



REPUBLIC OF KENYA



Otieno Ochich & Associates Advocates v JDO (Miscellaneous Application E057 of 2025) [2025] KEHC 18586 (KLR) (Family) (18 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E057 OF 2025
H NAMISI, J
DECEMBER 18, 2025**

BETWEEN

OTIENO OCHICH & ASSOCIATES ADVOCATES APPLICANT

AND

JDO RESPONDENT

(Being a Reference from the Ruling on Taxation on the Applicant's Advocate- Client Bill of Costs by Hon. C Nganga dated and delivered on 29 November 2024 on HC Family Misc Application No. E274 of 2023)

RULING

1. This matter that falls for determination before this Court by way of Reference under the provisions of Rule 11(2) of the Advocates (Remuneration) Order. The Objector/Applicant seeks the intervention of this Court to set aside, vary and/or vacate the decision of the Taxing Officer delivered on 29 November 2024.
2. The impugned decision arises from the taxation of an Advocate- Client Bill of Costs dated 19 December 2023, wherein the Applicant sought remuneration for professional legal services rendered to the Respondent in High Court Matrimonial Property Cause No. 77 of 2019. The total sum claimed in the said Bill of Costs amounted to Kshs 4,996,990.81. Upon taxation, the learned Taxing Officer allowed a total sum of Kshs 337,765.50.

Brief Background

3. The Applicant was retained by the Respondent to act in High Court Matrimonial Property Cause No. 77 of 2019, a dispute involving the division of matrimonial property. The subject matter of the dispute was a property known as Plot No. Kisumu/Dago/3097, Ukweli Area, Kisumu Municipality, valued



at approximately Kshs 17,500,000.00. The Applicant's mandate involved opposing an Originating Summons and various interlocutory applications, including injunctions restraining the Respondent from dealing with the suit property.

4. Following the conclusion of the mandate, the Applicant filed an Advocate-Client Bill of Costs dated 19 December 2023. The Bill was itemized and supported by a detailed breakdown of services rendered, including instructions, court attendances, drawing of pleadings, perusals, and disbursements. The total claim was Kshs 4,996,990.81.
5. The Respondent opposed the Bill. On 29 November 2024, the Taxing Officer delivered her Ruling, which was brief. It listed the items allowed and declined but provided scant reasoning for the specific quantum awarded. For instance, the instruction fee claimed at Kshs 2,000,000/= was taxed down to Kshs 300,000/= without a mathematical explanation or reference to the applicable scale in the Advocates Remuneration Order. Similarly, numerous items for perusals and correspondence were either summarily dismissed as not provided for or awarded arbitrary lump sums.
6. Dissatisfied with the outcome, the Applicant filed a Notice of Objection on 9 December 2024. This was within the 14-day period prescribed by Rule 11(1) of the Advocates (Remuneration) Order. The Notice specifically listed the items objected to (Items 1, 2, 5, 6, 10, 13, 21, 22, 23, 24-79, 80, 83-92, 93-104, 105-111, 112-130, 135-137, 140-161, and omissions on items 15, 138, 139) and requested the Taxing Officer to record and forward reasons for the decision.
7. The Taxing Officer did not respond immediately. On 23 December 2024, the Applicant wrote a letter to the Deputy Registrar requesting a response to the Notice of Objection. It was not until 27 February 2025 that the Taxing Officer responded via email. The email stated:

“We note that the response to your Notice of Objection is contained in the Ruling dated 29 November, 2024.”
8. Upon receipt of this communication, which effectively crystallized the reasons, by referring back to the original Ruling, the Applicant filed the instant Chamber Summons on 6 March 2025. This filing was within 14 days of the email communication of 27 February 2025, but clearly outside 14 days from the original ruling of 29 November 2024.
9. The Chamber Summons dated 3 March 2025 seeks the following orders:
 - i. That the ruling or decision dated and delivered on 29 November 2024 in High Court of Kenya at Nairobi (Family Division) Misc Application No. E274 of 2023 by the Taxing Officer, the learned Hon. C. Nganga, taxing the Applicant's Advocate-Client Bill of Costs dated 19 December 2023 at Kshs 337,765.50 be set aside and/or vacated and the said Bill of Costs be remitted back to the Taxing Officer for fresh taxation in strict adherence with the law and in keeping with the further directions of the Honourable Judge emanating herefrom;
 - ii. That the costs of this Application be provided for;

