



THE JUDICIARY



REPUBLIC OF KENYA  
IN THE ENVIRONMENT & LAND COURT AT NAROK  
ELC MISC APPL. NO. E020 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  
JUDICIAL REVIEW MISC. CAUSE 25 OF 2017  
FORMERLY NAIROBI JUDICIARY MISC. CAUSE NO. 636 OF  
2017

IN THE MATTER OF AN APPLICATION BY ADVENTURES  
ALOFT (K) LTD FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERS OF CERTIORARI, PROHIBITION, MANDAMUS

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT, 2012

AND

IN THE MATTER OF THE FAIR ADMINISTRATIONS ACT, 2015

AND

IN THE MATTER OF THE TERMINATE ACCESS TO THE  
PROPERTY KNOWN AS CIS/MARA/TALEK/11

BETWEEN

MADA HOTELS  
LIMITED.....APPLICANT

VERSUS

THE COUNTY GOVERNMENT OF  
NAROK.....RESPONDENT

RULING

1. The matter for determination herein is the **Chamber Summons Application** dated **30<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 Two Million, Ninety Nine Thousand, Seventy five and Ten Cents (Ksh.2,099,075/10,) 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 contested, and the ensuing Ruling, the taxing master taxed **Item 1** at **Ksh. 1,000,000/=**, taxed off **Item 2**, and found all the other

items were drawn to scale, and also found and held that the items were not exorbitant and/or unreasonable.

3. The 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 6** of the **Advocates Remuneration Order**, as the amounts awarded were extremely high contrary to the Schedule; 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.1,000,000/=**, was extremely high; that the taxing master disregarded the Law by allowing items **Nos 7, 11, 15 and 28** on service, which is capped at **Ksh.1400/=** of the **Advocates Remuneration Order, 2014**; further, items **Nos 16,19,21,29,44,50 and 51** of the Applicant's Bill of Costs for hearing of application, taxation and rulings capped at **Ksh.1900/=** under **schedule 6A(7)** of the **Advocates Remuneration Order, 2014**; By raising the bill of costs by **50%** that was erroneous.
4. The Applicant deponed that it filed the instant Application because the award or assessment of costs 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 6**, 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.

5. 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 granted.
6. The Application is supported by the Affidavit of **John Mayiani Tuya**, sworn on **30<sup>th</sup> May 2025**, 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. 2,099,075/10**.
7. Aggrieved by the said award, the Applicant wrote to the Deputy Registrar on **18<sup>th</sup> December 2024**, requesting for written reasons for the award, with the intention of filing a Reference before this court; and the certified copy of the Ruling and reasons was received on **22<sup>nd</sup> January 2025**.
8. The Applicant claimed that the Taxing Officer misapplied **Schedule 6** of the **Advocates Remuneration Order**, resulting in excessive awards. It argued that the matter was neither complex nor novel, and the instruction fees of **Kshs.1,000,000/=**, was unreasonably high; Furthermore, the Taxing Officer allegedly disregarded the law by allowing certain items to exceed capped amounts and also by raising the bill of costs by 50%.
9. The Applicant 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.

10. This Reference is opposed by the Advocate/Respondent, who filed Notice **of Preliminary Objection**, and averred that the Chamber Summons Reference Application dated **30<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.
11. Consequently, the Advocate/Respondent urged the Court to dismiss the instant Chamber **Summons Reference** dated **30<sup>th</sup> January, 2025**, with costs *in limine*.
12. 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.
13. 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

**30<sup>th</sup> January 2025**, within the **14-days** timeline under Paragraph 11(2).

14. 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.***
15. 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.***
16. 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. The Client/Applicant further argued that the Taxing Officer erred in law and principle by failing to provide specific reasons for increasing instruction fees, and by generalizing the conditions for discretion without proper justification.
17. The Client/Applicant also submitted that the instruction fees were ***excessive, unjustified,*** and ***gratuitous,*** particularly as the matter was withdrawn and did not proceed to full trial. Reliance was sought in the cases of ***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.**

18. Additionally, the Client/Applicant submitted that the Taxing Officer's 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.**
19. The Applicant also submitted that the Taxing Officer was wrong to tax items **Nos 7, 11, 15 and 28** on service at **Kshs.3000/=**, yet the same is capped at **Kshs.1400/=**, and items **No.16, 19, 21, 29, 44, 50 and 51** on hearing of application at **Kshs.15,000/=**, yet the same is capped at **Kshs.3000/=** . It was submitted the said items were taxed at rates higher than those capped under the Advocates Remuneration Order, 2014.
20. The Client/Applicant urged the court to dismiss the **Preliminary Objection** with costs, and insisted that its Application was filed within the stipulated timelines, and had 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.

