

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & TAX DIVISION**  
**HCCOMM E034 OF 2024**

**TRANSFLEET LIMITED.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**MIDDLE EAST BANK KENYA LIMITED.....1<sup>ST</sup> DEFENDANT**

**AKBER ABDULLAH KASSAM ESMAIL.....2<sup>ND</sup>**

**DEFENDANT**

**ELIZABETH ONG'ARE.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This ruling concerns the Applicant's Chamber Summons dated 6<sup>th</sup> October 2025, brought pursuant to Rule 11 of the Advocates Remuneration Order. The Applicant seeks, inter alia, orders for stay of execution and enforcement of the taxation ruling delivered on 22<sup>nd</sup> September 2025 by Hon. C. L. Adisa (Deputy Registrar), setting aside of the said ruling on the Party and Party Bill of Costs dated 8<sup>th</sup> January 2025, and remission of the Bill for taxation afresh before a different taxing officer.
2. The application is premised on the grounds on the face thereof and supported by the affidavit of James Abiam Mugoya Isabirye. The Applicant's case, in brief, is that following a ruling of 5<sup>th</sup> December 2024 striking out the Respondent from the main suit with costs, the Respondent filed a Party and Party

Bill of Costs which was taxed at Kshs. 13,088,120/-. The gravamen of the Applicant's complaint is that although the Taxing Officer correctly stated that the subject matter value ought to be derived from the pleadings, she nonetheless adopted a subject matter value of Kshs. 1,149,077,345.22 without disclosing the basis, calculations, or specific pleadings informing that figure. It is contended that the true subject matter of the suit was a breach of the *in duplum* rule and that figures pleaded beyond the alleged excess paid were merely contextual. Further, the Applicant asserts that the 2<sup>nd</sup> Defendant's involvement was limited to the excess amount allegedly paid, quantified at Kshs. 141,113,557.83, which was not considered by the Taxing Officer. On that basis, the Applicant argues that the taxation was founded on an error of principle and resulted in a manifestly excessive award amounting to unjust enrichment.

3. The application is opposed by the 2<sup>nd</sup> Defendant and the 3<sup>rd</sup> Defendant/Respondent through Grounds of Objection dated 14<sup>th</sup> October 2025 and 27<sup>th</sup> October 2025 respectively. They challenge the jurisdiction of this Court to grant stay of execution on a reference from taxation under section 51(2) of the Advocates Act and Rule 11 of the Advocates Remuneration Order. They further contend that the Applicant has failed to demonstrate any error of principle on the part of the Taxing Officer, arguing that the subject matter was properly determined from the pleadings and duly applied in assessing instruction fees.

4. The application was argued orally. I have carefully considered the application, the affidavit evidence, the rival submissions by counsel, and the applicable law.
5. The single issue that falls for determination is whether the Applicant has demonstrated a proper basis for this Court's interference with the decision of the Taxing Officer.
6. The principles governing interference with taxation are settled. A court will not lightly interfere with the discretion of a taxing officer. As was stated in **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] EA 162**, taxation is not a mathematical exercise and interference is only justified where the taxing officer has acted on a wrong principle or where the award is so manifestly excessive or so low as to amount to an injustice. These principles have been reiterated consistently, including in **First American Bank of Kenya v Shah & Others [2002] 1 EA 64** and more recently by the Supreme Court in **Outa v Odoto & 3 Others [2023] KESC 75 (KLR)**.
7. One such recognized error of principle is where the taxing officer misapprehends or improperly determines the subject matter value of the suit, particularly for purposes of instruction fees. It is trite that where the value of the subject matter is ascertainable from the pleadings, judgment, or settlement, the same should guide the assessment; where it is not so ascertainable, the taxing officer must exercise discretion judiciously, with reasons.

8. In the present matter, the Taxing Officer acknowledged that the subject matter value ought to be derived from the pleadings. However, the ruling on taxation adopted a subject matter value of Kshs. 1,149,077,345.22 without setting out how that figure was arrived at or identifying the specific pleadings supporting it. From the material placed before this Court, the suit was principally anchored on an alleged breach of the *in duplum* rule, with the Applicant asserting that the actionable amount was limited to the excess paid beyond what was permissible in law. The Applicant further demonstrated, *prima facie*, that the 2<sup>nd</sup> Defendant's alleged exposure was confined to a quantified excess of Kshs. 141,113,557.83.
9. In the absence of a reasoned justification linking the adopted subject matter value to the pleadings, and bearing in mind that figures pleaded merely as background or context do not necessarily constitute the subject matter in dispute, I am persuaded that the Taxing Officer fell into error by adopting a global figure without sufficient explanation. This omission goes to the root of the assessment of instruction fees and, in my view, amounts to an error of principle.
10. Once an error of principle is established, this Court is entitled to interfere. The question then arises as to the appropriate relief. Ordinarily, the proper course is to remit the Bill of Costs for taxation afresh, particularly where the error affects the foundation of the taxation, as held in **Joreth Ltd v Kigano & Associates [2002] 1 EA 92.**

11. On the issue of stay of execution, while Rule 11 of the Advocates Remuneration Order does not expressly provide for stay, this Court retains inherent jurisdiction to grant appropriate interim relief to preserve the subject matter of a reference and prevent the same from being rendered nugatory. In the circumstances of this case, and having found merit in the reference, an order of stay is warranted.
12. In the result, I find that the Applicant has satisfied the threshold for interference with the taxation.
13. Accordingly, the Court makes the following orders:
  - i. The ruling of the Taxing Officer delivered on 22<sup>nd</sup> September 2025 in respect of the Party and Party Bill of Costs dated 8<sup>th</sup> January 2025 is hereby set aside.*
  - ii. The said Bill of Costs shall be remitted for taxation afresh before a taxing officer other than Hon. C. L. Adisa.*
  - iii. There shall be a stay of execution and enforcement of the taxed costs pending the fresh taxation.*
  - iv. Costs of this application shall abide the outcome of the taxation.*

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **29<sup>th</sup>** day of **January** 2026.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Ms. Kaunda h/b for Mr. Mogere for Applicant*

*Mr. Kimani, SC for 3<sup>rd</sup> Defendant and h/b for Mr. Esmael for 1<sup>st</sup>*

*Defendant and Mr. Oduol for 2<sup>nd</sup> Defendant*

*Mr. Kerosi h/b for Mr. Onyambu for 4<sup>th</sup> Defendant*

*Court Assistant: Carlos*