

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
MISC APPLICATION NO. E 032 OF 2025

IN THE MATTER OF THE MATTER OF THE ADVOCATES'
REMUNERATION ORDER
AND
IN THE MATTER OF TAXATION OF ADVOCATE – CLIENT COSTS

ELIZABETH MUTHONI GACHECHE JEANNE WANJIKU GACHECHE <i>(Suing as Administrators of the Estate</i> <i>Of Late Gacheche Hosea)</i>	APPLICANTS
VERUS	
WANGUI KATHRYN KIMANI & CO. ADVOCATES	RESPONDENT

(Being a Reference from the Ruling on Taxation of the Respondent's Advocate-Client Bill of Costs dated 5 May 2023 by the learned Taxing Officer, Hon C. Nganga (DR) dated 24 January 2025)

RULING

1. This dispute arises from High Court Succession Cause No 1869 of 1989, Estate of Gacheche Hosea (Deceased). The Deceased died intestate. A

Petition for Letters of Administration was filed by the firm of M/s Archer & Wilcock Advocates on 31 August 1999. The Grant of Letters of Administration Intestate was subsequently issued on 23 November 1999 to Elizabeth Muthoni Gacheche (the widow), Andrew Gathambo Gacheche and Jeanne Wanjiku Gacheche. The Grant was confirmed on 13 June 2000. The Certificate of Confirmation of Grant indicated that Elizabeth Muthoni Gacheche was the sole beneficiary of the estate. The inventory of assets at that time was valued at approximately Ksh 36 million and included several properties such as Nyeri Municipality/Block 111/161 and LR No 7022/9. It is undisputed that the Respondent was not the firm that handled the petitioning for the Grant or its confirmation in 2000.

2. Sometime in 2011 or 2012, the Applicants identified an error in the confirmed Grant. Certain properties had been inadvertently omitted from the Schedule of Assets. Consequently, they instructed the Respondent to rectify the Grant.
3. The precise scope of these instructions is a matter of contention. The Applicants' position is that the instructions were specific and limited. The Respondent was instructed to file Summons for Rectification of Grant to include the two properties that had been omitted. The Applicants aver that the Respondent was also to handle the transfer of these specific properties to the Beneficiary.
4. The Respondent asserts that her instructions were far broader. The Respondent claims that she was instructed to collect all the assets of the Deceased, transfer all the assets collected to Elizabeth Muthoni Gacheche and facilitate the sale of L.R. No. 209/7383/18, located in Kimathi Estate, Nairobi. She argues that the 2000 Grant was fatally defective as it lacked a Schedule, and her work was to regularise the entire estate's distribution.

5. On 14 May 2012, the Respondent attended Court before the late Hon. Njagi, J, who granted the order of rectification. This date is critical for the determination of the limitation period.
6. The relationship between the parties appeared to have soured shortly after the rectification order was obtained. On 19 February 2014, the Respondent wrote to the 1st Application regarding withdrawal of instructions. On 16 and 20 April 2015, the Respondent wrote further letters confirming that she was no longer acting for the Applicants and requested them to appoint another Advocate to whom she could hand over the file.
7. In 2020, the firm of KNM Law Associates LLP took over the conduct of the matter. Along with the Notice of Change of Advocates, they filed a motion to amend the Grant to remove the name of a deceased Administrator, Andrew Gathambo Gacheche.
8. On 28 May 2021, the Respondent file her Advocate-Client Bill of Costs, claiming fees for work done primarily in 2012. This was approximately 9 years after the services were rendered. On 30 July 2021, the Applicants filed a Notice of Preliminary Objection, arguing that the Bill was time barred under section 4(1)(a) of the Limitation of Actions Act, which prescribes a 6-year limitation period for contractual claims.
9. On 24 February 2023, the Deputy Registrar delivered a Ruling on the Objection, holding that the Taxing Master lacked jurisdiction to determine the issue of statutory limitation and referred the matter to a Judge for determination.
10. On 26 April 2023, the matter came before Hon. Riechi, J. The Respondent sought leave to amend the Bill of Costs to include items of work allegedly

done in 2021 and 2022, which leave was granted. The Respondent contends that this order overtook the limitation objection. The Applicants contend that it merely allowed a procedural amendment without determining the substantive limitation issue.