21. 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.
22. 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.
23. The Advocate/Respondent further submitted that the background of the matter involves legal services rendered to the Client from **15<sup>th</sup> November 2017** to **12<sup>th</sup> October 2022**, in connection with **Narok Judicial Review Misc. Cause No. 25 of 2017**, concerning access to the **Maasai Mara Game Reserve** via a bridge.
24. Further, that 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 **Kenya Shillings Two Million and Ninety-Nine Thousand and Seventy-Five and Ten Cents (Kshs.2,099,075/10)**, which the Client/Applicant now disputes.

25. 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.
26. 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.
27. Regarding the specific items in the Bill of Costs, the Advocate submitted that Objections to ***items 1, 7, 11, 15, 18, 19, 21, 28, 29, 44, 50, and 51*** are unfounded, as the Taxing Officer correctly applied ***Schedule 6*** of the ***Advocates Remuneration Order***, considered distances, travel costs, and higher-scale fees were justified by the importance and complexity of the matter.
28. 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.

29. 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.
30. 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 ***30<sup>th</sup> January, 2025***.
31. The Advocate/Respondent submitted that the background of the Reference involves legal services provided by the Advocate between ***15<sup>th</sup> November 2017 and 12<sup>th</sup> October 2022***, in relation to a dispute over access to the ***Maasai Mara Game Reserve***, which dispute culminated in an Advocate-Client Bill of Costs dated ***4<sup>th</sup> October, 2023***.
32. 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. 2,099,075.10***.

33. 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).
34. 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.
35. 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 Preliminary Objections should raise pure points of law, capable of disposing of a matter without examining factual disputes.
36. 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.

37. 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.

38. The above are the grounds in support of the instant Reference, 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 30<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**

39. 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.

40. Before delving into the merits and demerits of the instant Preliminary Objection, the court will first determines whether

what has been raised herein fits into the description of what amounts to a Preliminary Objection.

41. 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.

42. 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.”***

43. 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.***

44. The same issue was discussed in the case of in ***Avtar 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.”***

45. 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.
46. Further, the allegation that the Client/Applicant 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,***

47. Having found that the instant Preliminary Objection is a pure point of law, is it merited? **Under Rule 11(1) & (2)** of the **Advocate Remuneration Order**, it states;

**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.**

48. 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 **30<sup>th</sup> January 2025**, which is way after the fourteen days stipulated in the **Para 11** of **Advocates Remuneration Order**.

49. However, the Client /Applicant averred that after the ruling was delivered on **18<sup>th</sup> December 2024**, it was aggrieved by it, 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(**18/12/2024**), and was within 14 Days as stipulated by **Para 11(1)** of **Advocates Remuneration Order**.

50. It is evident that the taxing master supplied the certified copy of the Ruling which contained reasons for taxation on **22<sup>nd</sup> February 2025**, and the instant Reference was filed on **30<sup>th</sup> January 2025**, within a period of **8 Days** after receipt of the Certified copy of the Ruling.
51. **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**.
52. Though the Advocate/Respondent submitted that the Ruling supplied to the Client /Applicant was the same as the 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.
53. 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.
54. 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 30<sup>th</sup> January 2025 is merited?**

55. In the instant Reference, the Client/Applicant has sought for setting aside the Advocate/Respondent's bill of costs assessed at **Ksh 2,099,075/10**, 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 Ngayo**.
56. In the Reference and submissions, the Client averred and submitted that the taxing master misapplied the provisions of **Schedule 6 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 1000,000/=** instruction fees was extremely high.
57. 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 7,320,899.00**, but the taxing master taxed off most of the items and the cumulative taxed amount was **Ksh. 2,099,075/10**, which amount was reasonable given the time taken and amount of work put in defending the suit.
58. 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.

