

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT VOI

MISC. APPLICATION NO. E006 OF 2025

(In the matter of Advocate and Client costs arising from Voi
CMCC No. E031/2020)

CANON GENERAL INSURANCE (K) LIMITED.....
RESPONDENT/APPLICANT

=VERSUS=

C.B GOR & GOR
ADVOCATES.....ADVOCATES/RESPONDENT

JUDGMENT

1. The Client filed the Reference Application dated 15th July 2025 seeking the following prayers:-
 - (i) **THAT the taxing master’s decision of 4th July 2025 be reviewed and or set aside.**
 - (ii) **THAT the costs of this application be provided for.**
2. The application is based on the following grounds:-
 - (i) **THAT the taxing master erred by finding that the costs proposed by the Respondent/Applicant are so low that allowing them would be akin to sanctioning undercutting when the subject matter of the primary suit was Kshs. 1,341,715/=.**

- (ii) THAT the taxing master erred in finding that the Respondent/Applicant's submissions lacked proper basis as the items at paragraphs 4, 9 and 11 had not inflated the instruction fees to an extent that warrants their denial.**
- (iii) THAT the taxing master erred in holding that attendances billed for need not be particularized as that is an issue of form over substance. The decision disregarded the burden placed on the Advocate to justify each item of the Bill of Costs effectively shifting the burden of proof to the client in regard to the same.**
- (iv) THAT the taxing master erred in overriding the Respondent/Applicant's objections and allowing the advocates Bill at Kshs. 1,077,519/= where the subject matter of the primary suit was Kshs. 1,341,715/= translating to the advocates fees being equivalent to 80% of the subject matter.**

3. The application is supported by the affidavit of JOAN OBURU in which she deposed as follows:-

- (i) THAT I am an Advocate of the High Court of Kenya and currently practicing as the Respondent/Applicant as a Legal Officer; as such I have access to all**

documents relevant to the suit herein and the facts herein are within my personal knowledge.

(ii) THAT I am informed by the advocates on record, Makhecha and Gitonga, which I believe to be true, that the Advocates attended court when the taxing master found that the advocates/respondent's bill was reasonable and thus taxed it as drawn at Kshs. 1,077,510/=

(iii) THAT I am informed by the advocates on record, Makhecha and Gitonga, which I believe to be true, that the taxing master erred by finding that the costs proposed by the respondent/applicant are so low that allowing them would be akin to sanctioning under cutting when the subject matter of the primary suit was Kshs. 1,341,715/=

(iv) THAT I am informed by the advocates on record, Makhecha and Gitonga which I believe true, that the taxing master erred in finding that the Respondent/Applicant's submissions lacked proper basis as the items at paragraphs 4, 9 and 11 had not inflated the instruction fees to an extent that warrants their denial.

- (v) THAT I am informed by the advocates on record, Makhecha and Gitonga, which I believe to be true that the taxing master erred in holding that attendances billed for need not be particularized as that is an issue of form over substance and shifted the burden of proof to the client in regard to the same.**
- (vi) THAT I am informed by the advocates on record, Makhecha and Gitonga which I believe to be true that the taxing master erred in overriding the respondent/applicant's objections and allowing the advocates bill at Kshs. 1,077,519/= where the subject matter of the primary suit was Kshs. 1,341,715/= making the cost to the client of getting representation 80% of the subject matter.**
- (vii) THAT I am informed by the advocates on record, Makhecha and Gitonga which I believe to be true, that the taxing master erred in granting interest on the taxed amount before issue of the certificate of taxation and a judgment in favour of the advocates/respondent.**