Preliminary Objection

10. The Respondent, through a Notice of Preliminary Objection dated 18 March 2025 and supported by Written Submissions, argues that the Reference is incompetent. The Respondent contends that the Reference violates Rule 11(2).
11. The Respondent argues that the Ruling of 29 November 2024 was comprehensive and contained all necessary reasons. They point to the fact that the Taxing Officer listed items as "allowed" or "declined"



and gave brief reasons for declinature (e.g., "not proved" or "not provided for"). Citing *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Limited* (2) 1 EA 5, the Respondent submits that where reasons are already contained in the Ruling, there is no need to ritualistically seek further reasons. Consequently, the time to file the Reference began running immediately from 29 November 2024. The filing on 6 March 2025—some 4 months later—is fatal. The Respondent further notes that the Applicant did not seek leave to extend time under Rule 11(4), making the late filing incurable.

12. The Applicant, through their submissions, counters that they strictly followed the mandatory procedure laid out in the statute. They argue that Rule 11 is couched in mandatory terms. The Applicant asserts that the Ruling was largely bare. It did not explain the mathematical basis for the instruction fee reduction, nor the arbitrary lump sums for perusals. Thus, a request for reasons was not ritualistic but necessary to understand the decision.
13. The Applicant argues that time to file the Reference only starts running after the Taxing Officer forwards the reasons. Since the Taxing Officer's response, stating that reasons were in the ruling, was only received on 27 February 2025, time ran from that date. The delay between December and February was solely due to the Taxing Officer's failure to respond forthwith. To punish the Applicant for the registry's delay would be unjust.
14. The determination of this objection turns on the interpretation of Rule 11 of the Advocates (Remuneration) Order, which provides:
 - (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 to 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...
15. The first question is whether the Ruling contained reasons sufficient to obviate the need for a Notice of Objection. A reason in the context of taxation is not merely a statement of the result. To say "I award Kshs 300,000" is a decision, not a reason. A reason must explain the process of reasoning. It must show how the Taxing Officer moved from the claim (Kshs 2,000,000/=) to the award (Kshs 300,000/=). Did they apply a different scale? Did they reduce the value of the subject matter? Did they find the work simple?
16. In *Muriu Mungai & Co. Advocates V New Kenya Co-operative Creameries* [2012] KEHC 3705 (KLR), the High Court emphasized that the Taxing Officer must provide a justification for the award, especially where there is a significant departure from the Bill. A perusal of the impugned Ruling reveals a distinct lack of such reasoning. For Item 1, the Taxing Officer simply stated: "Thus I will award instruction fee for work done by the Applicant at Kshs. 300,000/=." This is a bare assertion. It offers no guidance to the parties or to this Court on review as to whether the officer acted on a wrong principle.
17. Therefore, the Applicant was legally justified—indeed, practically compelled—to file a Notice of Objection seeking the actual reasons for these figures. The reliance by the Respondent on *Ahmednasir Abdikadir* (*supra*) is distinguishable. In that case, Hon. Ochieng, J. noted that seeking reasons is unnecessary where the ruling is already considered and formal. Here, the ruling was formal but lacked the considered detailed breakdown required to mount a specific challenge on quantum.
18. The Respondent argues that time runs from the decision. However, the express wording of Rule 11(2) ties the commencement of the 14-day reference period to the receipt of the reasons.



