Maengwe t/a GM Maengwe & Company Limited v Mokal Investments Limited (Environment and Land Miscellaneous Application E007 of 2023) [2025] KEELC 8590 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8590 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E007 OF 2023

LA OMOLLO, J

DECEMBER 4, 2025

BETWEEN

GEORGE MAENGWE T/A GM MAENGWE & COMPANY LIMITED ..... APPLICANT

AND

MOKAL INVESTMENTS LIMITED ..... RESPONDENT

RULING

Introduction

1. This ruling is in respect of the Respondent/Applicant's Chamber Summons application dated 16th May, 2024. It is expressed to be brought under Order 11(sic) of the Advocates Remuneration Order.

2. The application seeks the following prayers;

    a. That the reference be allowed.

    b. That the decision of the Taxing Master delivered on the 7th November, 2023 be set-aside and substituted thereof a decision striking out the advocate-clients bill of costs.

    c. That the costs of this reference be awarded to the client.

3. The application is based on the grounds on its face and the supporting affidavit of Isaac Kiprono the Respondent/Applicant's director.

Factual Background.

4. On 17th March, 2025 the Court issued directions that the application under consideration be heard by way of written submissions.

5. It was mentioned on 5th May, 2025 to confirm filing of submissions and reserved for ruling on 15th July, 2025.

The Respondent/Applicant's Contention.

6. The affidavit in support of the application is sworn by Isaac Kiprono the Respondent/Applicant's director.

7. He contends that the Taxing Officer taxed the Advocate-Client bill of costs filed by the Applicant/Respondent at Kshs. 2,026,700/=.

8. He also contends that the said decision was based on an error of principle.

9. He further contends that the Taxing Officer relied on Schedule 6 of the Advocates Remuneration (Amendment) Order 2014 and yet the matter had been filed before the Magistrates Court.

10. It is his contention that the Taxing Officer ought to have relied on Schedule 7 of the Advocates Remuneration Order 2014.

11. It is also his contention that the Taxing Officer erred by finding that the suit filed before the subordinate Court was novel and complex. He goes on to state this finding was not backed up by the Court record.

12. It is further his contention that the Applicant/Respondent failed to properly discharge his retainer as he improperly incurred costs by filing a suit in a Court which did not have jurisdiction.

13. He contends that the Applicant/Respondent in addition to filing the suit before a Court that does not have jurisdiction, impleaded the wrong party.

14. He also contends that this information was disclosed to the Taxing Officer vide an affidavit sworn on 22nd May, 2023. The affidavit was filed after the Taxing Officer granted leave on 17th May, 2023.

15. He further contends that the bill of costs was instituted in an improper manner as the Applicant/Respondent did not file an application for taxation as provided for under Paragraph 13 of the Advocates Remuneration Order.

16. It is his contention that on 17th May, 2023, the Taxing Officer ordered the Applicant/Respondent to show cause why his bill of costs should not be struck out.

17. It is also his contention that the Taxing Officer's decision delivered on 7th November, 2023 was contrary to his earlier directions that had been issued on 17th May, 2023.

18. It is further his contention that the Taxing Officer awarded the Applicant/Respondent getting up fees in a matter that was filed before the Magistrate's Court and yet no such provision exists.

19. He ends his deposition by stating that the Taxing Officer failed to consider that the Applicant/Respondent had been paid Kshs. 50,000/= for the retainer.

The Applicant/Respondent's Response.

20. In response to the Respondent/Applicant's application, the Applicant/Respondent filed a Replying Affidavit sworn on 18th March, 2025.

21. He deposes that the Respondent/Applicant instructed him to represent it in Kericho CM ELC Case No. E064 of 2022 Mokal Investments Limited vs K.K Security.

22. He also deposes that the said suit was with respect to LR No. 9932/7 (I.R 246019) which belongs to the Respondent/Applicant and is situated in Brooke-Kuresoi.

23. He further deposes that after he received instructions, he conducted extensive research including consulting environmental experts.

24. It is his deposition that he filed a Certificate of Urgency, Notice of Motion application, Plaint, Verifying Affidavit, List of Documents and List of Witnesses dated 17th October, 2022 in Kericho CM ELC Case No. E064 of 2022.

25. It is also his deposition that the Court issued an order on 18th October, 2022 which was confirmed on 9th November, 2022.

26. It is further his deposition that on 11th January, 2023 the matter came up for hearing and one Andrew Cheruiyot Rotich who is an agent of the Respondent/Applicant called him and instructed him to withdraw the suit.

27. He deposes that after he was instructed, he did his work diligently but the Respondent/Applicant refused to pay his fees and he was therefore forced to file the bill of costs. He goes on to state that the bill of costs was with respect to the services he rendered in Kericho CM ELC Case No. E064 of 2022.

