



REPUBLIC OF KENYA



**Obiero t/a C Obiero & Associates Advocates v Speaker County Assembly of Homabay & 6 others
(Miscellaneous Case E006 of 2025) [2026] KEELRC 132 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 132 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CASE E006 OF 2025
JK GAKERI, J
JANUARY 27, 2026**

BETWEEN

**CLIFFORD OTIENO OBIERO T/A C OBIERO & ASSOCIATES
ADVOCATES APPLICANT**

AND

**SPEAKER COUNTY ASSEMBLY OF HOMABAY 1ST RESPONDENT
HOMABAY COUNTY ASSEMBLY 2ND RESPONDENT
HON MICHAEL NYANGI 3RD RESPONDENT
HON PETER JUMA AWUOR 4TH RESPONDENT
COMMISSIONER LILIAN OGONO 5TH RESPONDENT
COMMISSIONER JOSEPH OKOTO 6TH RESPONDENT
FAITH APUKO 7TH RESPONDENT**

RULING

1. Before the court for determination is the Applicant's Chamber Summons dated 16th October 2025 filed on 23rd October 2025 seeking Orders that:-
 1. The decision of Hon. F. M. Rashid, Taxing Officer deliered on 29th September 2025 taxing the Adocate Client Bill of Costs dated 30th January 2025 filed by the objector, be set aside andor reiewed.
 2. The Honourable Court do remit the Adocate-Client Bill of Costs to a different Taxing Officer for taxation de noo.
 3. Costs of this application be proided for.



2. The Chamber Summons was expressed under paragraph 11(2), 4 of the Advocates (Remuneration) Order, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 52 of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit of the Applicant who contends that the Taxing Officer erred in principle by striking out the Objector's Advocate-Client Bill of Costs on the ground that the main proceedings were still pending contrary to settled legal precedent.
3. That the previous advocate in the same matter successfully taxed their Bill of Costs before conclusion of the main suit.
4. That the Objector acted for two parties, took over conduct of the matter, secured favourable judgment and defended an appeal to conclusion.
5. That the Taxing Officer's decision disregarded paragraph 13 of the Advocates Remuneration Order and Order 12 Rule 9 of the Civil Procedure Rules and judicial pronouncements.
6. In their grounds of Opposition dated on 3rd December 2025, the respondents argued that since the applicant did not seek reasons from the taxing master, the court had no jurisdiction to entertain the application and where two or more advocates represent a client, the final advocate draws the bill of costs for all services and the award shared on pro rata basis and amongst all the advocates.
7. That the application was muddled up and incapable of being granted as the Petition was remitted for rehearing and the advocate can file another Bill of Costs and the application was for dismissal.

Objector's submissions

8. On request for reasons, counsel urged that the notice dated 9th September 2025 requested for reasons citing the decisions in *Twiga Motors Ltd Dalmas Otieno Onyango* [2015] eKLR, *Republic Ministry of Agriculture ex parte W'Njuguna* [2006] eKLR, *KRA Design Partnership Ltd* [2021] eKLR and *Insurance Regulatory Authority Waweru Gatonye & Co. Advocates KEHC 4402 (KLR)*, to urge that the respondent's objection was factually incorrect.
9. On the application of paragraph 62A of the *Advocates Act*, Counsel relied on the decisions in *Ahmednasir Abdikadir & Co. Advocates National Bank of Kenya (No. 2)* (2006) 2 EA 5, *Muriu Mungai & Co. Advocates New KCC* [2012] eKLR, *Kipkorir, Titoo & Kiara Advocates Deposit Protection Fund* [2005] eKLR and *Omulele & Tollei Advocates Mount Holding* (2016) eKLR, among others to urge that the provision had no application to Advocate-Client Bills.
10. Concerning the striking out of the Bill of Costs by the Taxing Master, counsel submitted that since a previous advocate was awarded Kshs.1.6 million prior to the conclusion of the suit, the Taxing Master was inconsistent and discriminatory and misdirected herself.
11. Finally, counsel submitted on the right to fair hearing and fair administrative action citing the decisions in *Geoffrey Muthinja Samuel Kinyanjui* [2015] eKLR and *Suchan Investment Ltd Ministry of Heritage* [2016] eKLR.