19. The Respondent asks this Court to retroactively invalidate the Notice of Objection and hold that the Applicant should have known the reasons were the Ruling itself. This approach is fraught with danger. It requires a litigant to gamble on whether a court will later find a ruling sufficiently reasoned. If the litigant guesses wrong and waits for reasons, they are time-barred. If they file immediately, they may be accused of being premature or lacking the material (reasons) necessary to draft their grounds of objection.
20. The safer, more just interpretation, supported by Paul Gicheru T/A Gicheru & Co. Advocates v Kargua (K) Construction Co. Ltd (Eldoret HCMCA No. 124 of 2007), is that the mandatory requirement for the Taxing Officer to forward reasons acts as a stay on the limitation period. Even if the Taxing Officer eventually says "my reasons are in the ruling", the date of that communication becomes the trigger for the 14-day period. This provides certainty.
21. Furthermore, Article 159(2)(d) of *The Constitution* commands courts to administer justice without undue regard to procedural technicalities. The delay between December 2024 and February 2025 was entirely attributable to the court registry/Taxing Officer. The Applicant was vigilant, even sending a reminder letter. To penalize the Applicant for the Taxing Officer's delay would be the height of injustice. It is a settled principle that a party should not suffer for the mistakes or delays of the court system.
22. Consequently, this Court finds that the Reference was filed within time. The limitation period commenced on 27 February 2025. The filing on 6 March 2025 was timely. The Preliminary Objection is devoid of merit and is hereby dismissed.

The Reference

23. Having dispensed with the jurisdictional challenge, the Court turns to the merit of the Reference.
24. The jurisdiction of this Court on a reference from a Taxing Officer is not appellate in the full sense of re-hearing the evidence. It is a review of the exercise of discretion. The guiding principles were established in the landmark case of Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd EA 162. A Judge will only interfere with the decision of a Taxing Officer where the Taxing Officer has erred in principle or the fee awarded is so manifestly excessive or so manifestly low as to justify an inference that it was based on a wrong principle.
25. An error of principle occurs where the Taxing Officer applies the wrong schedule of the Remuneration Order, or ignores a relevant factor (e.g., the value of the subject matter) or considers an irrelevant factor or fails to verify facts (e.g., folio counts) or evidence properly placed before them.
26. In Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board 1 KLR 528, the Court of Appeal clarified that failure to apply the specific formula for assessing instruction fees constitutes a reviewable error of principle.
27. The Applicant's primary contention is that the Taxing Officer ignored the statutory nature of the Advocates (Remuneration) Order. Specifically, the Applicant argues that the Remuneration Order sets minimum fees below which an Advocate cannot charge (Rule 3) and below which a Taxing Officer should not tax, barring exceptional circumstances. The Applicant categorizes the errors into arbitrary reduction of Instruction Fees below the scale, arbitrary lump-sum awards for perusals/drawings ignoring folio counts, erroneous exclusion of emails as "not provided for", and ignoring evidence of disbursements.