28. He also deposes that the bill of costs was to be taxed under part (B) of Schedule 6 of the Advocates Remuneration Order and therefore the Taxing Officer followed the requisite procedure in taxing the said bill of costs.

29. He further deposes that the Taxing Officer's decision delivered on 7th November, 2023 was sound, fair and reasonable and there is therefore no reason for this Court to interfere with it.

30. It is his deposition that in a reference, Courts are hesitant to interfere with the discretion of a Taxing Officer unless an Applicant demonstrates that the Taxing Officer did not exercise his discretion judiciously.

31. It is also his deposition that under Section 45 (5) of the Act (sic), an Advocate who has acted diligently for a client is entitled to sue and recover his fees if the client defaults in making payments.

32. It is further his deposition that taking into consideration the complexity of the matter, the dynamics of land laws and the time taken, he is entitled to an increment in the instructions fees as well as the getting up fees.

33. He deposes that the Taxing Officer dealt with the issue of the show cause before he delivered his ruling and if at all the Respondent/Applicant had an issue, then he ought to have filed an appeal.

34. He also deposes that the Respondent/Applicant should understand that a law firm is not a charitable organization that works for free. He goes on to state that he should therefore be remunerated accordingly.

35. He further deposes that he has been unfairly denied his professional fees for the legal services rendered.

36. He ends his deposition by seeking that the reference herein be dismissed with costs.

Issues for Determination.

37. The Respondent/Applicant filed its submissions on 2nd May, 2025 while the Applicant/Respondent filed his submissions on 14th May, 2025.

38. The Respondent/Applicant relies on Paragraph 11 of the Advocates Remuneration Order, the judicial decision of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR, M/S Lubuleliah & Associates Advocates vs N.K Brothers Limited [2014] eKLR and submits that the Taxing Officer relied on the wrong schedule in taxing the Applicant/Respondent's bill of costs.

39. The Respondent/Applicant reiterates that the Taxing Officer ought to have relied on Schedule 7 of the Advocates Remuneration Order which provides for taxation of matters filed before the Magistrates Courts. The Taxing Officer instead relied on Schedule 6 of the Advocates Remuneration Order which provides for taxation of matters filed before the High Court.

40. The Respondent/Applicant relies on the judicial decision of Benard Gichobi Njira vs Kamuru Njira Kathendu & another [2015] eKLR in support of its submissions.

41. The Respondent/Applicant submits that the Taxing Officer did not consider the pleadings that had been filed in the said suit when he held that the value of the subject matter was known to the parties.

42. The Respondent/Applicant also submits that the pleadings filed in the said suit did not disclose the value of the subject matter.

43. The Respondent/Applicant relies on Schedule 7A (2) of the Advocates Remuneration Order 2014 and submits that the Taxing Officer ought to have taxed the instruction fees at Kshs. 50,000/=

44. It is the Respondent/Applicant's submissions that the Taxing Officer instead taxed the instruction fees at kshs. 1,500,000/=.

45. The Respondent/Applicant reiterates that the Taxing Officer erred in principle in finding that the matter was novel and complex. The Respondent/Applicant relies on the judicial decision of Kagwimi Kang'ethe & Company Advocates v O'Lerai Nurseries Limited [2009]eKLR in support of its submissions.

46. The Respondent/Applicant also reiterates that a Notice to Show cause why the advocates-clients bill of costs should not be struck out was issued but the same was not adhered to. (sic)

47. The Respondent/Applicant submits that the said notice was issued pursuant to Paragraph 61 of the Advocates Remuneration Order.

48. The Respondent/Applicant also submits that the bill of costs filed by the Applicant/Respondent violated Paragraph 13 of the Advocates Remuneration Order as no application was made for the taxation of the said bill of costs.

49. The Respondent/Applicant relies on the judicial decision of Chairman Constituency Development Fund Suna East Constituency (CDF) & another v Jambo Construction Limited [2022] eKLR in support of its submissions.

50. The Respondent/Applicant reiterates that the Taxing Officer erred in failing to take into consideration that the Applicant/Respondent was paid Kshs.50,000/= as fees and that Schedule 7 of the Advocates Remuneration Order does not provide for getting up fees.

51. The Respondent/Applicant concludes its submissions by urging the Court to allow its reference as prayed.

52. The Applicant/Respondent submits on the following issues;

    a. Whether the Deputy Registrar exercised his discretion judiciously in awarding the instruction fees.

b. Whether the Applicant/Respondent is entitled to fees accrued from work carried out before instructions were withdrawn by the Respondent/Applicant.

53. On the first issue, the Applicant/Respondent while reiterating the averments in his Replying Affidavit, submits that the Taxing Officer did not err in awarding him costs of Kshs. 2,026,700/=.

