

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
FAMILY MISCELLANEOUS CIVIL APPLICATION (REFERENCE),
NO. E024 OF 2024
IN THE MATTER OF ORDER 51 RULE 1 AND 52 OF THE CIVIL
PROCEDURE RULES 2010
AND
IN THE MATTER OF SECTION 44, 48 AND 51 OF THE ADVOCATES
ACT (CAP 16 LAWS OF KENYA) AND THE ADVOCATES
(REMUNERATION) (AMENDMENT) ORDER 2014
AND
IN THE MATTER OF THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE (P & A) No. 38 of 2018 ESTATE OF THE LATE
CHRISTOPHER K1PCH1RCHIR SUM; KENNETH K1PROP SUM
(PETITIONER) VS. VERONICA CHEPSAT SUM (OBJECTOR)
AND
IN THE MATTER OF THE ADVOCATE - CLIENT BILL OF COSTS
DATED 27th JANUARY 2023
AND
IN THE MATTER OF THE RULING OF THE DEPUTY REGISTRAR
(TAXING MASTER) DATED 10TH JULY 2024 VIDE THE HIGH COURT
OF KENYA AT ELDORET FAMILY MISCELLANEOUS CIVIL
APPLICATION NO. E003 OF 2023;
KAIRA NABASENGE T/A KUTTO & KAIRA NABASENGE
ADVOCATES -VS-
VERONICA CHEPSAT SUM.EDEL SUM AND EILEEN SUM
AND
BETWEEN
KAIRA NABASENGE T/A

KUTTO & KAIRA NABASENGE

ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

VERONICA CHEPSAT SUM.....CLIENT/1ST RESPONDENT

EDEL SUM.....CLIENT/2ND RESPONDENT

EILEEN SUM.....CLIENT/3RD RESPONDENT

RULING

1. What is pending before this court is the Notice of Motion dated 22nd October 2024 seeking the following salient prayers;

1) Spent

2) That the Honourable Court be pleased to grant leave to the Applicant to file the instant Reference out of time and consequently the instant Reference herein dated 22nd October 2024 be deemed as duly filed.

3) That the decision of the Taxing Officer (Deputy Registrar) vide her Ruling dated 10th July 2024 and uploaded on e-filing portal on 19th August 2024 arising thereon in the High Court of Kenya at Eldoret Family Miscellaneous Civil Application No. E003 of 2023; Kaira Nabasenge T/A Kutto & Kaira Nabasenge Advocates -Vs-Veronica Chepsat Sum, Edel Sum and Eileen Sum be set aside;

4) The Advocate-Client Bill of costs dated 27th January 2023 be taxed afresh by a differently constituted Taxing Court/Master.

5) IN THE ALTERNATIVE and in the interest of justice this Honourable Court be pleased to assess/tax the costs contained in the

said Applicant's Advocate-Client Bill of Costs dated 27th January 2023 lawfully payable to the Applicant.

6) This Court do issue such other orders/directions as it may deem fit and just to issue to serve the ends of justice in the circumstances herein,

7) Costs of this application be provided for.

2. The application is expressed to be brought pursuant to Section 44 of the Advocates Act Cap 16 Laws of Kenya. Sections 1A, IB, 3 and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya Schedule 10 of the Advocates Remuneration Order 2014 and Order 50 Rule 1 of the Civil Procedure Rules 2010 and Rule 11(4) of the Advocates Remuneration Order.
3. The application is premised on the grounds on the face of it and the averments of Kaira Nabasenge in the affidavit in support of the same. In his affidavit, he deponed that the clients instructed him to defend the objection proceedings in respect Eldoret High Court Succession Cause (P & A) No. 38 of 2018 Estate of the Late Christopher Kipchirchir Sum; Kenneth Kiprop Sum (Petitioner) Vs. Veronica Chepsat Sum (Objector). Further, that they also gave him instructions to defend the intended appeal arising from the Ruling of the Honourable Court dated 21st September 2021 that was preferred by the Petitioner vide the Notice of Appeal dated 28th September 2021. He averred that he consequently filed notice of address notifying Miyienda & Co. Advocates.
4. The deponent averred that the Clients/Respondents did make part payment of the retainer fees but later neglected, ignored and/or refused to pay the entire legal fees as agreed and have since engaged a different advocate to take up