11. On 5 May 2023, the Respondent filed an Amended Advocate- Client Bill of Costs. On 13 June 2023, the Applicants filed a fresh Notice of Preliminary Objection against the amended Bill. They argued that the inclusion of minor items from 2021 was a stratagem to revive a stale Bill and that the Taxing Master still lacked jurisdiction over the 2012 items. They further argued that the Respondent had no instructions in 2021.
12. On 24 January 2025, the Taxing Master delivered a Ruling, taxing the Bill at Kshs 8,702,714.40 and awarding Kshs 5 million as instruction fees. The Appellants allege that the Taxing Master did not deliver a ruling on the Preliminary Objection dated 13 June 2023 before proceeding to taxation.
13. In the said Ruling, the Taxing Master made the following findings. The Taxing Master correctly identified that the Respondent did not petition for the Grant but was instructed to file Summons for Rectification, which work falls under Schedule 10(1)9f) of the Advocates (Remuneration) Order. Regarding the value of the estate, the Taxing Master stated, *"The Applicants firm did not Petition for Grant... the applicants only came to the picture in this matter on lodging an application for revocation of grant/rectification of grant... Hence the Applicant's reliance on the value of the deceased estate has no basis."*
14. Despite rejecting the value of the estate as a basis, the Taxing Master relied on the discretionary factors in ***Joreth Limited vs Kigano & Associates 1 EA 92*** (nature, importance, complexity) and awarded an instruction fee of Kshs 5 million. She taxed off Kshs 48,283,562/= from the bill (which claimed over Kshs 50 million).

15. The Applicants filed this Reference *vide* Chamber Summons dated 3 February 2025 seeking, *inter alia*:

- (i) That this Honourable Court be pleased to vacate and set aside in its entirety the Ruling and reasoning of the learned Taxing Master, Hon C. Nganga (DR) dated and delivered on 24 January 2025, taxing the Advocate/Respondent's amended Advocate – Client Bill of Costs dated 5 May 2025 at Ksh 8,702,714.40;
- (ii) That the Honourable Court be pleased to reassess the quantum of total fees and disbursement in the Amended Advocate-Client Bill of Costs dated 5 May 2023;
- (iii) That in the alternative to prayer (ii), the Honourable Court be pleased to remit the Amended Advocate – Client Bill of Costs dated 5 May 2023 for reassessment on the quantum of fees and disbursements chargeable before a different Taxing Master with appropriate directions therefor;

16. The Application was canvassed by way of written submissions.

The Applicants' Case

17. The Applicants' case is articulated in the Supporting Affidavit sworn by the 2nd Applicant, the Supplementary Affidavit and written submissions. The Applicants submit that the Taxing Master committed a grave error of principle by failing to rule on their Preliminary Objection dated 13 June 2023, which challenged the jurisdiction of the court to tax the Bill on the grounds of limitation. They argue that under the authority of authority of ***Owners of the Motor Vessel "Lilian S" vs Caltex Oil (Kenya) Ltd KLR***, jurisdiction is a threshold issue that must be determined before any further step is taken. By ignoring the objection and proceeding to tax the Bill, the Taxing Master acted

ultra vires. They contend that the amendment of the Bill did not cure the statutory bar affecting the items from 2012.

18. The Applicants argue that the award of Kshs 5 million for a rectification application is manifestly excessive, unconscionable and punitive. They point out that Schedule 10(1)(f) prescribes a minimum fee of Kshs 4,500/=. While discretion allows for enhancement, an increase of over 100,000% is arbitrary and unsupported by the work done. They rely on the Agreement for Sale of the Nairobi property showing a value of Kshs 4.8 million, and a valuation for the Nyeri property for Kshs 1 million. The Applicants argue that even an *ad valorem* calculation on the specific assets involved (approximately Kshs 5.8 million) would yield a fee drastically lower than Kshs 5 million.
19. The Applicants vehemently deny that the Respondent was instructed to administer the entire estate. They assert that the instructions were strictly limited to the rectification of the Grant to add two omitted properties. They argue that the Taxing Master erred by confusing the estate in question with another relating to the Loontasati ole Lolowuaya. They further contend that the work was never completed by the Respondent, as the rectified Grant was eventually extracted by KNM Law Associates in 2021.
20. The Applicants argue that items 10-16 in the Amended Bill (relating to 2021/2023) were inserted falsely to bypass the Limitation of Actions Act. They provide evidence that by 2021, KNM Law Associates was already on record, and the Respondent had no active instructions. Therefore, the last item of work was in 2012, making the entire bill statute-barred.

The Respondent's Case

21. The Respondent opposes the Application through a Replying Affidavit, Notice of Grounds for Affirming the Decision and submissions.