54. The Applicant/Respondent relies on the judicial decision of Mereka & Company Advocates vs Zakhem Construction (Kenya) [2014]eKLR and submits that the value of the subject matter is used to determine the instruction fees payable.

55. The Applicant/Respondent also submits that the Taxing Officer in assessing instruction fees relied on the pleadings filed as the matter did not proceed to judgement.

56. The Applicant/Respondent further submits that instruction fees are charged once and that the Taxing Officer ought to have appreciated that an Advocate is entitled to full instruction fees.

57. The Applicant/Respondent relies on Paragraph 21 of the Advocates Remuneration Order in support of his submissions.

58. On the second issue, the Applicant/Respondent submits that the Respondent/Applicant withdrew instructions which marked the end of their Advocate Client relationship.

59. The Applicant/Respondent also submits that it is only the Taxing Officer who has the jurisdiction to tax bill of costs. The Applicant/Respondent relies on the judicial decision of Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board NRB CA Civil Appeal No. 220 of 2004 [2005]eKLR in support of his submissions.

60. It is the Applicant/Respondent's submissions that the Taxing Officer relied on the proper schedule, that is Schedule 6 of the Advocates Remuneration Order 2014 in taxing the bill of costs filed before him.

61. The Applicant/Respondent relies on Section 2 of the *Civil Procedure Act*, the judicial decision of Peter Muthoka and another v Ochieng and 3 Others NRB CA Civil Appeal No. 328 of 2017 [2019] eKLR and submits that a matter need not be set down for hearing for an advocate to be paid costs.

62. The Applicant/Respondent concludes his submissions by urging the Court to dismiss the Respondent/Applicant's application.

Analysis and Determination.

63. I have considered the Respondent/Applicant's application, the response thereto and the rival submissions. It is my view that the following issues arise for determination;

a. Whether the Taxing Officer's decision on the bill of costs dated 13th February, 2023 delivered on 7th November, 2023 should be set aside.

b. Who should bear costs of the application.

64. The principles for setting aside the decisions of Taxing Officers were established by the Court of Appeal in the judicial decision of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR. It was found as follows;

> " 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."

65. In Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] Civil Appeal 206 of 2006, the Court of Appeal gave instances where discretion cannot be deemed to have been exercised properly as follows;

> " ...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." [Emphasis Mine]

A. Whether the Taxing Officer's decision on the bill of costs dated 13th February, 2023 delivered on 7th November, 2023 should be set aside.

66. The Respondent/Applicant is seeking that the Court sets aside the Taxing Officer's decision on the bill of costs dated 13th February, 2023.

67. The Respondent/Applicant contends that the Taxing Officer relied on Schedule 6 of the Advocates Remuneration Order 2014 which provides for taxation of matters filed before the superior Courts instead of relying on Schedule 7 of the Advocates Remuneration Order which provides for taxation of matters filed before the Magistrates Court.

68. The Respondent/Applicant also contends that the Taxing Officer erred in finding that the matter was novel and complex which issue was not supported by the pleadings filed in Court.

69. The Respondent/Applicant further contends that the Applicant/Respondent was paid Kshs. 50,000/= which the Taxing Officer did not take into consideration in taxing the said bill of costs.

70. It is also the Respondent/Applicant's contention that the bill of costs was filed in an improper manner as it did not comply with Paragraph 13 of the Advocates Remuneration Order.

71. The Applicant/Respondent on the other hand contends that the Taxing Officer relied on the proper schedule in taxing the said bill of costs.

72. The Applicant/Respondent also contends that he is entitled to instruction fees even though the matter did not proceed for hearing.

73. The Applicant/Respondent generally submits that the Taxing Officer did not err in taxing the said bill of costs.

74. 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) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subparagraph (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.
>
> 4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have expired."

75. The Respondent/Applicant contends that the Applicant/Respondent did not comply with Paragraph 13 of the Advocates Remuneration Order.

76. The Respondent/Applicant submits that the Applicant/Respondent did not file an application for the taxation of his bill of costs.

77. The Applicant/Respondent did not address this issue in his response and submissions.

78. Paragraph 13 of the Advocates Remuneration Order provides as follows;

> "(1) The taxing officer may tax costs as between advocate and client without any order for the purpose upon the application of the advocate or upon the application of the client, but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation, and in such event the advocate shall not be bound by or limited to the amount of the bill rendered in summarized or block form.
>
> (2) Due notice of the date fixed for such taxation shall be given to both parties and both shall be entitled to attend and be heard.
>
> (3) The bill of costs shall be filed in a miscellaneous cause in which notice of taxation may issue, but no advocate shall be entitled to an instruction fee in respect thereof."

