



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LAND MISC. APPLICATION NO. E101 OF 2024

DINESH KUMAR, JITENDRA KUMAR

AND TOR BJORNSEN (Sued in their

capacity as officials of ANANDA

MARGA MISSION IN KENYA).....

.....APPLICANT

VERSUS

ANTHONY BURUGU & CO. ADVOCATE.....

RESPONDENT

JUDGMENT

1. Before me for determination is a Chamber Summons dated 18th February 2025 brought under Paragraph 11(2) of the Advocates Remuneration Order and Section 3A of the Civil Procedure Act, in which the Applicant seeks the following orders:

a) That this Honourable Court be pleased to review, vary or set aside the ruling of the Honourable Taxing Officer dated 6th February 2025 on the taxation of the Plaintiff's Bill of Costs in ELC MISC E101 of 2024.

b) That this Honourable Court be pleased to remit the Bill of Costs for fresh taxation before a different taxing officer.

c) That the costs of the application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Samuel Mbugua Advocate, sworn on even date.

THE APPLICANT'S CASE

3. The Applicant is aggrieved by the ruling of the Taxing Officer on the grounds that the award for instruction fees is manifestly excessive and was made without any justification. The deponent asserted that the Taxing Officer did not consider the fee scale set out in the Advocates Remuneration Order 2009, which was applicable at the time.

He maintained that the Applicant had already paid the fees in 2011 based on an oral agreement made that same year.

THE RESPONDENT'S CASE

4. The Respondent filed a replying affidavit dated 12th March 2025 in opposition to the application. The deponent stated that prior to the ruling on the advocate-client bill of costs, the party and party costs had been taxed at Kshs 970,919/=. He further averred that a certificate of costs had been issued and no reference had been filed to challenge that taxation. Based on this assessment, the taxing officer increased the party and party costs by 50% to determine the instruction fees payable. He maintained that the instruction fees were justified because they were assessed in accordance with the Advocates Remuneration Order. He denied there was an oral agreement between the parties.
5. The Respondent filed an application dated 3rd March 2025 seeking the following orders: _

a) Spent

b) Judgment be entered in the sum of Kshs 1,559,399 against the Respondent in accordance with the Certificate of Cost dated

21st February 2025, together with interest from the date of this ruling.

c) The costs of the application be provided for.

6. The application is premised on the grounds appearing on its face together with the supporting affidavit of Anthony Burugu Advocate, sworn on even date.

THE APPLICANT'S CASE

7. The Applicant is seeking to enforce the ruling delivered on 6th February 2025, in which the Taxing Officer taxed the bill of costs at Kshs 1,559,399.06/=. He urged the court to allow the application as prayed.

THE RESPONDENT'S CASE

8. The Respondent filed a replying affidavit of Samuel Mbugua in opposition to the application. He argued that the Respondents had filed a reference challenging the Taxing Officer's ruling.
9. The Reference was canvassed by way of written submissions.

THE OBJECTORS/APPLICANT'S SUBMISSIONS

10. The Applicant filed its submissions dated 30th April 2025. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:-
- a) Whether the total award of Kshs 1,559 399.06/= occasioned an error of principle.*
 - b) Whether the award is punitive in nature and not compensatory*
11. On the first issue, Counsel submitted that the Taxing Officer erred in principle by applying the wrong Remuneration Order. Counsel contended that the applicable Remuneration order should have been the Advocates' Remuneration Order 2009, which was in force at the time this suit was filed.
12. Regarding the second issue, Counsel submitted that the award for instruction fees is manifestly excessive and amounts to unjust enrichment. It was submitted that the case was straightforward; therefore, the award is both punitive and compensatory.
13. In conclusion, Counsel urged the court to allow the application with costs to the Applicant.

THE RESPONDENT'S SUBMISSIONS

14. The Respondent filed its submissions dated 21st May 2025. On behalf of the Respondent, Counsel outlined the following issues for the court's determination:-

a) Whether the Learned Taxing Officer erred in awarding the sum of Kshs 1,559,399.06?

b) Whether the award is punitive in nature?

c) Who should bear the costs of the applications?

15. Regarding the first issue, Counsel relied on the contents of the replying affidavit to support his submissions. It was submitted that the assessment of the instruction fees was justified because it was based on party and party costs and in accordance with the Advocates' Remuneration Order.

16. It was further submitted that the Applicant had not demonstrated any grounds to justify the setting aside of the ruling. Counsel urged the court to dismiss the application and allow the Respondent's application with costs.

ANALYSIS AND DETERMINATION

17. Having considered the Reference, the grounds of opposition and the rival submissions, the issue that arises for determination is whether the decision of the Taxing Officer should be set aside.

18. The Applicant challenged the decision of the Taxing Officer on the basis that an incorrect Remuneration Order was applied in the taxation of the Advocate-client bill of costs.

19. The circumstances under which the Court can interfere with a Taxing Officer's decision were outlined in the case of **First American Bank of Kenya Ltd v Gulab P. Shah & 2 others [2002] KEHC 1277 (KLR)** as follows:-

“First, I find that on the authorities, this 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. (See STEEL & PETROLEUM (E.A) LTD VS. UGANDA SUGAR FACTORY (Supra). Of course. It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates Remuneration Order itself, some of

the relevant factors to take into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings, and any direction by the trial Judge. Needless to state, not all the above factors may exist in any given case, and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the Taxing Officer for re-assessment unless the Judge is satisfied that the error cannot materially have affected the assessment.”

20. It is well-established law that the applicable remuneration order for an advocate-client bill is the one in effect at the time the instructions are given, not when taxation occurs. In the case of **Joreth Ltd v Kigano & Associates**, the court

held that instruction fees accrue once instructions are received.

21. It is not in dispute that the suit from which the bill of costs arose was filed in 2011. As of 2011, the applicable remuneration order was the Advocates' Remuneration Order 2009. The taxing officer applied the 2014 Remuneration Order. This constitutes an error of principle that allows this court to interfere with the taxation. The Respondent's argument that the Taxing Officer exercised discretion properly cannot cure an error of principle.

22. Having found that the Taxing Officer erred in principle in applying the wrong Remuneration Order, the impugned ruling on taxation cannot stand. Consequently, the application that seeks to enforce the ruling is premature, and I will not delve into its merits.

23. In the end, I find that the application is merited and the same is allowed in the following terms-

a) The ruling dated 6th February 2025 is hereby set aside.

b) The bill of costs shall be remitted for re-taxation before a different Taxing Officer.

c) Costs to abide with the outcome of the taxation.

RULING DATED, SIGNED & DELIVERED VIA MICROSOFT TEAMS THIS 5TH DAY OF DECEMBER 2025

.....
**T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Mbatha holding brief for Burugu for the Respondent.
Ahmed – Court Assistant

ORIGINAL