 200,000 and Ksh. 66, 666.66 as instruction and getting up fees respectively.

Analysis and Determination

30. The court has considered the Reference and the Cross reference filed herein together with all the material including the submissions. The only issue for determination is whether items 1 and 42 of the applicant's Bill of Costs should be re-taxed.
31. Both the applicant and the respondents have challenged items 1 and 42 of the Bill of Costs dated the 22nd August, 2024. While the Applicant/Advocate contends that the Taxing Master's assessment of the two items at Ksh. 200,000 and 66,66.66 being instruction and getting up fees, respectively, was inordinately low, the Clients/respondents contend that the advocate was not entitled to instruction and getting up fees.
32. The question as to whether an advocate who takes over a matter from another advocate is entitled to instruction fees, and to what extent, is not new. It has been the subject of many decisions just but to quote a few;
 - a. Kenya Tea Development Agency Limited Vs J.M Njenga & Company Advocates in which the court held;

“(A) An advocate can charge only for the work he has done. He cannot charge for the work done by a previous advocate in the matter.



But having said that, a new advocate coming onto a matter somewhere in the middle of the proceedings in the HIGH Court will be entitled to the full instruction fee prescribed in Part A of schedule V1 of the order subject to the taxing officer's discretion to increase or (unless otherwise provided) reduce it and as augmented by the formula in part B (increase by a half). A client who changes advocates therefore can expect to pay the full instruction fee as many times as he pleases to change advocates, notwithstanding that he recovers only one instruction fee in a party and party taxation, unless there is Judge's certificate for more than one counsel'

- b. Mumias Sugar Company Limited Vs Tom OJienda & Associates Advocates (2021) KEHC 9051 (KLR) in which the late Justice D.S Majanja stated as follows;

“23. In light of the aforesaid decisions and the principle that an advocate is entitled to full instruction fees upon taking over the conduct of the matter, the proper approach to determining instruction fees in this case is to consider the value of the subject matter.”

- c. Monaco Engineering Limited vs Njeru Nyaga & company Advocates (2021) KEHC9 (KLR) in which the court stated;

“.....the point of contest by the applicant is whether the advocates are entitled to the full instruction fees since they did not complete the suit and instructions were withdrawn midway through the suit. I can only reproduce what the court of appeal stated in Joreth Limited vs Kigano & associates NRB CA Civil Appeal No. 66 of 1999 (2002) eKLR that;

“The instructions fees is an independent and static item, it is charged once only and it is not affected or determined by the stage the suit had reached”.

- d. Joreth Limited Vs Kigano & associates (2002) KECA 153 (KLR);

“Instruction fees is payable only once

“Instruction fees is payable only once and in full when the client appoints an advocate the first time. When a notice of advocate is filed, the subsequent advocate cannot be awarded the instruction fees. Rather, it is the first advocate who initiated the suit that should bill for and be awarded instruction fees, regardless of whether or not the suit is carried on to the end.”

33. As correctly stated by Ringera J (as he then was) in the case of First American Bank (supra), the issue of when an advocate becomes entitled to an instruction fees is subject of apparently conflicting appellate decisions. In my considered view, instruction fees is an independent and static item not affected by the stage a suit has reached. This is the same position that was taken by the court of appeal in the case of Joreth Limited (supra).

34. However, and in the circumstances of this case, the court has noted the work that was done by the Advocate in preparing for the trial, perusing of the documents and the nature of the matter. Further, in assessing the instructions fees, the Taxing Master appreciated that the advocate came on record after the pleadings had been filed and was therefore not entitled to full instructions and getting up fees. It is only fair that he gets paid the sums that the taxing master assessed his professional work at, and not more.



35. In the end, I find that both applications have no merits and they are dismissed. The orders issued by the taxing master in her ruling dated the 16th July, 2025 are upheld.

36. No orders as to costs.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF NOVEMBER, 2025

.....

L.M. NJUGUNA

JUDGE

In the presence of:-

Mr. Midenga for both respondents

Miss Gikonyo holding brief for Mr. Thuita for the plaintiff

Court assistant - Adan