79. In the judicial decision of Evans Thiga Gaturu, Advocate V Kenya Commercial Bank Limited [2012] KEHC 4274 (KLR) the Court while considering the provisions of Paragraph 13 of the Advocates Remuneration Order held as follows;

> " What the above provision provides is that the bill of costs to be taxed is to be filed in a miscellaneous cause. A "cause" in this context, in my considered view, means a "proceeding" which has been interpreted to include both actions and matters and "matters" means every proceeding which may be commenced as prescribed otherwise than by plaint. See Uganda Commercial Bank Vs. Akamba (U) Limited Kampala HCCS No. 592 of 1992."

80. In the judicial decision of Chairman Constituency Development Fund Suna East Constituency (CDF) & another v Jambo Construction Limited [2022] KEHC 1092 (KLR) ,which decision has been cited by the Respondent/Applicant, the Court held as follows;

> " ...The second issue is now well settled, Learned Counsel ought to have brought his Advocate - Clients Bill of Costs via a miscellaneous cause."

81. Paragraph 13(3) of the Advocates Remuneration Order provides that an Advocate-Client bill of costs shall be filed in a miscellaneous cause.

82. In the judicial decisions cited above, the Courts have affirmed that an Advocate – Client bill of costs ought to be filed in a miscellaneous cause.

83. A perusal of the Court record shows that the Applicant/Respondent commenced the present proceedings by filing the bill of costs dated 13th February, 2023.

84. The said bill of costs was taxed by the Taxing Officer on 7th November, 2023. The said taxation is the basis upon which the Respondent/Applicant filed the reference under consideration.

85. I find, therefore, that the Applicant/Respondent complied with Paragraph 13 of the Advocates Remuneration Order as he filed his bill of costs in a miscellaneous cause.

86. A perusal of the Court record shows that on 7th November, 2023 the Taxing Officer delivered a ruling on the bill of costs dated 13th February, 2023. The Taxing Officer stated as follows;

> " ...I proceed to tax it as per schedule 6 of the Advocates [Remuneration] Amendment] Order 2014..."

87. Schedule 6 of the Advocates Remuneration Order provides for the taxation of costs of proceedings filed in the High Court.

88. It is not disputed that the Applicant/Respondent represented the Respondent/Applicant in Kericho CM ELC Case No. E064 of 2022 Mokal Investments Limited vs K.K Security.

89. It is also not disputed that the said suit was filed before the Kericho Chief Magistrate's Court.

90. Therefore, the relevant schedule for taxing the said bill of costs was Schedule 7 of the Advocates Remuneration Order, 2014 which provides for the taxation of costs of proceedings filed in the subordinate Court.

91. That being the case, the Taxing Officer's decision on the applicable schedule of the Advocates Remuneration Order is an error of principle.

92. In the judicial decision of Meir Mizrahi & another v Nairobi City Council & 2 others [2014] eKLR the Court held as follows;

> " The Ruling in Premchand Raichand & Another v Quarry Services E.A Ltd & Others (1972) E.A provided that a Court will not normally interfere with a taxing officer's decision on taxation matters, the exception to the same are decisions based on error of principle and manifestly excessive fees awarded to justify an inference that it was based on an error. The Court is granted unfettered power to determine what orders it deems fit and suitable to be made in the circumstances of the determination of a taxing officer's ruling as per Section 51(2) of the *Advocates Act*. In exercise of the aforementioned provisions of the law, and considering all circumstances and issues raised, the application by the Plaintiff dated 20th July, 2006 is allowed and the Bill of Costs dated 6th April 2006 remitted for taxation afresh before a different taxing officer." (Emphasis mine)

93. In the judicial decision of Elijah Ireri t/a Ireri & Company Advocates v County Government of Embu [2021] KEHC 2460(KLR) the Court held as follows;

> " 26. In the instant case, the amount claimed was straight-forward. Looking at what the schedule provides, it is clear that the taxing officer did not apply the Schedule properly. The amount arrived at was erroneous and ought to be reviewed as it was based on a wrong principle. The bill ought to be returned for reconsideration by the taxing master."

94. Having found that the Taxing Officer relied on the wrong schedule of the Advocates Remuneration Order in taxing the advocate-client bill of costs, it follows that the entire decision must be set aside.

Disposition.

95. Taking the foregoing into consideration, I find that the Respondent/Applicant's application dated 16th May, 2024 has merit and it is hereby allowed in the following terms;

    a. The Taxing Officer's decision delivered on 7th November, 2023 is hereby set aside.

    b. The Bill of Costs dated 13th February, 2023 is hereby remitted for fresh taxation before a different Taxing Officer.

    c. The Respondent/Applicant shall have costs of the reference.

96. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 4TH DAY OF DECEMBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Rono for the Respondent/Applicant.

Mr. Mugambi for the Applicant/Respondent.

Court Assistant; Mr. Joseph Makori.