



Kemboy Law Advocates v Narok County Government (Environment and Land Miscellaneous Application E018 of 2023) [2025] KEELC 8295 (KLR) (27 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2023
LN GACHERU, J
NOVEMBER 27, 2025**

BETWEEN

KEMBOY LAW ADVOCATES ADVOCATE

AND

NAROK COUNTY GOVERNMENT CLIENT

RULING

1. The matter for determination herein is the Chamber Summons Application dated 27th January 2025, filed by the Client/Applicant and a Preliminary Objection dated 9th 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 21st December 2024 in which he taxed the Advocate/Respondent's Bill of Costs dated 4th October 2023 at Kenya Shillings Four hundred and Twenty-one Thousand, Four Hundred and Fifteen and Fifty Cents (Ksh.421,415/50) and the Advocate/Respondent's Advocate-Client Bill of Costs be taxed afresh.
 - ii. That this court be pleased to issue appropriate directions for the re-taxation/assessment of the Advocate/Respondents Advocate-Client Bill of Costs dated 4th 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 4th October, 2023; which was unopposed as the respondent did not file a response. They deponed that the taxing officer misapplied the provisions of Schedule 7 of the Advocates Remuneration Order, and the ensuing Ruling delivered on 21st December 2024, taxing the Bill of cost at Kshs.421,415/50, the taxing master taxed Item 1 at Ksh.



- 200,000/= which was extremely high, allowed Item 2, yet the law does not provide for perusal of documents and that the taxing officer disregarded the law by allowing and considering items Nos 3, 8, 9 and 14, on drawing documents yet Schedule 7 does not provide that found all the items were drawn to scale.
3. The Client/Applicant averred that the taxing master misapplied the provisions of Schedule 7 of the Advocates Remuneration Order, as the amounts awarded were extremely high contrary to the 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.200,000/=, was extremely high; that the taxing master disregarded the Law by allowing items Nos 3, 8, 9 and 14 on drawing documents including correspondence letters yet Schedule 7 does not provide such; further, by taxing service of documents items 6 at Kshs.5,000/= hence granted the Advocate/ Respondent an excessive amount, taxed item 7 at Ksh.7,100/=, contrary to the provision of Schedule 7, taxed items 11, 15 and 16 as drawn and also taxed items 12 and 13 being attending court for taxation and attending court for delivery of Ruling respectively and yet are not provided under Schedule 7 of the Advocates Remuneration Order.
 4. The Client/ Applicant deponed that he filed the instant Chamber Summons Application because the Orders are not anchored in law, policy or Court practice, and asserted that the learned Taxing Officer erred in law and in fact by disregarding the provisions of Schedule 7, and failing to appreciate the Court's duty to protect public funds; that the misapplication of law jeopardizes the Client/Applicant's rights and interests, and risks occasioning injustice if the ruling is not set aside.
 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 for granted.
 6. The Application is supported by the Affidavit of John Mayiani Tuya, sworn on 27th January 2025, who averred that the Advocate/Respondent filed an Advocate-Client Bill of Costs dated 4th October 2023, which the Client/Applicant contested. He further deponed that on 21st December 2024, the Taxing Officer, Hon. Daniel Ngayo, delivered a Ruling that taxed the Bill of Costs at Kshs. 421,415/50.
 7. The deponent averred that the Taxing Officer misapplied Schedule 7 of the Advocates Remuneration Order, resulting in excessive awards. He contended that the Taxing Officer allegedly erred in law disregarding the explicit provisions of Schedule 7 and taxation guidelines provided therein.
 8. Further, the deponent averred that the misapplication of the law and principles jeopardizes the Client/Applicant's rights, and risks injustice. Consequently, the deponent 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.
 9. The Chamber Summons Application is opposed by the Advocate/Respondent who filed a Replying Affidavit dated 28th February 2025, and also a Preliminary Objection dated 9th May 2025; and contended that the Chamber Summons Reference Application dated 27th 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.
 10. The Chamber Summons is also opposed vide the Replying Affidavit sworn by Julius K. Kemboy Advocate, who averred that the instant Chamber Summons Application is not only frivolous and vexatious but is also without merit and should be struck out.