4. The Respondent filed a Replying Affidavit as follows:-

5. The parties filed written submissions as follows; The Applicant challenges the ruling of the Taxing Master on the grounds that it was erroneous in law and principle, resulting in an excessive and unjustified award of costs.
6. The Applicant contends that the Taxing Master fundamentally misapprehended the provisions of the Advocates (Remuneration) Order and established judicial precedent.
7. The core of the challenge lies in the assessment of the subject matter. While the Taxing Master correctly recorded that instruction fees were conceded at Kshs. 120,000 for a claim valued at Kshs. 1,341,715, the subsequent total award of over Kshs. 900,000 was deemed manifestly excessive.
8. The Applicant argues that this initial instruction fee is intended to be inclusive of the core legal work, as outlined in the Remuneration Order.
9. A significant error identified is the Taxing Master's treatment of the Respondent's proposed fee, which was mistakenly characterized as "undercutting."
10. The Applicant submits that this is a misapprehension of law, as undercutting is a matter for disciplinary proceedings, not a valid reason to inflate a taxation award.
11. Further, the Applicant asserts that the Taxing Master improperly allowed numerous items that are not provided for in

the Remuneration Order, citing over 78 specific items that should have been disallowed entirely.

12. The ruling is also faulted for failing to require the Respondent to provide particulars for various attendances, contrary to the principle that the party presenting the bill must justify each item. The overall award of Kshs. 1,077,519 is criticized as being disproportionate, amounting to roughly 80% of the original claim's value, which violates the principle that costs should not be so high as to impede access to justice. Finally, the Applicant points to a procedural error, arguing that the Taxing Master permitted execution of the award prior to the issuance of a formal Certificate of Taxation, which is a mandatory requirement.

13. In the interest of judicial economy, the Applicant invites the Court to re-tax the bill itself. A proposed computation is provided, which, after applying the prescribed scales for instruction fees, service, and attendance, adding VAT, and deducting a deposit paid, would result in a final taxed amount of Kshs. 117,326. The Applicant therefore prays for the Court to set aside the Taxing Master's ruling, substitute it with this proposed award, and grant costs of this reference in their favor.

14. The Advocate/Respondent, C.B. Gor & Gor Advocates, submits that the Applicant's Reference is fundamentally flawed

and should be dismissed. The core argument is that the Application is fatally incompetent because the Applicant failed to comply with the mandatory procedure under Rule 11(1) of the Advocates Remuneration Order, which requires a written notice to the taxing master specifying the items objected to. This omission is jurisdictional, meaning the Court lacks the legal authority to even hear the Reference.

15. On the substance of the case, the Respondent argues that the Applicant has not demonstrated any error of principle by the Taxing Master. The Application is portrayed as a mere dissatisfaction with the quantum of costs awarded, which is not a valid ground for the High Court to interfere with a taxing officer's discretionary decision. The Respondent defends the Taxing Master's ruling, stating it was reasoned, applied the correct legal schedule, and considered all relevant factors. Furthermore, the Respondent characterizes the Applicant's argument against the "undercutting" observation as a misunderstanding of the law, asserting that the Taxing Master was duty-bound to ensure remuneration did not fall below the statutory minimum.

16. Finally, the Respondent contends that the entire Application is an abuse of the court process, designed not to correct a legal error but to tactically delay the Advocate from receiving the

lawfully taxed costs. The Respondent urges the Court to dismiss the Chamber Summons with costs to bring finality to the matter.

17. **The issues for determination in this Reference are, firstly, whether the Applicant complied with the mandatory procedural prerequisite for filing a reference against a taxation ruling, and secondly, if the Reference is properly before the Court, whether the Taxing Master erred in principle in the taxation of the Advocate/Respondent's Bill of Costs, resulting in a manifestly excessive award.**

18. The Client/Applicant filed a Reference dated 15th July 2025, seeking to set aside the ruling of the Taxing Master delivered on 4th July 2025, which taxed the Advocate/Respondent's bill of costs at Kshs. 1,077,519. The Applicant contends that this award is manifestly excessive and resulted from errors in principle.

19. The Advocate/Respondent raises a potent preliminary objection: that this Reference is incompetent for failure to comply with the mandatory procedure under Rule 11(1) of the Advocates Remuneration Order.

20. This rule requires an aggrieved party to give the taxing officer a written notice specifying the items objected to before filing a reference in the High Court.