59. 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.”***

60. 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.”***

61. 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.”***

62. 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.***

63. 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***
64. Further, this court will 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 issues, see the case of ***Fredrick Otieno Outa vs Jared Otieno Odoto & 3 Others SC Petition No. 6 of 2014[2023]KESC 75(KLR).***
65. Bearing in mind the above holdings of the superior courts, the court will proceed and determine whether the instant Reference is merited.

66. The Client/Applicant is disputing the Advocate/Client bill of costs which was taxed at **Ksh 2,099,075/10**, on allegation that it is extremely high and was arrived by misapplication of the principles of taxation.
67. The matter in issue that brought about this impugned taxation was **Narok ELCJR No 25 of 2017**, which matter was not heard to conclusion but was withdrawn with no Orders as to cost after parties entered into negotiations, and after several applications had been made and determined and the court visited the locus quo.
68. 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 this 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**.
69. 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),”***

70. Since the value of the subject was unascertainable, the taxing master used his discretion while relying on the case of ***Premchand Raichand vs Quarry Services E.A Ltd*** and awarded ***Ksh.1,000,000/=*** 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.2,000,000/=***.
71. The ***ELC JR No.636 of 2017***, in issue was filed in ***Nairobi in 2017***, and later transferred to ***Narok Environment and Land Court***. The matter proceeded in court severally and the Advocate/Respondent gave several updates to the Client/Applicant on the progress of the case, culmination in the final withdrawal of the suit.
72. Even if the suit did not go the full trial, this court finds that the taxing master took into account the necessary considerations while arriving at the instruction fees of ***Ksh 1,000,000/=*** and the same is not excessive at all. This court finds no reasons to interfere with that award.
73. On the other items, 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.

74. However, the Client /Applicant took issue with items **Nos 7, 11, 15 and 28**, which it averred were capped at **Ksh 1400/=** as per the **Advocates Remuneration Order 2014**, yet the taxing officer disregarded the law and allowed them as drawn.
75. A look at the above items, they relate to Service of various pleadings and or documents. The Client/Applicant submitted that services are capped at **Ksh.1400/=** and not **3000/=** as sought by the Advocate/Respondent.
76. The Advocate/Respondent submitted that **Schedule 6(9)** of the Advocates Remuneration Order, provides as follows on service;- **that within three kilometers of the High Court or district registry of the High Court Kshs 1,400** and further, Sub-Paragraph b stipulates that **every additional kilometre over three, such an amount that is reasonable, not exceeding a kilometre.** It was its submissions that the taxing master considered the distance between Nairobi and Narok in awarding the said costs.
77. The impugned Advocates/Client Bill of costs was prepared under **Schedule 6(B)** of the Advocates Remuneration Order 2014. On service, it provides as follows; **SERVICE (a) within three kilometres of the High Court or district registry of the High Court Ksh.1400/=**  
**(b) Every additional kilometre over three, such amount as is reasonable, not exceeding per kilometre Ksh.35/=.**

78. From the above provisions of the **Advocates Remuneration Order 2014**, it is clear that if service is outside the three kilometres of the High Court, then the said amount is not capped at **Ksh.1400/=**, but is calculated based on the additional kilometres.
79. Given that the service upon the client was in **Narok**, and the advocate was based in **Nairobi**, the court finds and holds that this award of **Ksh. 3000/=** on Service was not **exorbitant**, and will not interfere with it.
80. On items **No 16, 19, 21, 29, 44, 50** and **51**, on the hearing of Applications, which was awarded at **Ksh 15,000/=** instead of **3000/=** the Client/Applicant submitted that the same amount or award was in disregard of the law on taxation and was blatantly wrong.
81. On its part, the Advocate/Respondent submitted that the Advocate attended physical court and the amount charged is **Ksh 15,000/=** and were drawn to scale. The court too has considered the attendance fees as provided by the **Advocates Remuneration Order 2014**, and given the attendance was in physical court, this court finds no reasons to interfere with that award as the same was drawn to scale.
82. 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.

83. Ultimately, having considered the instant **Chamber Summons Application** dated **30<sup>th</sup> January 2025**, this court finds and holds it **not merited** and the same is **dismissed** entirely.

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

84. 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 that 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.
85. In a nutshell, the instant **Chamber Summons Application Reference** is dismissed with an order that each party to bear its own costs. However, costs of the Preliminary Objection is awarded to the Client/Applicant.

***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***

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

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

***L. Gacheru***

***Judge***