11. Further, the Advocate/Respondent averred that the Advocate-Client Bill of costs is in respect of essential services provided to the Client by his Law Firm between 28th June 2022 and 12th October 2022 in connection with instructions to defend the Client/Applicant in Narok ELC No. E051 of 2021, Further, that the Advocate-client relationship came to an end on account of refusal by the Client/Applicant to honour payment of legal fees, and thus the filing of the said Bill of Costs.
12. The Advocate/Respondent deponed that upon serving the Client/Applicant with the bill of costs and notice of taxation severally the Client/Applicant never appeared and the taxing officer proceeded and scheduled the bill for taxation. The taxing officer issued his ruling on 21st December 2024. That subsequently, the Client/Applicant filed its Notice of Motion Application dated 13th February 2024 seeking to vacate the Ruling date and to be granted leave to file its response to the bill of costs out of time, but the Application was struck out on 25th April 2024 with costs. As a result the Advocate filed and served its Party and Party Bill of Costs dated 29th April 2024.
13. The Advocate/Respondent further averred that on 18th December 2024 the court taxed the Advocate-Client Bill of Costs at Kenya Shillings Four Hundred and Twenty-One Thousand Four Hundred and Fifteen and Fifty Cents(Kshs.421,415/50), contrary to the Client/Applicants' that the ruling was rendered on 21st December 2024 this being the date it was uploaded on CTS.
14. The Advocate/Respondent further deponed that the Chamber Summons Reference Application is time barred by operation of paragraph 11(2) of the Advocates Remuneration Order and also was filed without leave of the court contrary to paragraph 11(4) of the ARO.
15. Consequently, the Advocate/Respondent urged the Court to dismiss the instant Chamber Summons Reference dated 30th January, 2025, with costs in limine.
16. The Chamber Summons Application and the Preliminary Objection were canvassed together by way of written submissions. In response to the Preliminary Objection, the Client/Applicant submitted that it had complied with Paragraph 11(1), by filing a letter to the Deputy Registrar on 18th December 2024, within the stipulated 14 days, expressing dissatisfaction with the Taxing Officer's ruling, and requesting written reasons and a Certified copy of the ruling.
17. The Client/Applicant averred that they received the certified copy and written reasons on 22nd January 2025, and filed the instant Chamber Summons Application on 27th January 2025, within the 14-days timeline under Paragraph 11(2).
18. 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.
19. 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.
20. 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.
21. The Client/Applicant also submitted that the instruction fees were excessive, unjustified, and gratuitous, particularly as the matter was withdrawn and did not proceeded 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.
22. 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.
 23. The Client/ Applicant also submitted that the Taxing Officer departed from the well settled principles of taxation and fair remuneration for work done and proceeded to award exorbitant and unreasonable instruction fees which warrants this court intervention.
 24. The Client/Applicant urged the court to dismiss the Preliminary Objection with costs, and insisted that its Chamber Summons 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.
 25. The Advocate/Respondent, filed its submissions through 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.
 26. 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.
 27. The Advocate/Respondent further submitted that the background of the matter involves legal services rendered to the Client from 28th June 2022 to 12th October 2022, in connection with instructions to defend the Client/Applicant in Narok ELC Case No. E051 of 2021.
 28. However, the Advocate-Client relationship came to an end on 12th October 2022, and the Advocate prepared a Fee Note for settlement of the legal fees, which the client never settled, despite several demands.
 29. Further, that following non-payment of Legal fees, the Advocate/Respondent filed the Bill of Costs dated 4th October 2023, served it on the Client/Applicant on 26th October 2023; and despite the service, the Client/Applicant was absent when the matter came for taxation. Consequently, the Taxing Officer taxed the Advocate/Respondent’s Bill of Costs at Ksh. 421,415/50, which the Client/Applicant now disputes.
 30. 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.
 31. The relevant authorities cited, included *Premchand Raichand Limited vs 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.
32. Regarding the specific items in the Bill of Costs, the Advocate submitted that Objections to items 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, the Advocate/Respondent submitted are unfounded, as the Taxing Officer correctly applied Schedule 7 of the Advocates Remuneration Order, which provides;
- “When an order has been made in general terms for the payment of costs by either party and an advocate has been employed, those costs, in addition to the court fees, shall be computed under this Schedule, which shall be the minimum fee, and shall include (except’ as may be provided) taking instructions, drawing or perusing documents, pleadings or similar documents, engrossing and filing documents, and all necessary attendance at court or chambers.”
33. The Advocate/ Respondent further submitted that the said section provides; Costs exceeding the scales in this Schedule may be charged on special grounds arising out of the nature, importance, difficulty or urgency of the case.
34. Further, that the 50% increase applied to the Advocate-Client Bill is also proper under Part B, of Schedule 7 of ARO, it provides; As between advocate and either the minimum fees shall be—
- (a) the fees prescribed in A above increased by 50%; (b) the fees ordered by the court increased by the 50%; or
- (c) the fees agreed by the parties under paragraph 57 increased by 50%, as the case may be and the increase to include all proper attendances on the client and all necessary correspondence.
35. Therefore, it was the Advocate/Respondent submissions that the taxing officer did not err when he increased the taxed amount by 50% before calculating VAT, as recognized in multiple authorities including *Kinyua Muyaa Co. Advocates v. Kenya Ports Authority*, *Dennis KN Magare vs Armajit Singh Gahir*, and *Havi & Co. Advocates vs Purma Holdings Limited*, where the court held that instruction fees may be increased to reflect fair remuneration for the work involved.
36. Finally, the Advocate/Respondent submitted that costs should follow the event, and that all items in the Advocate-Client Bill of Costs were appropriately taxed. Consequently, the Advocate/Respondent urged the Court to dismiss the Client’s Reference Application with costs and uphold the Taxing Officer’s ruling.
37. Further, Kemboy Law Advocates filed written Submissions on in support of their Notice of Preliminary Objection (P.O), dated 9th May 2025, and challenged the competence of the Client/Applicant’s Reference Application dated 30th January, 2025.
38. The Advocate/Respondent submitted that the background of the Reference involves legal services provided by the Advocate between 28TH June 2022 and 12th October 2022, in connection to instructions to defend the Client/Applicant in Narok ELC Case No. E051 OF 2021, which dispute culminated in an Advocate-Client Bill of Costs dated 4th October, 2023.
39. It was further submitted that the Client/Applicant failed to settle the Legal fees, which failure prompted the Advocate/Respondent to file for taxation, which was scheduled and subsequently determined by the Taxing Officer, Hon. Daniel Ngayo, on 18th December, 2024, at 421, 415/50.
40. Further, the Advocate/Respondent submitted that the Client/Applicant filed the instant Chamber Summons Reference Application outside the statutory 14-days timeline prescribed under Paragraph