22. The Respondent argues that the issue of limitation was effectively settled by Hon. Justice Riechi on 26 April 2023 when he granted leave to amend the Bill. She contends that the inclusion of work items from 2021 and 2022 brought the Bill within the limitation period, and thus the Preliminary Objection was overtaken by events. The Respondent relies on the case of ***Abincha & Co. Advocates vs Trident Insurance Co. Ltd eKLR*** to suggest that advocate-client relationships are contractual, but argues the contract was ongoing.
23. The Respondent maintains that the instruction fee is justified because her work sanitized the entire estate. She argues that the original confirmed grant of 2000 was defective because it listed no assets. By rectifying it, she effectively validated the distribution of the entire estate, valued at Kshs. 916,500,000. The Respondent argues that the fee should be based on this aggregate value. She also alleges that the 2nd Applicant admitted the debt in an email dated 14 August 2023 and that there was a family agreement to pay Kshs. 9 million, though the Respondent admits the consent order was never signed.
24. The Respondent insists she was never formally terminated until the new Advocates took over in 2020/2021. She relies on correspondence and the fact that she held the original title deeds as proof of her continued mandate. The Respondent argues that the Applicants cannot approbate and reprobate by acknowledging her work in private correspondence while denying it in court.

Analysis & Determination

25. I have carefully reviewed the pleadings herein and submissions. the following issues lend themselves for determination:

- (i) Whether the Taxing Master erred in principle by failing to determine the Applicants' Preliminary Objection dated 13 June 2023 regarding the limitation of actions.
 - (ii) Whether the Respondent's claim for costs (specifically items relating to work done in 2012) was statute-barred under the Limitation of Actions Act, and whether the amendment of the Bill cured this defect.
 - (iii) Whether the Taxing Master committed an error of principle in the assessment of Instruction Fees (Item 1), specifically regarding interpretation of the scope of instructions, the applicable Schedule of the Advocates Remuneration Order and the reasonableness of the quantum vis-a-vis the subject matter value.
26. This Court is cognizant of the settled principles governing references from the decision of a Taxing Master. The jurisdiction is supervisory, intended to correct errors of principle, not merely substitute the Judge's discretion for that of the Taxing Master.
27. The *locus classicus* in this jurisdiction is the Court of Appeal decision in **Joreth Limited v Kigano & Associates EA 92**, where the Court held:
- "The value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement... but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just... The Court will not interfere with the exercise of the taxing officer's discretion unless it is satisfied that he erred in principle."*
28. This was echoed in **First American Bank of Kenya v Shah and Others EA 64**, where Ringera J (as he then was) stated:

"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 so manifestly excessive as to justify an inference that it was based on an error of principle."

29. An error of principle encompasses taking into account irrelevant factors, omitting relevant factors, applying the wrong legal scale, or failing to adjudicate on a jurisdictional issue. With these principles as my compass, I turn to the issues at hand.

Jurisdiction and Limitation of Actions

30. The Applicants contend that the Taxing Master proceeded to tax the Bill without ruling on the Preliminary Objection filed on 13 June 2023. The Preliminary Objection challenged the court's jurisdiction on the basis that the claim was time-barred.
31. It is a cardinal principle of law that jurisdiction is a threshold issue. In the instance case, the objection raised the issue of limitation of actions. Under Section 4(1)(a) of the Limitation of Actions Act, actions founded on contract must be brought within 6 years from the date the cause of action accrued. An Advocate's claim for costs is a claim based on a contract of service.
32. The chronology of this matter is telling. The primary work was concluded in 2012. The first Bill of Costs was filed in 2021. An amended Bill was filed in 2023. The Taxing Master had previously ruled, in February 2023, that she lacked jurisdiction to determine the limitation issue and referred it to a Judge. When the matter returned to her after the amendment, the Applicants raised the issue again via the Preliminary Objection of June 2023. By failing to rule on this Preliminary Objection, the Taxing Master abdicated her duty to

determine whether she had the mandate to tax the Bill at all. This failure constitutes a procedural irregularity and a substantive error of principle.

33. The Respondent argues that Hon. Riechi, J's order allowing the amendment settled the limitation issue. This Court disagrees. Granting leave to amend a pleading is a matter of judicial discretion to ensure that all issues are ventilated. It does not automatically immunize the amended pleading from statutory bars.
34. The inclusion of items 1-16 (searches and letters in 2021) in the Amended Bill appears to be what the Applicants describe as a colourable device to revive a stale claim. The bulk of the fees claimed relates to work done in 2012. The cause of action for that fee accrued when the work was completed or when the retainer was terminated.
35. In ***Abincha & Co Advocates v Trident Insurance Co Ltd [2013] KEHC 6821 (KLR)*** it was held that an Advocate's claim for costs is subject to the Limitation of Actions Act. If the work was completed in 2012, the time to file a Bill for that work expired in 2018. Writing a letter in 2021 does not restart the clock for the 2012 instruction fee unless there is an acknowledgment of debt, which is disputed here. Consequently, the Taxing Master erred by taking the 2012 items without determining if they were statute-barred.