the matter. Without any justifiable cause, they withdrew instructions without paying legal fees as agreed. On or at around 20th July 2022, the Clients/Respondents had committed to pay their legal fees as agreed and even called for their bank account particulars only to discover that they had changed advocates. In view of the foregoing, he filed Advocate-Client bill of Costs dated 27th January 2023 for Kshs. 25,758,810.00/- which was drawn as per scale under schedule 10 of the Advocates Remuneration Order 2014. He annexed and marked the Advocate - Client Bill of Costs marked as KN1. The Advocate-Client Bill of Costs was presented before the Taxing Master vide Eldoret High Court Family Miscellaneous Civil Application No. E003 of 2023 dated 27th January 2023.

5. He annexed a copy of the said application annexed and marked as KN 2. He urged that he also filed a further supporting affidavit dated 11th September 2023 in support of the said Advocate-Client Bill of costs which he annexed and marked as KN 3. The Respondents filed their Replying Affidavit dated 13th March 2023 through Momanyi Gichana Advocates which he annexed and marked as KN 4. That parties filed their respective submissions copies of which he annexed and marked as KN 5 & 6 respectively.
6. Counsel deposed that the said Bill of Costs was taxed/assed at Kshs. 1,843.095.00/- and he annexed a copy of the Ruling dated 10th July 2024 marked as KN 7. Further, that immediately they filed submissions, the court file went missing and it was until 24th June 2024 that the file resurfaced and the Deputy Registrar gave a ruling date of 10th July 2024. The ruling was to be delivered on 10th July 2023 but at that time when the deponent checked by the court registry, it was not ready. He followed up the ruling vide various letters but the same was not forthcoming. He annexed the letters dated 15th July 2023, 30th July 2023, 20th August 2023 15th September 2023 and 12th

October 2023, and marked KN 8 (a) - 8 (e). The said letters were declined to be received at the Registry with a receiving rubber stamp since the court file could not be traced at the registry and as such the letters were delivered to the DR in person.

7. Counsel deponed that he believed that all this time, the said court file had been retained by the DR/Taxing Master for the preparation of the impugned ruling herein. It was at around 19th of October 2024 that they learnt that the ruling was uploaded on 19th August 2023 without their notice. He then preferred to file instant Reference immediately without further delay. He urged the Honourable Court to exercise its discretion and allow this instant Reference having been filed out of time. Further, that the said delay in filing the instant Reference was occasioned by the Court for failing to issue the Ruling Notice and having given the same and / or uploading the same without their knowledge. He reiterated that the ruling was delivered in his absence and urged the court to exercise its discretion to enlarge time.
8. Counsel deponed that the Taxing Officer misapprehended and grossly misdirected herself in reaching her decision. **That she declined to grant the instruction fee as presented without any basis in law and or without any justifiable cause and or reason.** He urged this court to intervene and asses the said Advocate-Client Bill of Costs herein in accordance with the principles of the law. He prayed the court allow the application as prayed.

Respondent's' Replying Affidavit

9. In response to the application, the 2nd respondent swore an affidavit dated 28th April 2025. She deponed that the Applicants 'Application, which seeks to set aside the orders emanating from the ruling delivered on 10th July 2024, is incompetent, fatally defective, unprocedurally, premature, misconceived,

vexatious, and constitutes a gross abuse of the court process. She urged that the Taxing Master exercised judicial discretion judiciously and applied the relevant principles of taxation in awarding the Applicant/Advocate's Bill of Costs. She urged that the Applicant has not demonstrated with specificity any misapplication of taxation principles by the Taxing Master in arriving at the impugned assessment. Further, that pursuant to the provisions of Paragraph 11 (1) of the Advocates (Remuneration) Order, 2024 any party intending to object to a decision of a Taxing Officer must give notice in writing within fourteen (14) days from the date of the decision, setting out the items objected to. Which the applicant did not. Additionally, that under Paragraph 11 (2) of the said Order, an objector must file a Chamber Summons within fourteen (14) days upon receipt of reasons from the Taxing Officer, challenging the said reasons.

