

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**

**CIVIL APPEAL NO. E613 OF 2022**

**DEVIRIS SOLUTIONS LTD .....**  
**APPLICANT**

**VERSUS**

**CRAFT SILICON LTD.....**  
**.....RESPONDENT**

**RULING**

1. The **Chamber Summons Application** dated 11/06/2024 determines the Applicant's defence dated 11/06/2024 as against the Respondent. It is filed pursuant to schedule 6 para. 1, **11(1) and (2) of the Advocates Remuneration Order, 2014 and Sections 3A, 63(e)** of the **Civil Procedure Act** and supported by the grounds stated at its face and at the Supporting Affidavit sworn on 10/06/2024 by Stella Muraguri Advocate for the Applicant.
2. The Applicant seeks, the following orders;-
  - 1) *Stay of execution of the certificate of costs in respect to item No. 1 (instructions fees) of the party and party Bill of costs dated 31/07/2023.*
  - 2) *Fresh taxation as relates to item 1 with a view to vary or setting aside of the decision.*
  - 3) *Costs of the application.*

3. The Applicant's case as seen from the supporting affidavit is that the Taxing Master in taxing instructions fees - Item No. 1 at Kshs. 1,070,000/= failed to take into account and to justify the subject value stated as Kshs. 40 Million as it was not contained in the value added Partner Agreement or at the trial court's ruling of 8/05/2023.
4. Additionally, the Applicant posited that the Taxing Master failed by taxing item 1 over and above the statutory fees prescribed under the Advocates, Remuneration Order 2014, leading to an exorbitant and prejudicial sum of Kshs. 664,195 against the Applicant.
5. In **Opposing the reference**, the Respondent filed a **Replying Affidavit sworn on 4/03/2025** by Amanywa V. Odero, its advocate wherein he posits that the sum of Kshs. 664,195/= was justified as the subject value was Kshs. 40,000,000/=, that no error of principle by the Taxing Master was identified by the Applicant adding that the bill of costs was based on the vesting authority to the chair of the Chartered Institute of Arbitration to appoint an arbitrator for determination of the dispute anchored on an agreement dated 3/03/2014 between the Applicant and the Respondent for a cumulative amount of USD 318,600 and EURO. 24,490 from the Respondent.
6. The Respondent filed its submissions dated 5/05/2025 whereas the Applicant is dated 21/03/2025.

The court has dully considered the said submissions.

**Issues for determination**

- a) *Whether the Taxing Officer committed an error of principle in taxation of the party and party bill of costs dated 31/05/2023 to the detriment of the Applicant.*
- b) *Whether the Instructions fees should be varied or set aside.*

**Analysis and Determination**

- 7. The Applicant seeks to have the Ruling of the Taxing Master on the Party and Party Bill of costs dated 31/05/2024 be set aside or varied, and in the alternative be remitted back for taxation to a fresh Taxing Master. The reasons are in the main that the amount allowed as instructions fees is too high as was not based on the parties dispute but on only the appointment of an Arbitrator in the dispute; based on **Schedule 6, not 7 of the Advocates Remuneration Order, 2014.**

I have perused the impugned ruling. The Taxing Master Hon. Wambo relied on **Schedule 7** as urged by the Applicant (in the taxation) and proceeded to Tax the bill under the wrong schedule.

- 8. Whereas it is mandatory that the Taxing Master disclose what informed the decision to tax the costs in one way or another,

Hon. Wambo did not do so in his very short ruling, the taxing Officer simply stated that Item 1 was drawn to scale and allowed it as drawn as clearly held in the case of **Republic v. Minister for Agriculture & 2 Others v. Exparte Samuel Muchiri W’Njuguna & 6 others [2006] eKLR.**

9. The Taxing Officer discretion in taxation of bills of costs is denoted by the law and ought to be exercised guided by transparent regular, reliable and just criteria to avoid any prospects of unjust enrichment for any particular party as held in **Kimonye V. Kenya Meat Commission Co-operative bank of Kenya [2023] eKLR.**
10. The Taxing Officer in this matter failed to ascertain from the material before him, including the court ruling (Ongeri J) the correct value of the subject matter; and indeed the subject matter itself, thus in my view, stating that the subject matter was based on a value of Kshs. 40 Million was grossly erroneous.
11. A closer look and consideration of what was taxed pursuant to court order issued on 8/05/2023 (Ongeri J) at paragraph 19 of the ruling, it ought to have been limited to the appointment of an Arbitrator, not on the value of the subject claim asseen in the value added partner agreement between the parties.

I therefore agree with the Respondent that the Taxing Master failed to interrogate and disclose what informed his decision

to hold the value of the dispute as the subject matter in the Bill of Costs.

12. The court on **Joreth Limited V. Kigaro & Associates [2002]eKLR** held that

*“the subject value of a suit for purposes of taxation of a bill of a suit for purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the ... or matter.... Any direction by the trial judge and all other relevant circumstances.”*

13. An error of principle upon which a court may interfere with the Taxing Master’s decision was discussed in the case of **Nyangito & Co. Advocates v. Doinyo Lessons Creameries Ltd [2014]eKLR** as:-

*a) The 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 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 or principle.*

*b) It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factor, and according to the remuneration order itself, some of the relevant factors to be taken into account include the nature and importance of the cause of or matter.....*

*c) The Taxing Officer must set out the basic fee before venturing to consider whether to increase or educe it.....”*

**14. For the foregoing, the court is persuaded to allow the Applicant’s reference by the Chamber Summons Applications dated 11/06/2024 at prayers (2) and (3) and hereby remits the party and party Bill of costs dated 31/07/2023 for fresh taxation before any other Deputy Registrar save for Hon. Erick Wambo, to wit, Hon. Njue Dr.**

**15. The mistake having been caused by not either of the parties but by the Taxing Master no costs on the reference shall be awarded to any of the parties. Orders accordingly.**

**Delivered Dated and Signed at Nairobi this 30<sup>th</sup> day of January, 2026.**

.....  
**JANET MULWA.**

**JUDGE**

ORIGINAL