

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
MISCELLANEOUS APPLICATION NO. E248 OF 2024
OKOTH & KIPLAGAT ADVOCATES
ADVOCATE**

v

**BOARD OF TRUSTEES
NATIONAL SOCIAL SECURITY FUND
RESPONDENT**

EMPLOYMENT AND LABOUR RELATIONS COURT

RULING

1. The Taxing Officer taxed an Advocate-Client Bill of Costs presented by Okoth & Kiplagat Advocates (the advocate) on 30 April 2025.
2. On 6 May 2025, the National Social Security Fund (the Respondent) lodged an Objection against the taxation, and it followed with a Reference on 14 May 2025, seeking orders:

- (i) **NAIROBI** THAT the Ruling of the Taxing Officer delivered on 30th April 2025, in so far as the same relates to the reasoning and determination pertaining to the Respondent's Advocate - Client Bill of

Costs dated 21st August 2024, be set aside.

(ii) THAT the Honourable Court be pleased to refer the matter back for re-taxation of the Respondent's

Advocate - Client Bill of Costs dated 21st August 2024 before another

Taxing Officer with proper and appropriate instructions thereon.

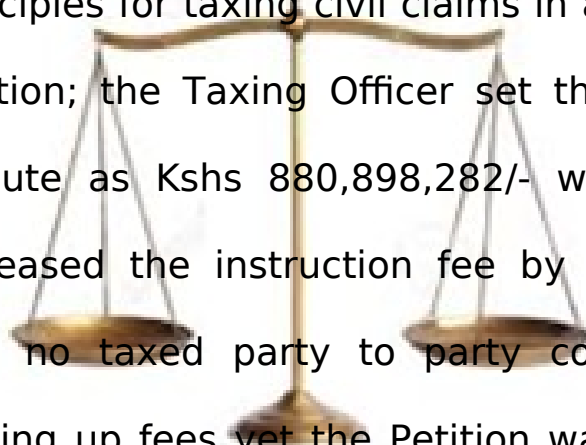
(iii) THAT in the alternative to prayer (..) above, the Honourable Court be pleased to re-tax the Respondent's Advocate - Client Bill of Costs dated 21st August 2024.

(iv) **NAIROBI** THAT the costs of this application be borne by the Respondent.

3. The primary grounds in support of the Reference were that the taxed amount was exorbitant, unjust and oppressive; the Taxing Officer misdirected herself and exercised her discretion

wrongly by not factoring in the first instance the basic instruction fee for a Constitutional Petition before increasing the same; the Taxing Officer used the wrong provision of the Advocates Remuneration Order (paragraph 1(b) instead of paragraph (c) of Schedule 6) the instruction fees was manifestly high; the Taxing Officer used principles for taxing civil claims in a Constitutional Petition; the Taxing Officer set the value of the dispute as Kshs 880,898,282/- without a basis; increased the instruction fee by half, yet there was no taxed party to party costs and taxed getting up fees yet the Petition was canvassed by way of submissions.

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4. The advocate filed an affidavit opposing the Reference on 13 October 2025.
 5. According to the advocate, the Taxation was sound in law and fact; the Taxing Officer exercised her discretion correctly; although the dispute was characterised as a Petition, no Constitutional

relief was sought; the crux of the prayers in the Petition were quantifiable and liquidated; there was extensive review of employee records and research; the parties could not agree on legal fees; that had the Petition been allowed, the Respondent would have incurred a financial loss of Kshs 880,898,282/-; the Taxing Officer considered all the relevant factors such as complexity and novelty; getting up fees was earned upon a filing of a Defence; that it is not correct that the Respondent's submissions were ignored and that a judge could not interfere with a taxation merely because the judge would have awarded a different sum.

6. The Respondent filed a further affidavit on 23 October 2025, objecting to the competence of documents introduced through the advocate's replying affidavit and reiterating that the suit was heard and determined as a Constitutional Petition.