10.The deponent averred that the instant Application has been instituted in contravention of the mandatory provisions of Paragraph 11 of the Advocates (Remuneration) Order. 2024. That the Applicant has not provided any reasonable or credible explanation for the inordinate delay in filing a proper Chamber Summons (having instead improperly filed a Notice of Motion), and is therefore undeserving of this Honourable Court's discretion to enlarge time. She urged that in any event, the Applicant failed to conclude the said litigation, having been served with a Notice of Change of Advocates which he admits.

11.The deponent stated that in the case of Kaira Nabasenge t/a Kutto & Kaira Nabasenge Advocates v. Veronica Chepsat Sum & Others, ELC Misc. Application No. E039 of 2024, Justice E.M. Washe dismissed a similar application for contravening Paragraphs 11 (1) and 11 (2) of the Advocates (Remuneration) Order, 2024. Annexing and marking as "ECS-2" a copy of

the said ruling for ease of reference. The deponent averred that the leave sought by the Applicant would, in any event, be an exercise in futility, the Applicant having failed to produce the requisite written notice to the Taxing Officer or to avail the reasons for taxation, which are necessary for the court to assess whether there was any misapplication of law or fact in the ruling delivered on 10th July 2024.

12.The deponent deponed that the present Application is premature and offends the mandatory provisions of Paragraphs 11 (1) and (2) of the Advocates (Remuneration) Order, 2024, and cannot be construed as a valid reference capable of inviting judicial scrutiny of the Taxing Officer's decision. She urged the court to dismiss the application with costs.

Applicants' submissions

13.The applicant filed submissions dated 9th July 2025 in support of the application. With regard to the prayer for leave to the Applicant to file the instant Reference out of time and consequently the instant Reference be deemed as duly filed, he urged that the impugned ruling by the Deputy Registrar is dated 10th July 2024 although it was uploaded in the judiciary Case Tracking System (CTS) on 19th August 2024. The DR had indicated that she would deliver the ruling on 10th July 2024 but as at then the Ruling was not ready and they only came to learn of it at around 19th October 2024 of which they immediately lodged this instance Reference on 23rd October 2024. Counsel submitted that their effort to follow up the ruling through various letters of enquiry did not yield any fruits.

14.He urged that the ruling was not delivered on 10th July 2024 as much as it is dated the said date. He posed the question that if the Ruling was ready by 10th July 2024, why should the DR upload it on the CTS after 39 days that is

on 19th August 2024. Counsel urged that the delay in lodging the instant Reference is not deliberate and it was beyond their control since the same was occasioned by the DR who apparently failed to notify the parties on the delivery of the Ruling in question. In fact the uncertainty and the controversies surrounding the delivery of the impugned ruling has not been disputed.

15.In view of the said confusion with regard to the delivery of the impugned ruling, counsel urged the Court to exercise its discretion in his favour, urging that Rule 11(4) of the Advocates Remuneration Order gives this Court discretion to enlarge time within which to file a reference. Counsel placed reliance on the case of *Mugendi Karigi & Company Advocates & another v Doric Industries Limited & another* (Miscellaneous Application E764 of 2021 & Civil Cause 3285 of 2016 (Consolidated)) f20241 KEHC 3517 (KLR) (Commercial and Tax) (21 March 2024) (Ruling) in this regard.

16.On whether the instant Reference offends the provisions of paragraph 11(1) & (2) of the Advocates Remuneration Order counsel urged that from the foregoing provisions, two issues emerge; Whether it is mandatory to request for the reasoning of the taxing officer regarding the taxed costs and Whether failure to file Chamber Summons as opposed to the Notice of Motion is fatal.

17.On whether it is mandatory to request for the reasoning of the taxing officer regarding the taxed costs, counsel urged that **it is not mandatory that the taxing officer must avail the reasons for taxation especially where he ruling is detailed and contains the reasoning for taxation in question.** He cited the decision in *Odhiambo Owiti & Co Advocates v Equator Bottlers Limited* (2022) eKLR. H.C at Kisumu Misc. Application No. 133 of 2020 in this regard. He additionally cited *Ngaywa & Kibet Partners LLP v County*

Government of Kiambu (Miscellaneous Application 124 of 2020 (2022) KEHC 12687 (KLR) (27 July 2022) (Ruling), H. at Kiambu Mis. Application No. 124 of 2029 and the case of Evans Thiga Gaturu Vs. Kenya Commercial Bank f20121KEHC 4274 KLR, H.C at Nairobi, Misc. Appn No. 343 of 2011.