21. The jurisprudence on this point is settled, notably in **First American Bank of Kenya Ltd v. Shah and Others [2002] eKLR**, where the Court of Appeal held this requirement to be a jurisdictional prerequisite.
22. Upon perusing the record, I find that the Applicant has not demonstrated that such a notice was served upon the Taxing Master. Strictly applied, this failure is fatal to this Reference, and it would be struck out.
23. However, this Court, in the exercise of its inherent jurisdiction to do substantive justice and to prevent a potentially grave injustice from being shielded by a procedural technicality, will, in the unique circumstances of this case, invoke the "interest of justice" exception.
24. The sum of money at stake is significant, and the merits of the challenge raise serious questions about the proportionality of the award. I therefore elect to look beyond the procedural lapse and consider the Reference on its substantive merits.
25. The role of this Court in a reference is not to re-tax the bill afresh, but to determine whether the Taxing Master erred in principle.
26. An error of principle includes misapprehending the law, taking into account irrelevant factors, or failing to consider relevant ones, leading to a manifestly unjust result (**Joreth Limited v. Kigano & Associates [2002] eKLR**).

27. The primary suit was for Kshs. 1,341,715. The instruction fee, which covers the core of the advocate's intellectual work, was conceded at Kshs. 120,000.
28. This was a proper application of the relevant schedule. However, the total taxed costs ballooned to Kshs. 1,077,519, representing approximately 80% of the decretal sum.
29. While I agree with the Respondent that a high ratio of costs to the claim value is not, in itself, an error of principle, it can be a compelling indicator that such an error may have occurred.
30. The principle of proportionality is a cornerstone of a fair costs regime. Costs should not be so oppressive as to deny a successful party the fruits of their judgment or to deter litigants from accessing justice.
31. In this case, the sheer magnitude of the total costs relative to the claim value cries out for scrutiny.
32. The Taxing Master's duty was not only to ensure the advocate is not undercut but also to ensure the client is not subjected to extortionate costs.
33. By allowing a final bill where the advocate's fees consume 80% of the subject matter, the Taxing Master failed to adequately balance these competing interests.

34. This constitutes an error in principle. The award, in its totality, is so inordinately high as to be manifestly unjust and disproportionate.

35. Consequently, the Court is entitled to intervene. Having found a clear error of principle that has led to a manifestly excessive award, the just course is to set aside the taxation ruling.

36. In the interest of expediency and finality, guided by the Advocates (Remuneration) Order and the principle of proportionality, a reasonable and proportionate award is necessary.

37. On the instruction Fees, I find that this item was properly conceded at Kshs. 120,000 based on the subject matter. This fee is intended to cover the general conduct of the suit.

38. On the other Items (Getting Up, Attendances, etc.), Many of the items challenged by the Applicant, while perhaps incurred, appear to have been allowed at an inflated level, contributing to the disproportionate outcome.

39. A global assessment is necessary. Considering the nature of a typical civil suit in a Magistrate's Court, a reasonable and proportionate award for these miscellaneous items (including getting up, filing documents, and reasonable attendances) would be Kshs. 500,000.

Total Advocate Fees: Kshs. 120,000 + Kshs. 500,000 = Kshs. 620,000.

Value Added Tax (VAT): 16% of Kshs. 620,000 = Kshs. 99,200.

Sub-Total: Kshs. 620,000 + Kshs. 99,200 = Kshs. 719,200.

Less Deposit Paid: The record indicates a deposit of Kshs. 50,000 was made. (Kshs. 50,000).

Final Taxed Costs Payable: Kshs. 669,200.

40. The Applicant's Reference dated 15th July 2025 is hereby allowed.

41. The Ruling of the Taxing Master delivered on 4th July 2025 is set aside.

42. The Certificate of Taxation shall issue accordingly.

43. Each party shall bear its own costs of this Reference application.

44. **ORDERS TO ISSUE ACCORDINGLY.**

**Dated, signed and delivered this 3rd day of December 2025
in open court at Voi High Court.**

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Mabishi/Millicent

.....**for the Applicant**

.....**for the Respondent**