28. Under Schedule 6 Part B of the Advocates (Remuneration) Order, the fees chargeable are the fees prescribed in Part A (Party and Party) increased by 50%. This statutory increase reflects the higher duty of care and the indemnity nature of solicitor-own client costs.
29. On item 1 – instruction fees - the Applicant claimed Kshs 2,000,000/= as instruction fees. The Bill of Costs describes the mandate as opposing an Originating Summons regarding matrimonial property valued at Kshs 17,500,000.00. The Taxing Officer awarded Kshs 300,000/=. The sole reason given was: "I will use the remuneration order for 2014... Thus I will award instruction fee for work done by the Applicant at Kshs. 300,000."
30. The assessment of instruction fees in civil litigation involving property is primarily driven by the value of the subject matter. Under Schedule 6, Paragraph 1(a) and (b) of the Remuneration Order (2014), the scale fee for a subject matter value of Kshs 17,500,000/= is calculated cumulatively. While the exact scale figures change with amendments, the formula generally involves a base fee for the first Kshs 1,000,000/= and a percentage (usually 2%) for the excess.
31. Using the Applicant's calculation in their Submissions, which was not contested mathematically by the Respondent or the Taxing Officer:
 - Base fee for Kshs 1,000,000/= : Kshs 120,000/= (approx).
 - Excess (16,500,000 @ 2%) : Kshs 330,000.
 - Total Party and Party Minimum : Kshs 450,000 - 470,000.
32. Since this is an Advocate-Client Bill, this figure must be increased by 50% pursuant to Schedule 6 Part B. Advocate-Client Minimum: Kshs 470,000 + 235,000 = Kshs 705,000.
33. This figure, Kshs 705,000/=: represents the statutory floor. It is the minimum fee the law presumes is payable for the responsibility of handling a matter of that value. The Taxing Officer awarded Kshs 300,000/=. This is less than half of the statutory minimum.
34. The Taxing Officer committed a fundamental error of principle by undercutting the statutory scale. Rule 3 of the Advocates (Remuneration) Order prohibits an Advocate from accepting less than the scale fee. It follows logically that a Taxing Officer, as the arbiter of legal fees, cannot enforce a fee that would be illegal for the Advocate to accept voluntarily, in the absence of special circumstances like a waiver or admitted lack of work, which are not present here.
35. In *Joreth Limited v Kigano & Associates* 1 EA 92, the Court of Appeal held that where a value is ascertainable from the pleadings, the Taxing Officer is bound to use it as the basis for taxation. Ignoring the value of Kshs 17.5 million, which was clearly pleaded in the Originating Summons, was an error. The Taxing Officer treated the matter as if it had no monetary value or a very low value, without justification.
36. Furthermore, the Applicant sought an enhancement to Kshs 2,000,000/= based on complexity, time, and importance. While the Taxing Officer has discretion to refuse the enhancement, she has no discretion to go below the scale floor. The award of Kshs 300,000/= is manifestly low and contravenes the Remuneration Order. It must be set aside.
37. Getting Up fees are statutory and derivative. They are automatically calculated as a fraction of the instruction fee (usually 1/3). Since the instruction fee (Item 1) was assessed on a wrong principle, the Getting Up fee is consequently erroneous. It is set aside to be recalculated based on the correct instruction fee.



38. On items 5, 6, 19 and 13 – the Applicant charged for perusing various documents based on the folio count.

Item 5: Perusal of Originating Summons (98 folios @ Kshs 50) = Kshs 4,900.

Item 6: Perusal of Motion (26 folios) = Kshs 1,300.

Item 13: Perusal of Submissions (36 folios) = Kshs 1,800.

39. The Taxing Officer awarded a flat sum of Kshs 1,000/= for each of these items. Taxation of perusals is a mathematical exercise, not a discretionary estimation. Schedule 6 prescribes a rate per folio. The Taxing Officer is required to verify the document exists, verify the folio count (or estimate it reasonably if not counted) and multiply by the rate.

40. Awarding a uniform Kshs 1,000/= for a 98-folio document (Item 5) and a 26-folio document (Item 6) reveals that the Taxing Officer did not engage with the actual volume of work. For Item 5, Kshs 1,000/= represents only 20 folios. The Applicant is effectively denied payment for 78 folios of work. For Item 13, Kshs 1,000/= represents 20 folios. The Applicant is denied payment for 16 folios.

41. This global award approach acts as an arbitrary cap. In *Muriu Mungai* (supra), the Court warned against arbitrary taxation. If the Taxing Officer doubted the folio count, she should have counted a sample page. Simply awarding a round figure of Kshs 1,000/= suggests an abdication of the duty to verify. The taxation of these items is set aside.

42. On emails and correspondence (items 23 -79; 140 – 161), these items relate to emails exchanged between the Advocate and the Client, or the Advocate and opposing Counsel. The charges were typically Kshs 50/- for perusing an email or Kshs 1,000/= for drawing/sending a necessary email.

43. The Taxing Officer declined all these items entirely. Reason given:

"Item 23 to 79 are declined as Schedule VI does not provide for the same" and "Items 135... to 161 are declined as Schedule 6 Part A deals with party-to-party costs...".

44. This finding contains two distinct legal errors. The finding that Schedule 6 does not provide for emails is legally incorrect. Paragraph 6 of Schedule 6 allows for charges for "drawing and dispatching... necessary letters". Courts have consistently held that emails are letters for the purposes of legal costs.