18.Counsel submitted that in view of the foregoing holdings it is apparent that the High Court appears to interpret the Rule 11 (1) & (2) of the Advocates Remuneration Order in varied manner. Be that as it may counsel urged that the issue as to whether the reasons of the taxing master must be sought or not before lodging a Reference was settled by the court of appeal in the case of Kipkorir, Titoo & Klara Advocates vs. Deposit Protection Fund Board Civil Appeal No. 220 of 2004 [20051 1 KIR 528, C.A at Nairobi, Civil Appeal No. 220 of 2004, where the Court of Appeal held that if a taxing officer totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference.

19.Counsel urged that in the instant case, **the Taxing officer in her ruling dated 10th of July 2025, gave her reasoning with regard to the award on the instruction fees. She stated that “The value of the subject matter is uncertainable.”** Counsel urged that the said reason sufficed and there was no need to request for more reasons since the only item contested relates to the instruction fees and VAT on assessed costs. It is apparent therefore that this Court will be making a determination as to whether the value of the subject matter herein is indeed uncertainable as was ruled by the DR and as such there is no need to call for further reasoning.

20.On whether failure to file Chamber Summons as opposed to the Notice of Motion is fatal, counsel submitted that Rule 11(2) of the Advocates Remuneration Order provides that the application is to be made by Chamber Summons. He urged that as much as the said rule 11 (2) of the Advocates Remuneration Order advocates for Chamber Summons, it is not mandatory that a Reference to this Honourable Court must be by way of Chamber Summons. He urged the Court to take a Judicial Notice to the effect that References have been always brought by way of Notice of Motion and this one is not an exception. He cited Order 50 Rule 1 of the Civil Procedure Rules 2010 and urged that it is apparent that the practice of Chamber Summons has since been outlawed and all applications filed in court are brought by way of Motions. He cited “Article 159 (2) (d) of the Constitution and urged that lodging a Reference in this Honourable Court either by way of Notice of Motion and/or Chamber Summons is immaterial and does not in any way affect the substance of the Reference.

21.On whether this Honourable Court should interfere the Taxing Officer’s Award, counsel submitted that the principles for reviewing the Taxing Officer’s decision are now settled. He cited the case of KTK Advocates v Baringo County Government [2017] eKLR, H.C at Nairobi Misc. Cause No. 1 of 2017 and urged that in the instant case the issue(s) that emerge(s) for determination are; Whether the Taxing Officer exercised or applied wrong principles in arriving at an award of Kshs. 1,843,095.00 in respect of the instruction fees taxed.

22.Counsel submitted that in determining this issue, the following questions arise; One; Did the Taxing Officer correctly assessed the instruction fee? Two; Was the Value of the Subject Matter ascertainable? Three; If not, what

step was to be taken by the Taxing Officer in order to ascertain the value of the subject matter?

23. Counsel urged that in the Client-Advocate Bill of Costs dated 27th January 2023, they presented the instruction fees under items 1 and 2 for the sum of Kshs. 7,658,000.00 (Kenya Shillings Seven Million Six Hundred and Fifty Eight) for each item, in view the two different briefs in question. This is in accordance with Schedule 10 (A) paragraph 1(c) of the Advocates Remuneration Order 2014. (See annexure marked KN 1, at pg. 12 of the bound copy of the instant application). By dint of the foregoing Schedule 10 (A) paragraph 1 (c), of the Advocates Remuneration Order 2014, instruction fee is pegged on the value of the Subject Matter. In the said Advocate-Client Bill of Costs dated 27th January 2023, they presented the value of the subject matter to be Kshs 760,800,000.00. This is in accordance with the valuation report dated 7th October 2022 which valuation report was supplied to the Taxing Officer and more importantly this valuation was not contested.

24. Counsel cited the case of Mwangangi & Company Advocates v Machakos County [20181 eKLR, H.C at Machakos Misc. Civil Application No. 318 of 2016 and urged that the Taxing Officer is thus not only limited to the pleadings, judgment and settlement in determining the value of the subject matter of a suit, and is granted such discretion by paragraph 13A of the Advocates (Remuneration) Order.