- 11(2) of the Advocates Remuneration Order (ARO), without leave from the Court as required by Paragraph 11(4).
41. The Advocate/Respondent also submitted that the instant Reference is time-barred, procedurally defective, and an abuse of the Court's process, therefore depriving the Court jurisdiction to hear it.
 42. The Advocate/Respondent relied on the established case law, including *Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors* (1969)EA 696; *Quick Enterprises Ltd vs Kenya Corporation*, Kisumu HCCC No. 22 of 1999(unreported and, *Dismas Wambola vs Cabinet Secretary, Treasury & 5 others* [2017]eklr, which cases stated that Preliminary Objections should raise pure points of law, capable of disposing of a matter without examining factual disputes.
 43. Further, the Advocate/ Respondent relied on other cases being; *Aoro v. Were* (Miscellaneous Reference Application E019 of 2022)[2022]KEHC 14628(KLR)(31 October 2022), *Muturi Mwangi & Associates vs Mwangi*(ELC Misc App. E163 of 2021 [2024]KEELC 1604(KLR), and *Evans Thiga Gaturu, Advocate vs Kenya Commercial Bank Limited* (2012)eklr Nairobi HC Misc. APP No.343 of 2011, to underscore strict compliance with Paragraph 11 timelines, noting that failure to file within 14 days or seek an extension renders the Reference incompetent.
 44. Ultimately the Advocate/ Respondent submitted that the Preliminary Objection herein is meritorious, and the instant Reference should be struck out for being filed out of time and without leave, and the Advocate/Respondent is entitled to costs.
 45. The above are the grounds in support of the instant Reference, 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 9th May 2025 is merited;
 - ii. Whether the Chamber Summons Application dated 27th January 2025 is merited;
 - iii. iii) who should pay costs of this Reference?