Respondent's submissions

12. Counsel submitted that because the applicant did not seek the taxing master's reasons before filing the instant suit the court lacked jurisdiction to entertain the application in its current form and in case of two or more advocates, the final advocate draws the bill of costs and the award was shared to cushion the client against unnecessary litigation.



13. Counsel further submitted that the applicant was unsure of what he wanted as the Bill related to Petition No. 27 of 2020 but annexed a judgment of the Court of Appeal to urge that the application was muddled up.
14. That the Bill was not dismissed but struck out and the applicant could file another.
15. Counsel prayed for dismissal of the application.

Analysis and determination

16. It is not in contest that the applicant filed an Adocate-Client Bill of Costs dated 30th January 2025 claiming the sum of Kshs.5,043,738.00 arising from Petition No. 27 of 2020 and by a ruling deliered on 29th September 2025 the Deputy Registrar struck out the Bill of Costs on the premises that Kisumu ELRC Petition No. 27 of 2020 was still actie and had a mention before the judge slated for 1st October 2025.
17. The learned Deputy Registrar reasoned that it was prudent to await the conclusion of the matter and present a single Bill of Costs.
18. By letter dated 3rd October 2025, the applicant forwarded a Notice of Objection Under Rule 11(1) of the Adocates (Remuneration) Order, 2014, contending that an Adocate who had acted for only two months in ELRC MISC. E052-E054 was awarded Kshs.1.6 Million and haing defended the respondent in Ciil Appeal No. 295 of 2022, the applicant was unaware that the respondent had appointed an alternatie Adocate.
19. That paragraph 13 of the Adocates Remuneration Order and Order 21 Rule 9 of the Ciil Procedure Rules permit the filing of Adocate-Client Bill of Costs regardless of the stage of the proceedings.
20. Reliance was placed on the decisions in Omulele Tollo Adocates Mount Holdings Ltd [2016] eKLR, Insurance Regulatory Authority Waweru Gatonye & Co. Adocate [2021] KEHC 4402 (KLR) and Kithi & Co. Adocates Menengai Oil Refinery Ltd [2016] eKLR, to urge that the Adocate-Client Bill of Costs may be taxed at any stage of the matter, though the Party and Party Bill of Costs may await conclusion of the suit.
21. The objection sought the reasons for the decision under paragraph 11(2) of the Adocates Remuneration Order.
22. From the record, it is unclear to the court whether the reasons for the decision were aailed.
23. The instant Chamber Summons was filed about 11 days later.
24. The court is satisfied that it has jurisdiction to hear and determine the Chamber Summons application herein. Similarly, since the Petitioner opted to pursue the rehearing of the Petition in person, nothing preented the Objector from filing a Bill of Costs and thus Section 62A of the *Adocates Act* did not apply to this case.
25. Finally, the fact that the Objector filed a decision of the Court of Appeal in Petition E295 of 2022 did not alter the Objector's case and may hae desired to appraise the parties and the court on the status of the appeal.
26. The only issue for determination is whether the Taxing Officer made an error of principle to justify a reiew of the Ruling dated 29th September 2025.



27. In *Kamunyori & Co. Adocates Deelopment Bank of Kenya* [2015] KECA 595 (KLR) the Court of Appeal held:

There are principles which a taxing Officer is enjoined to follow while taxing Bills of Costs. It is axiomatic that an Adocate is entitled to claim instructions fee: where an Adocate is instructed by a client to sue or defend a suit, proiding the adocate does his work he is entitled to charge for the work he has done.