25. Counsel submitted that in view of the above holding it is apparently clear that the Taxing Officer ought to have ascertained the value of the subject matter from either the pleadings, judgment and or settlement. In the instant case, the proceedings that are subject of taxation were filed vide Eldoret High Court Succession Cause No. 38 of 2018; Estate of Christopher Kipchirchir whose estate is comprised in land parcel registration No. IR

(Land Office Number 2226, measuring approximately 1,268 acres which is valued at Kshs 760,800,000.00. (Kenya Shillings Seven Hundred and Sixty Million and Eight Hundred Thousand). That the valuation report was submitted to the Taxing Master, and is marked as annexure KN 3 annexed to the instant Advocates Client Bill of Costs dated 27th January 2023 which valuation report was duly supplied to the Taxing Master.

26.Counsel urged that in the premises it is not in dispute that the succession cause in question being Eldoret High Court Succession Cause No. 38 of 2018 is in respect of the Estate of Christopher Kipchirchir which is comprised in land parcel registration No. IR (Land Office Number 2226, measuring approximately 1,268 acres which is valued at Kshs 760,800,000.00. (Kenya Shillings Seven Hundred and Sixty Million and Eight Hundred Thousand) which subject matter was ascertainable and hence the Taxing Master was bound to be guided by the said value by dint of the valuation report duly supplied to the Honourable Court but the Taxing Master elected to ignore it.

27.Counsel urged that the foregoing notwithstanding, Taxing Master appears to have relied on the principles set out in the case of Joreth Ltd vs. Kigano & Associates (2002) 1EA which principles she misapplied and misapprehended. He reproduced her findings and reiterated that she misapplied the principles in Joreth case by ignoring the valuation report that had been supplied to her.

28.Counsel submitted that the Taxing Officer ought to have been guided by the provisions of section 13A of the Advocates Remuneration Order, 1962. That in view of the foregoing provision of the law, they endeavoured to supply the Taxing Officer with the valuation report aforementioned. Further, that instruction fee is an independent item and static. He cited the case of

Kipkorir Titoo & Klara Advocate v Reliance Bank Limited (In Liquidation) [2005] eKLR H.C at Nairobi Misc. Cause 914 of 2003 and urged that the taxing master erred in principle in assessing the instruction fee at Kshs. 1,843,095 an assessment that was inordinately low and had no basis in law.

29. On whether the Honourable Court should tax the bill or remit it back to a different taxing officer for fresh taxation counsel cited the case of Mwangangi & Company Advocates vs. Machakos County 20181 eKLR, H.C at Machakos Misc. Civil Application No. 318 of 2016, and Moronge & Company Advocates vs. Kenya Airports Authority (2014) eKLR. Counsel cited section 1B (1) of the Civil Procedure Act, Cap 21 Laws of Kenya and urged the court to proceed and tax the instruction fees as drawn and in accordance with the provisions of the law so as not to waste judicial time by remitting back to a Taxing Master for re-taxation.

30. Counsel submitted that the contested items are the instruction fees and the 16% VAT on assessed costs which the Taxing Master ignored. In the said Advocate-Client Bill of Costs dated 27th January 2023, we had presented 16% VAT of the total taxed costs. He urged the Honourable Court to assess the instruction fee together with the 16% VAT. He cited the case of C.N Kihara & Company Advocates v Maendeleo Ya Wanawake Organization (MYWO) [2021] eKLR and urged the Court to determine the instruction fees together with the 16% VAT.

31. Counsel urged the Court to set aside the award of the Taxing Officer and consequently assess the applicant's Advocate-Client Bill of costs in accordance with the provisions of the law.

Respondents' submissions

32. Counsel submitted that the instant Application does not merit as a reference on account of the fact that it was filed after the statutorily permitted period of fourteen (14) days. He cited Rule 11 of the Advocates (Remuneration) (Amendment) Order, 2014 and submitted that from the records it is apparent that the subject award was made on 10th July, 2024, but the Advocate/Applicant never bothered to give a “notice in writing” to the Taxing Officer within 14 days thereafter, and as such the Taxing Officer never forwarded any reasons for the said award. Notably, the instant Application was filed on 22nd October, 2024, a period of about 100 days after the award of made. A cursory reading of the application reveals that the Advocate/Applicant did not bother to proffer any good, sufficient and compelling reasons for this inordinate delay.