Assessment of Quantum

36. Notwithstanding the foregoing, even if the Bill was not time barred, the assessment of the instruction fees reveals profound errors of principle. The Respondent contends that the instruction fee should be based on the value of the entire estate, Kshs 916 million, because her work rectified the Grant for the whole estate.

37. In her Ruling, the Taxing Master stated thus:

"The Applicants firm did not Petition for Grant... the applicants only came to the picture in this matter on lodging an application for revocation of grant/rectification of grant... Hence the Applicant's reliance on the value of the deceased estate has no basis."

38. This finding by the Taxing Master was sound. However, the Taxing Master immediately contradicted this finding by awarding Kshs. 5 million, a figure that can only be explained if one subconsciously reverts to the high value of the estate.

39. In **REPUBLIC VS. MINISTER FOR AGRICULTURE & 2 ORS EX PARTE SAMUEL MUCHIRI W'NJUGUNA (2006) eKLR**, Hon. Ojwang, J. (as he then was) dealt with a similar scenario where a Taxing Master raised a fee from Kshs. 20,000 to Kshs. 20 million without clear justification. He termed such awards "mystical figures" and held:

"Discretion... is to be guided by principles... It is not enough to set out by attributing to oneself discretion... and thereafter merely cite wonted rubrics... as if these by themselves could permit assignment of mystical figures... The sum awarded... appeared, in my assessment, as a mystical figure which cannot be allowed to stand."

40. The parallels are striking. The Taxing Master here cited **Joreth Limited case (supra)** but failed to provide the arithmetic or logical bridge to the figure of Kshs. 5 million.

41. The specific instruction was to rectify the grant to include two omitted properties. For L.R. No. 209/7383/18 (Nairobi), the Agreement for Sale dated

22 June 2011 indicates the price as Kshs. 4.8 million. For Kirimukuyu/Mbogoini/562 (Nyeri), the Valuation Report dated 12 February 2021 indicates the at Kshs. 1 million. The total subject matter value, therefore, is Kshs. 5,800,000.

42. If the Respondent were to charge an instruction fee of Kshs. 5,000,000 on a subject matter worth Kshs. 5,800,000, it would amount to an absurdity where the legal fees consume nearly 86% of the asset value. This violates the principle of proportionality and fairness. The award of Kshs. 5 million represents an enhancement of approximately 111,000% over the base fee. While discretion is broad, it is not unfettered. Such a massive enhancement requires evidence of extraordinary complexity, novelty, or volume of work.
43. The Taxing Master correctly identified Schedule 10(1)(f) of the Advocates (Remuneration) Order as the applicable scale. This Schedule covers "other applications... not otherwise provided for."
44. In ***Lalji Mehji Pate & Company Limited v PCEA Foundation & another [2020] KEHC 1228 (KLR)*** the court held that using the total project cost to determine fees when the dispute was settled for a much lower sum was an error of principle. Similarly, using the estate value, or a figure derived from it, when the instruction was limited to specific assets is erroneous.
45. Having found that the Taxing Master erred in principle on both jurisdiction and quantum, the decision cannot stand. The question remains whether to remit the matter or reassess it here. Given that the dispute has dragged on for years and stems from work done over a decade ago, and given the clarity of the error, this Court will exercise its discretion to re-assess the costs to bring finality to the litigation.

Reassessment

46. The claim for instruction fees and attendances related to the 2012 rectification are statute-barred. They were brought 9 years after the cause of action accrued. The attempt in 2021 to revive was ineffective. Therefore, item 1 – instruction fees – is struck out.
47. The Applicants admit that items 10-16 (searches and letters) were recent but argue that there were no instructions. The Respondent has not proven a fresh retainer in 2021 distinct from the old one. However, even if allowed, these items amount to negligible sums, not millions.
48. In conclusion, this Court finds that the entire Bill of Costs is fundamentally flawed due to the limitation bar on the primary item.
49. In view of the foregoing, the Chamber Summons dated 3 February 2025 is allowed. The Ruling delivered on 24 January 2025 in Misc Application Case No. E106 of 2021, taxing the Respondent's Bill of Costs at Ksh 8,702,714.40 is hereby set aside in its entirety.
50. The Respondent's Amended Advocate – Client Bill of Costs dated 5 May 2023 is struck out for being statute barred by virtue of section 4(1)(a) of the Limitation of Actions Act.
51. The Respondent shall bear the costs of this Reference and the costs of the proceedings before the Taxing Master.

DATED AND DELIVERED AT NAIROBI THIS 5 DAY OF DECEMBER 2025

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Applicants: Ms Wairegi h/b Ms. Mungania

Respondent: Mr M^cRonald

Court Assistant: Lucy Mwangi

Ruling