

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISCELLANEOUS APPL. NO. E565 OF 2025

ANO ADVOCATES LLP.....
.....APPLICANT

VERSUS

CRJE (EAST AFRICA)
LIMITED.....RESPONDENT

RULING

1. This is a reference from the ruling of the Deputy Registrar of the High Court (Hon. Shimenga) in her capacity as a taxing officer, dated 5th June 2025.
2. The grounds are on the face of the application which is supported by the affidavit of *Deng Xiawei* sworn on 13th June 2025.
3. The application is opposed by the Respondent vide a replying affidavit sworn by *Joshua Ninah* on 28th June 2025.
4. The applicant filed a further affidavit sworn by *Deng Xiawei*.
5. The reference was canvassed by way of written submissions.
6. I have considered the reference, the response and submissions by parties. I have also considered the decisions relied on by parties. The issue for my determination is whether the instant application is merited.

7. The principles for setting aside the decisions of Taxing Masters are well established by the Court of Appeal in the case of **Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR** that:

“On reference to a Judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”

8. The proper exercise of discretion by the Taxing Officers was restated in the case of **Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] Civil Appeal 206 of 2006**, where it was held that:

“Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. 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.”

9. The next question for consideration is whether sufficient grounds have been laid out to warrant the setting aside of the decision of the Taxing Officer.
10. There are two aspects to the instant reference namely; whether the reference is properly before this court and whether the Taxing Officer erred in law and principle while taxing the Bill of Costs herein.
11. It is settled law that any grievance emanating from a ruling on taxation can only be ventilated through Paragraph 11 of the Advocates Remuneration Order. In **Machira & Co. Advocates v Magugu [2002]2 E.A**, Ringera J (as he then was) held as follows:

“As I understand the practice relating to Taxation of Bills of Costs, any complaint about any decision of the Taxing officer whether it relates to a point of law taken with regard to Taxation or to a grievance about the Taxation of any item in the Bill of Costs is ventilated by way of a Reference to a Judge in accordance with paragraph 11 of the Advocates Remuneration Order.”

12. **Paragraph 11** of the **Advocates Remuneration Order** provides 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 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.

3. ...

4. ...”

13. Where a party is dissatisfied with the decision of a Taxing Officer, he/she is expected to give a Notice of Objection itemizing the items objected to especially where the Taxing Officer has not given any reasons for the decision.
14. The Applicant has annexed a copy of the notice of objection dated 13th June 2025.
15. In the case of Vincent **Kibiwott Rono v Abraham Kiprotich Chebet & another [2022] eKLR** the Court held as follows;

“The taxation ruling was delivered on 17th January 2022. The Applicants wrote to the taxing officer on 19th January 2022 notifying him of the items that he wished to object to. There are no reasons that have been presented by the taxing officer as per the Provisions of Rule 11(2) of the Advocates (Remuneration) Order. However, it is a judicial principle that a ruling contains reasons for the decision given.”

16. I have perused the Court record and I note that the Applicant did annex a copy of the decision by the Taxing Officer which was delivered on 5th June 2025. Additionally, I note that the notice of objection was filed within the stipulated time.
17. In view of the foregoing, this Court finds that the said reference is properly before this Court.
18. This brings me to the second issue. In **First American Bank vs Shah & Others [2002] EA 64 at P. 69**, it was held that the court ought not to 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.
19. Therefore, in a reference, the Judge is not to tax bill of costs, that being the preserve of the taxing master, exercising special jurisdiction of the High Court.
20. Considering the above basic principles, I think the only pertinent questions in this ruling is whether or not it has been shown by the Applicant that the Taxing Officer acted on the wrong principles or arrived at a manifestly excessive taxation. The principal error of principle complained of is that the Taxing Officer failed to consider the application dated 17th April 2025 before taxation.
21. In the proceedings dated 24th April 2025, the Taxing Officer granted leave to the parties to file responses and submissions in respect to both the application dated 17th

April 2025 and the Bill of Costs then gave a ruling date for 5th June 2025.

22. I note that the impugned ruling only addresses the Bill of Costs. The Taxing Officer in my view did misapprehend the applicable principles and law in arriving at her decision without first determining whether there was an advocate-client relationship between the parties.

23. As such, I hereby set aside the ruling dated 5th June 2025. I further direct that the applications be determined on merit before a different Taxing Officer. I make no orders as to costs.

RULING delivered virtually, dated and signed at **NAIROBI**

This **11th** day of **December** 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Musyoka for Applicant

Mr. Sundwa h/b for Ms. Mukiri for Respondent

Court Assistant: *Carlos*