

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT KERICHO
MISCELLANEOUS APPLICATION**

NUMBER E006 OF 2025

BETWEEN _

TENWEK
HOSPITALAPPLICANT

MISSION

VERSUS

DR. ANOLD
ORWARESPONDENT

IAN

RULING

1. The Applicant brought Claim against the Respondent at the E&LRC Kericho, registered as Cause Number E009 of 2022.
2. The prayers were that the Respondent, is compelled to specifically perform his obligations under the executed bond agreement dated 7th January 2015; or, judgment is entered in favour of the Applicant, in the sum of Kshs. 7,444,800. The Applicant also prayed for costs and interest.
3. The Claim was dismissed with costs, in the judgment of the Trial Court.
4. The Respondent filed a Party-to-Party Bill of Costs, which was taxed at Kshs. 560,376.28, on 14th May 2025.
5. The Applicant challenges the taxation ruling on the following grounds: -

- a. The Taxing Officer erroneously adopted the pleaded sum of Kshs. 7,444,800, as the value of the subject matter.
 - b. The Claim, having been dismissed, the value of the subject matter was unascertainable. The Advocates Remuneration Order mandates that once judgment has been delivered, the value of the subject matter must be drawn from the judgment, not the pleadings.
 - c. The Taxing Officer erred in allowing 16% VAT. The item is not chargeable in party-to-party costs.
 - d. Items 7 and 9 on attendance were erroneously awarded as the Court was not sitting on the given dates.
 - e. Items 19, 20, 21 and 23 were wrongly granted, all correspondences having been sent through e-mail, and no evidence of service having been produced.
 - f. The amount granted, is manifestly excessive.
6. The Applicant proposes that the Court, sets aside the items granted above; retaxes the Bill; or remits the Bill to a different Taxing Officer for fresh taxation.

7. The Respondent opposes the application. His position is that the Taxing Officer is not shown to have applied wrong principles; or made an award that is manifestly high or low, so as to result in an injustice. He invokes paragraph 11 of the Advocates Remuneration Order, in support of this submission.
8. On the value of the subject matter, his position is that it ought to be determined from the pleadings, judgment or settlement. Where it is not ascertainable as such, the Taxing Officer is entitled to apply his discretion. Dismissal of a Claim, does not diminish the value of the subject matter.
9. The Respondent submits that Section [1] of the VAT Act, makes VAT chargeable on all legal services. It is chargeable on party-to-party costs, where the Advocate is a registered VAT payer. It is a statutory obligation.
10. The Respondent urges the Court to dismiss the reference.
11. The Application was last mentioned before the Court on 16th October 2025, when the parties confirmed filing and exchange of their submissions.

The Court Finds: -

12. The value of the subject matter is determined by looking at the pleadings, judgment or settlement agreement.

13. The Applicant specifically demanded for payment of a sum of Kshs. 7,444,800 from the Respondent, in its Claim which was dismissed.
14. That the Claim was dismissed, would not make the value of the subject matter unascertainable, as submitted by the Applicant.
15. The judgment of the Court would only have affected the value of the pleaded subject matter, if the Court found in favour of the Applicant, for the amount claimed, or any other amount.
16. If the claim was granted as pleaded at Kshs. 7,444,800, the value of the subject matter would have been confirmed by the Court to be the amount pleaded and granted. If it was granted for any other amount, higher or lower than Kshs. 7,444,800, the value would be that granted by the Court. Taxation would be based on the amount granted by the Court.
17. Where the Claim is ongoing, the value of the subject matter is what is contained in the pleadings. When it is heard and concluded, the value would be the sum granted by the Court, whether less, equal or in excess of the amount pleaded. If the Court has dismissed the Claim, and not granted anything from what is pleaded, the value of the subject matter remains what was pleaded. The value does not dissolve, become unknown, with the dismissal of the Claim, so as to lead the Taxing Officer to exercise his discretion, in determining the value of the subject matter.

18. Where the Claim is dismissed, one would have to revert to the pleadings, to determine the value of the subject matter.
19. As the Court found the Applicant was not entitled to any amount, the amount pleaded by the Applicant, remained the value of the subject matter. It was the value given by the Applicant to the Court from the outset, and dismissal of the Claim, did not render the value unascertainable.
20. The Court of Appeal in **Joreth Limited v. Kigano & Associates [2002] e-KLR**, ruled that: -

“The value of the subject matter of a suit, for purposes of taxation of a bill, of costs ought to be determined from the pleadings, judgment or settlement. Where it is not ascertainable from the pleadings, judgment or settlement, the Taxing Officer is entitled use his discretion.”

21. In the matter under reference, there was a clear sum pleaded by the Applicant, and the value of the subject matter was known from the outset, and the Court did not alter that value, in determining the Claim.
22. The Court’s view on VAT under Section 5 [1] of the VAT Act, is that it is not applicable in party-to-party costs. The decision cited by the Respondent, **Evans Thiga Gaturu v. Kenya Commercial Bank Limited [2012] e-KLR**, relates to advocate-to-client costs.

23. VAT is chargeable on advocate-to client costs, where the advocate is a registered VAT payer.
24. There were no taxable services rendered by the Respondent to the Applicant, to justify imposition of VAT in a party-to-party Bill of Costs.
25. In **Nairobi High Court Civil Appeal Number 289 of 2019, The Anti-Counterfeit Agency v. Peter Mugucia & Another; and Pyramid Motors Limited v. Langata Gardens Limited [2015] e-KLR**, it was affirmed that party-to-party Bill of Costs does not attract VAT. Neither party supplied taxable services to the other. Justice Onguto [peace be upon his soul], explained that:-

” The Bills herein concerned party-to-party costs, and VAT could then not apply, as neither party fetched or supplied services to the other. True, legal services were rendered, but it is not the Advocate herein, who was being compensated.”

26. From these judicial authorities, there is adequate reason, to conclude that the Taxing Officer erred by allowing VAT in a party -to-party Bill of Costs.
27. On attendances relating to 28th June 2022 and 26th September 2022, the Applicant has not supplied the Court with the typed and certified proceedings of the Trial Court, to authenticate its claim, that the Court did not sit, and costs on attendance should not have been awarded for the 2 days.

28. The objection relating to costs on service of court processes, has no weight. The Court would think that even when service is through e-mail or other permissible social media platforms, there are costs incurred. These are not items that should warrant interference by this Court on reference.

29. In the end, the reference is allowed, solely on account of VAT item granted by the Taxing Officer.

IT IS ORDERED: -

- a. The order allowing VAT at 16% of the Bill of Costs dated 17th July 2024, is set aside.***
- b. Other items allowed by the Taxing Officer are sustained.***
- c. No order on the costs of the reference.***

Dated, signed and delivered electronically at Kericho, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 28th day of November 2025.

James Rika
Judge