I. Whether the Preliminary Objection dated 9th May 2025 is merited

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



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

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

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

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

51. In the case of Avtar Singh Bhamra & Another vs. Oriental Commercial Bank, Kisumu High Court Civil Case NO. 53 of 2004, the Court held as follows:

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

52. The Advocate/Respondent’s 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. Further, the issue on jurisdiction is a pure point of law.

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

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

- (1). Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
- (2). The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

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



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

62. In the instant Reference, the Client /Applicant has sought for setting aside the Advocate/ Respondent's Bill of costs assessed at Ksh 421,415/50, for being extremely high, and that the court do re-tax /assess the said Bill of costs and/or refer it to another taxing officer other than Hon Daniel Ngayo, for the said re-taxation.
63. In the Reference and submissions, the Client/Applicant averred and submitted that the taxing master misapplied the provisions of Schedule 7 of Advocates Remuneration Order, and arrived at a wrong figure. Further, that some items were taxed in total disregard of the law. To the Client/Applicant, the matter herein was not complex nor was it novel, and an award of Ksh 200, 000/= instruction fees was extremely high.
64. This allegation and submissions were disputed by the Advocate /Respondent who submitted that the taxing master correctly used his discretion to arrive at the taxed amount. From their Client/Advocate bill of costs, the amount sought was Ksh 421,415/50, which the taxing officer found was fair and reasonable, and the said Bill of costs was taxed as drawn.
65. The court has carefully considered the instant Chamber Summons Application, the reply to the same, and the rival written submissions, and this court will be guided by the principles set out by various court when considering a reference from the decision of the taxing master.
66. It is evident that the Taxation herein is emanating from the Advocate/Client Bill of Costs, for a matter that was before the subordinate court. That being the case, Schedule 7B of Advocates Remuneration



Order, was the considered provision of law. The said Schedule provides;As between advocate and either the minimum fees shall be—

- (a) the fees prescribed in A above increased by 50%;
- (b) the fees ordered by the court increased by the 50%; or
- (c) the fees agreed by the parties under paragraph 57 increased by 50%, as the case may be and the increase to include all proper attendances on the client and all necessary correspondence.

67. Therefore, from the above, the instruction fees was supposed to be increased by 50% on what was provided in Part A, which is on Party to Party . From the Pleadings, the value of the subject matter was not given, but the Taxing officer was to be guided by the Provisions of Para B of Schedule 7.

68. Though the taxing officer had discretion to assess instruction fees, the guiding principles ought to be Para B as read with Para A, of Schedule 7. This court is not certain why the taxing officer arrived at the instruction fees of Ksh 200,000/= He ought to have explained his reasons as was held in the case of Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others [2006] KEHC 3504 (KLR)

69. 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.”

70. 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.”

71. 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.”



72. 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.”

73. 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

74. 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).

75. Bearing in mind the above holdings of the superior courts, the court will proceed and determine whether the instant Reference is merited.
76. The Client/Applicant is disputing the Advocate/Client Bill of Costs which was taxed at Ksh 421,415/50, on allegations that it is extremely high and was arrived by misapplication of the principles of taxation.
77. The matter in issue that brought about this impugned taxation was Narok ELC Case No. E051 OF 2021, which matter was not heard to conclusion as the Advocate- Client relationship came to an end before the matter was concluded, and is still on-going.
78. 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.
79. 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),”
80. Since the value of the subject was unascertained, the taxing master used his discretion while relying on the case of Premchand Raichand vs Quarry Services E.A Ltd and awarded Ksh. 200,000/= as instruction fees while taking into account the nature of the matter, interest of the parties and the labour required. The taxing master found that the sought amount of Ksh 200,000/= was reasonable, and taxed it as drawn.
81. The said Narok ELC Case No E051 OF 2021, came for hearing once on 28th June 2022, and the Advocate/Respondent gave an update to the Client/Applicant on the progress of the case. However, the relationship between the Advocate and Client came to an end on 12th October 2022, before the matter could be finalized.
82. The suit did not go to full trial, and this court finds that the taxing master should have elaborated what necessary considerations he took while arriving at the instruction fees of ksh 200,000/=. Therefore, this court finds the said amount was arrived on the wrong principle, and thus the court finds it necessary to interfere with that award, and discretion of the taxing master.
83. Though the taxing master found and held that the other items were drawn to scale, and were not exorbitant or unreasonable, and he allowed them as drawn by the Advocate/Respondent herein, the court will consider the disputed ones to arrive at a finding on whether they are up to scale or not.