7. The Respondent filed its submissions on the same day, while the advocate filed his submissions on 3 November 2025.

8. The Court has considered the Reference, affidavits and submissions and makes the following determinations.

9. One, what was before the Court and eventually before the Taxing Officer was a Constitutional Petition. The remedies sought were a mixture of declarations of constitutional violations and orders flowing from breach of statute/contract (the Petition alleged violations of Articles 27 and 41 of the Constitution and provisions of the Employment Act).

10. None of the parties suggested or proposed that the Petition did not meet the legal threshold or that it should be converted into an ordinary employment claim for breach of contract or statute.

11. Two, the Taxing Officer applied paragraph 1(b) of the 6th Schedule to the Advocates Remuneration Order in taxing the Bill of Costs. The appropriate part of the Advocates' Remuneration Order for taxing Bills of Costs in Constitutional Petitions is paragraph (j) of the 6th Schedule.

12. Three, by applying paragraph 1(b) and not 1(j) of the 6th Schedule to the Advocates Remuneration Order, the Taxing Officer misdirected herself and applied the wrong principles.

13. Four, getting up fees is allowable where a denial of liability is filed and the case is prepared for hearing.

14. Constitutional Petitions, as a general rule, are heard and determined based on affidavit evidence and submissions, unlike ordinary claims where witness statements are filed, adopted and the witnesses questioned.

15. The question of getting up fees in such situations has been addressed by the Courts before, but with different outcomes.

16. In Misc Application No. 429 of 2004, *Mits Electrical Co Ltd v National Industrial Credit Bank Ltd*, the High

Court stated:

getting up fees: clearly contemplated where counsel is involved in the preparation of witnesses and witness statements etc. This was not the case here. The application was supported by affidavit and no viva voce evidence was adduced.

17. The High Court took a similar position in *Republic v National Environment Tribunal ex parte Silversten Enterprises Ltd* (2019) eKLR.

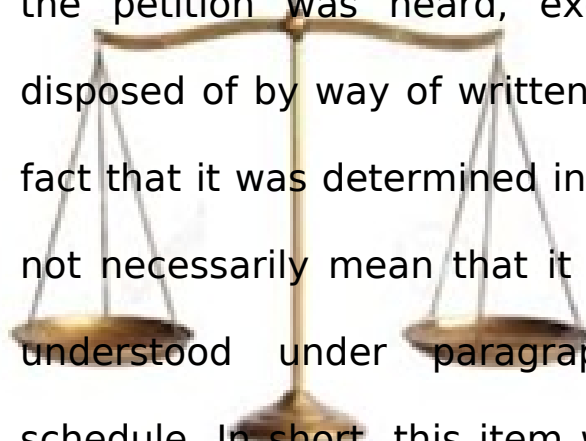
18. The High Court in *John Githinji Wangonde & Ors v Nyeri South Subcounty Cooperative Officer & Ors* (2018) eKLR took a different position. It stated:

Contrary to the taxing masters view, it is apparent from this provision that the decision to

award or not to award fees for getting up for trial is not based on the complexity of the matter; or whether there is any novel question; or on the value of the suit or the worth of the subject matter; rather, it based on whether the suit has been confirmed for trial.

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In the present petition, there is no doubt that the petition was heard, except that it was disposed of by way of written submissions. The fact that it was determined in this manner does not necessarily mean that it was not heard as understood under paragraph 2(ii) of the schedule. In short, this item was disallowed on the wrong premise.



- NAIROBI**
19. This Court is of the view that the decisions disallowing getting up fees where there is no *viva voce* hearing are sound in law.
 20. The Taxing Officer was therefore in error in allowing the getting-up fees.

Orders

21. In light of the above, the Reference is allowed in the following terms:

- (i) The Advocate - Client Bill of Costs dated to be taxed before a different Taxing Officer in compliance with the findings

22. Costs in the cause.

Delivered virtually, dated and signed in Nairobi on this 27th day of November 2025.

**Radido Stephen, MCI Arb
Judge**

Appearances

For Advocate

Okoth & Kiplagat
Advocates

For Respondent

P.K. Mbaabu & Co.
Advocates

Court Assistant

Wangu

NAIROBI