45. In *Republic v Kenya Revenue Authority Ex Parte Middle East Bank Kenya Limited* [2012] eKLR, the High Court recognized that electronic communication is the standard mode of business. To deny an Advocate remuneration because they used email instead of a physical post office letter is to penalize efficiency. An email requires drafting, legal thought, and dispatch. It attracts the same professional liability as a letter. It is a necessary document under the catch-all provisions of the Remuneration Order if not explicitly a letter. The refusal to tax emails was an error of principle.

46. The Taxing Officer reasoned that Items 135-161 (correspondence with the client) were declined because "Schedule 6 Part A deals with party-to-party costs." This reasoning fundamentally misunderstands the nature of an Advocate-Client Bill. In a Party-Party taxation, costs are strictly limited to what was necessary to conduct the litigation. Correspondence between the winner and their own lawyer is often excluded as a luxury or covered by the instruction fee. However, in an Advocate-Client taxation, the lawyer is entitled to be paid for all work done on instructions, provided it was not negligent or wholly unnecessary. Schedule 6 Part B explicitly states that Advocate-Client fees are the Part A fees increased by 50%. It does not exclude correspondence. In fact, keeping the client informed via email (Items 140-161) is a professional duty under the *Advocates Act*. It is the very essence of the



advocate-client relationship. To decline these costs on Party-Party principles was a misdirection. The Applicant is entitled to be paid for updating the client.

47. These items are, therefore, set aside.
48. On printing charges (items 93 – 104), the Applicant sought reimbursement for printing pleadings and documents. The Taxing Officer declined as "not proved." The Applicant submits that printing vouchers were exhibited in the Bundle of Documents. In taxation, proof of a disbursement requires a receipt or voucher. If the vouchers were on the court record (pages 1089-1094 of the bundle), the Taxing Officer's finding of not proved is factually erroneous. It suggests a failure to look at the documents provided. Unless the vouchers were illegible or unrelated to the matter, they constitute proof. The dismissal of these items is set aside.
49. Items 80 – 92 and 105 – 111, involve drawing documents (charged per folio) and making copies for court/service (charged per folio). Example: Item 110 (Copies of Respondent's Exhibits). The Applicant charged Kshs 154,200 based on 2,056 folios x 3 copies @ Kshs 25. Example: Item 111 (Copies of Replying Affidavit). Claim Kshs 31,200 (416 folios).
50. The Taxing Officer awarded Kshs 12,850/- for item 110, Kshs 20,750/= for Item 111, and Kshs 6,750/= on item 80.
51. The reduction in Item 110 from Kshs 154,200/= to Kshs 12,850/= is drastic (approx. 92% reduction). While a Taxing Officer has discretion to disallow unnecessary copies, there is no reasoning given for this reduction. Similarly, for Item 80, the reduction implies a specific recalculation of folios. However, without stating the new folio count, the decision is opaque. Taxation of copies is statutory: Number of Folios x Rate. If the Applicant proved the document had 2,056 folios (by producing the bundle), they are entitled to the statutory rate for copies necessarily made. The pattern of reductions here, lacking any mathematical explanation in the Ruling, points to arbitrariness. These items are set aside.
52. The Applicant correctly notes that the Taxing Officer failed to make any pronouncement on Items 15, 138 and 139. A judicial officer is seized of the entire pleadings. Failure to determine a specific prayer or item is an abdication of jurisdiction. These items must be determined.
53. Accordingly, the Court makes the following Orders:
 - i. The Preliminary Objection dated 18 March 2025 is hereby dismissed.
 - ii. The Ruling on Taxation delivered on 29 November 2024 in High Court Misc. Application No. E274 of 2023 is set aside in its entirety.
 - iii. The Applicant's Advocate-Client Bill of Costs dated 19 December 2023 is remitted to the Deputy Registrar for fresh taxation before a Taxing Officer other than Hon. C. Ng'ang'a.
 - iv. The Respondent shall bear the costs of this Reference.

DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF DECEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Applicant: Mr. Otieno

For the Respondent: No appearance

Court Assistant: Lucy Mwangi