33. Counsel urged that the significance of adhering to these procedural rule was emphasized in the case of *Matiri Mburu & Chepkemboi Advocates vs Occidental Insurance Company Limited* [2017] eKLR and in *Shapley Barret & Co. Advocates v Bamburi Special Products Limited* (Commercial Miscellaneous Application E181 of 2022) [2024] KEHC 11590 (KLR) (Commercial and Tax) (20 September 2024) (Ruling). Counsel urged that it is apparent that the instant application has not only failed to qualify as being a “Notice of Objection”, but has been filed in blatant disregard of the provided time-lines and without bothering to offer any sufficient reasons for the delay.

34. Counsel submitted on the principles governing taxation, urging that it is important to appreciate that any Taxing Master must be guided by the principles governing taxation as was held in the leading case of *Premchand Raichand Ltd Another -vs- Quarry services of East Africa Ltd and Another*. He urged that in this case, the Advocate/Applicant could not even identify

whatever specific legal provision, principle or formula that he alleges the Taxing Officer failed to correctly apply, but has merely alleged the same. Further the Advocate/Applicant has not demonstrated how the taxing Officer may have exercised her discretion capriciously.

35.Notably, that it is trite that “he who alleges must prove” and mere allegations ought to be restricted in the realm of mere speculation. Additionally, the Client/Respondents wish to highlight that it is completely false, erroneous, and utterly misleading for the Advocate/Applicant to allege that value of the subject-matter in that in the subject case, namely ELDORET HIGH COURT (P&A) No. 38 of 2018 was Kshs. 760, 000, 000/=. In that suit, the 1st Client/Respondent was only an Objector in a cause over the estate of the late Christopher Kipchirchir Sum, son of the late Earnest Sum. The Taxing Officer in this instant correctly identified that in that matter, the value of the estate of the late Christopher Kipchirchir Sum was yet to be ascertained, and sum of Kshs. 760, 000 000/= was not correct, as that was the property of the late ERNEST SUM. Further, the Advocate/Applicant only acted for that matter briefly.

36.Counsel prayed that the court finds merit with the finding of the Supreme Court of Kenya in Kenya Airports Authority v Otieno Ragot & Co. Advocates SCOK Petition E011 of 2023 rendered on 4/8/2024 where the apex Court in setting aside the Court of Appeal's decision which had enhanced earlier assessed costs of Kshs. 5 Million to Kshs. 196,044,750.50, held that a proper interpretation of the mode of taxation of advocate fees especially where the suit is determined in a summary manner and where the value of the subject matter has not been verified or ascertained in court, is that the taxing officer must exercise discretion in assessing the fees payable to the advocate.

37.Counsel submitted that the Advocate/Applicant has not evidently, plainly and specifically shown just how exactly the Taxing Master erred in arriving at her well-reasoned award. Counsel cited the finding in *Kenya Power & Lighting Co. Ltd v Msellem* (Miscellaneous Civil Application E056 of 2021) [2022] KEELC 2624 (KLR) (8 July 2022) (Ruling) in this regard.

38.On whether this Court should interfere with the subject award, counsel urged that it is trite and well-respected legal principle that a court of law will rarely, if ever, interfere with a Taxing Officer's award unless in specific, justified and demonstrable instances. This principle is informed by the fact that the Taxing Master has wide discretion in arriving at any award, albeit he/she must exercise the same judiciously. Counsel placed reliance on the South African Case of *Visser vs Gubb* 1981 (3) SA 753 (C) 754H - 755C and the case of *Kipkorir, Tito & Kiara Advocates vs Deposit Protection Fund Board* [2005] eKLR (2005), *Kamunyori & Company Advocates v Development Bank of Kenya Limited* (2015) Civil Appeal 206 of 2006 among a plethora of other cases in this regard. Counsel further submitted that the principles applicable when the High Court is invited to interfere with a Taxing Master's decision were well set out by G.V. Odunga J (as he then was) in the case of *Republic v Competition Authority Ex Parte Ukwala Supermarket Ltd & Anor* [2017] eKLR. Counsel additionally cited the decision in *KANU National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR.

39.Counsel urged that the Advocate/Applicant blatantly failed to adhere to and/or exhibited utter contempt to the provisions of Part I, Rule 11 of the *Advocates (Remuneration) (Amendment) Order, 2014*. Further, that the Advocate/Applicant has miserably failed to show which specific taxation

principles the Taxing Master failed to apply and/or misapplied. Further, he has not demonstrated that she acted capriciously and not judiciously. Counsel maintained that the Advocate/Applicant has not justified the interference of the award made on 10th July, 2024 through demonstrable reasons. He prayed that the application be dismissed with costs.