84. The Client /Applicant took issue with items Nos, 2, 3,4 6,7, 8, 9, 10,11, 12,13, 14, 15 and 16, which it averred were not provided for in Schedule 7 of the Advocates Remuneration Order 2014, yet the taxing officer disregarded the law and allowed them as drawn.
85. A look at the above items, No. 2, which relates to perusal of hearing Notice dated 15th March 2022, and as provided in the Notes to Schedule 7A, drawing and perusal of documents may be assessed, and this court will not interfere with it.
86. In regard to items Nos 3, 8,9 and 14 on drawing of documents including correspondences, it was submitted that the same was not included in Schedule 7. Indeed, this court has considered Schedule 7 (11) on drawing and filing of Affidavits, and the assessed cost is Ksh 1000/= and not Ksh.1100/= as sought by the Advocate/Respondent, and which the taxing master held was drawn to scale. There is no provision for correspondence letters. of various pleadings and or documents. The Court has seen the said correspondence letters, and it is in agreement that an award of Ksh.1100/= is excessive, and out of scale.
87. The Client /Applicant took issue with items Nos 4 and 10, of making copies, and submitted that the same are not provided for in Schedule 7 of Advocates Remuneration Order. The court has considered the said Schedule 7, and indeed there is no provision for making copies, and these item ought to have been taxed off.
88. The Advocate/Respondent submitted that he had attached a list of bundles of documents to justify the billing. However, such billing ought to have been done as per the laid down principles of taxation in Schedule 7 of Advocates Remuneration Order. This court concurs with the Client/Applicant that items Nos 4 and 10 was not drawn to scale.
89. The impugned Advocates Client Bill of costs was prepared under Schedule 7(B) of the Advocates Remuneration Order 2014. On service, it provides as follows; Service- within three kilometers of subordinate court or district registry of the subordinate court it is capped at Ksh 1400/=. However, the Advocate/Respondent charged ksh 5000/= and the taxing master held that was drawn to scale. Given that service was done post Covid 19 Pandemic, and thus done via email, the award or cost of Ksh 5000/= is excessive, and should have been to scale, being Ksh 1400/=.
90. On item No 7 on attending court, the matter did not proceed for hearing, and the amount charged ought to have been ksh.2100/= and thereafter the said cumulative fees be increased by 50%. The award of Ksh 7100/= was excessive.
91. On items Nos 11, 15 and 16 of attending Court for filing Bill of Costs, taxation and collection of Certificate of taxation, the court finds that Schedule 7(6) would suffice, and the court has no issue with the said assessment.
92. On items No 12 and 13 of the said Bill of Costs on attending court for taxation, the Client /Applicant submitted that they are not provided for in Schedule 7, but the court finds that the same falls under the category of attendance in Schedule 7(7), of the Advocates Remuneration Order and the correct amount ought to have been Ksh 5000/=. Thus the taxing master erred in taxing the said items as drawn, being Ksh.10,000/= which is excessive.
93. From the above provisions of the Schedule 7(b) of Advocates Remuneration Order 2014, it is clear that the Advocate Client Costs should be what is prescribed in A, being Party and Party Costs, and then increased by 50%. The taxing master ought to have used the right scale, and thereafter increase by 50% as stipulated in Part B of Schedule 7.



94. Ultimately, having considered the instant Chamber Summons Application dated 27th January 2025, this court finds the said Chamber Summons is merited and the same is allowed entirely in terms of prayers Nos 1 and 2

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

95. 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 9th May 2025, by the Advocate/Respondent is dismissed with costs to the Client/Applicant.

96. In a nutshell, the instant Chamber Summons Reference dated 27th January 2025, is allowed entirely with an order that each party to bear its own costs. However, costs of the Preliminary Objection dated 9th May 2025 are awarded to the Client/Applicant.

It is so ordered,

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 27TH 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