28. In determining the instructions fee in an AdocateClient bill of Costs, the releant proision in the Adocates Remuneration Order is Schedule I B. It shows that the instructions fee is calculated on the basis of the alue of the subject matter in the suit where it can be determined from the pleadings or the judgment or where parties hae entered into a settlement...
29. It is now an accepted principle that a Judge will normally remit the matter to the Taxing Officer for reconsideration where there is an error of principle. Spry, Ag P. held in *Nanyuki Esso Serice Touring Cars Ltd* [1972] EA 500, that an error of principle can be inferred where an award is manifestly excessie unless in the opinion of the Judge, it has not materially affected the assessment..."
30. In *First American Bank of Kenya Ltd Gulab Shah & 2 Others* [2002] KEHC 1277 (KLR) Ringera J held:

"Of course. It would be an error of principle to take into account irreleant factors or to omit to consider releant factors. And according to the Adocates Remuneration Order itself, some of the releant factors to take into account include the nature and importance of the cause or matter, the amount or alue of the subject matter inoled, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge. Needless to state not all the aboe factors may exist in any gien 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 hae affected the assessment... However, the Judge does hae jurisdiction and it is within his discretion to reassess the bill himself..."

See also in this regard *Kipkorir, Titoo & Kiara Adocates Deposit Protection Fund* [2005] eKLR where the Court of Appeal held:

...The adequacy or otherwise of the reasons in the Ruling is another matter. Indeed we are of the ieuw, 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 precluded the Objector from filing a competent reference".

31. It is trite law that in determining a reference application a Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer erred in principle.
32. In the instant reference, the applicant's argument is that he is entitled to tax the AdocateClient Bill of Costs because he had earned the entitlements haing represented the 2 respondents in Misc. Applications No. E052 to E054 of 2022 and Ciil Appeal No. 295 of 2022 after taking oer the matter from another Adocate and the respondents instructed another Adocate after the appeal, without informing the applicant.



33. It is equally true that S. M. Onyango & Associates Adocates successfully prosecuted their AdocateClient Bill of Costs dated 15th September 2021 arising out of Kisumu ELRC Petition No. 27 of 2020 and the Bill was taxed at Kshs.1,676,588.61 on 7th September 2023 by Hon. M. Shimenga.
34. As regards instruction fees, it is trite law that it is earned when the Adocate acts on the clients instructions to defend the suit by filing the defence and a matter does not have to be set down for hearing for an Adocate to earn instruction fees as held in *Joreth Ltd Kigano & Associates [2002] eKLR*.
See also Insurance Regulatory Authority Waweru Gatonye & Co. Adocates (supra).
35. In this reference, since the applicant represented the respondents effectiely in the seeral matters, including the appeal, and the respondents had already engaged another Adocate behind the applicant's back, it was only fair that he pursues the fruits of his labour, the fact that Kisumu ELRC Petition No. 27 of 2020 was still pending notwithstanding.
36. In the court's ieuw, the fact that the Taxing Officer did not consider that the applicant was no longer representing the respondents in the hearing of the Petition as directed by the Court of Appeal and had earned his keep by rendering the serices in accord with the respondent's instructions, constituted an error of principle which justifies interference with the exercise of discretion by the Taxing Officer.
37. In the result, the reference is allowed. The Ruling deliered on 29th September 2025 is set aside.
38. The Bill of Costs dated 30th January 2025 be and is hereby remitted to a Taxing Officer other than F. M. Rashid for taxation.
39. Parties shall bear their own costs.

DATED, SIGNED AND DELIERED IRTUALLY AT KISUMU ON THIS 27TH DAY OF JANUARY 2026.

DR. JACOB GAKERI

JUDGE

ORDER

In ieuw of the declaration of measures restricting court operations due to the COID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be deliered through ideo conferencing or ia email. They hae waied compliance with Order 21 Rule 1 of the Ciil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of *the Constitution* which requires the court to eschew undue technicalities in deliering justice, the right of access to justice guaranteed to eery person under Article 48 of *the Constitution* and the proisions of Section 1B of the *Ciil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the oerring objectie which is to facilitate just, expeditious, proportionate and affordable resolution of ciil disputes.

DR. JACOB GAKERI

JUDGE

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