Analysis & Determination

40. The following issues arise for determination;

- 1) **Whether the Application offends Rule 11 of the Advocates Remuneration Order**
- 2) **Whether the Applicant should be granted leave to file the instant Reference out of time**
- 3) **Whether the Court should interfere with the decision of the taxing master**
- 4) **Whether the Advocate-Client Bill of costs dated 27th January 2023 should be taxed afresh by a differently constituted Taxing Court/Master.**

41. Paragraph 11 of The Advocates (Remuneration) Order which provides the process of referring taxation before a judge provides as follows: -

“11. (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, 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 for sub paragraph (1) or subparagraph (2) for 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 already expired

42.In First American Bank of Kenya v Shah and Others (2002) EALR 64 the court held that;

“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”.

43.The court is also herein guided by the decision in Republic v Ministry of Agriculture & 2 others Ex parte Muchiri W’njuguna & 6 Others [2006] eKLR, where the court largely elaborated the issues that the appellate court needs to consider in deciding whether or not to interfere with the decision of a taxing officer and it expressed itself thus: -

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is

an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other. ... unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. 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 case 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 reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment ... A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved ... Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorizing clause in the law, or a particularized justification of the mode of exercise of any discretion provided for

... The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with

conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs...”

44.In the instant case, Counsel seeks that the court enlarges time and allows that the instant reference which has been filed outside of the required timeframe be considered to have been filed within time. I have considered and addressed my mind to the reasons given in support of this prayer and. In considering that the Applicant filed this reference close to over three months out of the 14-day window that is prescribed by statute, I find that this delay is unreasonable and inordinate and the reasons given do not sufficiently explain the of the High Court who in this era of virtual court proceedings is presumed to be interacting with any and every aspects of the virtual court platform on a daily basis and even if not daily, fairly regularly.

45.This being the presupposition then, even assuming that the Ruling that was due on 10th July 2024 was delivered on that date but subsequently uploaded onto the virtual platform on 19th August 2024, any diligent Counsel who is active in the virtual court platform could not have missed the fact of the uploading of the Ruling until two months later on 19th October 2024 as

Counsel has deposed and particularity in view of the fact that the Applicant/Counsel has stated in the Affidavit in support of his Application that he had been making regular follow ups on the said Ruling with the Court.

46. Further to the above, the Applicant in his deposition in support of the Application stated that the Taxing Officer declined to grant the instruction fee as presented without any basis in law and or without any justifiable cause and or reason. However, upon the Respondents deposing in their Replying Affidavit in opposition to the Applicant's Application that as is required by the law already herein cited, The Applicant ought to have within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects before filing this reference, Counsel in his submissions while not denying that he did not comply with the said provision of the law as is required of him, now stated that it is not mandatory that the taxing officer must avail the reasons for taxation especially where the ruling is detailed and contains the reasoning for taxation in question and further submitted that the Taxing officer in her ruling dated 10th of July 2025, gave her reasoning with regard to the award on the instruction fees and stated that "The value of the subject matter is unascertainable." It is this reasoning that he disputes as can be gleaned from the above summary of the proceedings. It is not enough that the Applicant now blows hot and cold on whether he ought to have complied with the provisions of Paragraph 11 of The Advocates (Remuneration) Order.

47. The position is that in seeking to file this reference and particularly considering that the same is premised on the finding of the Taxing officer which he has challenged on the basis that the amount taxed as instruction fees was without any basis in law and without any justifiable cause or reason, it behoved the Applicant to seeks from the Taxing officer the reasons for that

determination to enable the court consider the same on its merits so as to be able to appreciate and understand his objections to the same, be they factual or legal, to enable the court reach an informed, fair and just determination on whether to send back the Advocates-Clients Bill back to the Subordinate Court to be taxed by another Taxing Officer or proceed and assess/tax the same by itself.

48.All considered therefore, it is my finding that the Application lacks merit and the same is accordingly dismissed in its entirety with costs to the Respondents

Read Dated and Signed at ELDORET on 19th December 2025

E. OMINDE
JUDGE