

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 525 OF 2015

M/S KYALO & ASSOCIATES ADVOCATES.

.....**APPLICANT**

-VERSUS-

ORTHODOX ARCHBISHOPRIC OF KENYA.....1ST
RESPONDENT

ORTHODOX TOWER
MANAGEMENT COMPANY.....2ND
RESPONDENT

RULING

1. There are two applications coming up for determination in this matter. The first is the chamber summons dated 25th March 2025 filed by the applicant, and it is expressed to be brought under the **Advocates Act, Paragraphs 11 & 12** of the **Advocates Remuneration Order** and **Article 159** of the **Constitution** seeking the following orders:-

1. That this honourable court be pleased to set aside the ruling of the taxing master dated 10th December, 2024 assessing the applicant's advocate/client bill of costs dated 21st July, 2023 at Ksh.1,073,150.00.

2. That the bill of costs dated 21st July, 2023 be remitted before any other taxing master with appropriate directions for taxation.

3. That the costs of this application be provided for.

2. The application is premised on the grounds on its face. It is further supported by the affidavit of Kyalo Mbobu, advocate practicing in the name and style of M/S Kyalo & Associates Advocates, the applicant herein which was sworn on even date.
3. The applicant deposed that they filed an advocate-client bill of costs dated 21st July, 2023 seeking Ksh.17,500,675.80/- after the respondents withdrew instructions from the firm, and that in a ruling delivered on 10th December, 2024 the said bill of costs was taxed at Ksh.1,073,150/= which was based on the wrong principles, as the taxing officer stated that the value of the subject matter could not be determined and further undermined the amount of work.
4. In response thereto, Makarios Andreas Tillyrides, filed the replying affidavit sworn on 15th September, 2025 on behalf of the respondents. He deposed that the applicant is not entitled to any costs, for the reason that the applicant only attended the matter twice for mention before the deputy registrar. Further, he deposed that the applicant has not laid any basis for the instruction fee sought and the value of Ksh.1billion that they have accorded the claim, which is exaggerated.

5. That by their own admission, the applicant when instructed received the sum of Kshs.300,000/- as fees, which was sufficient, given the work done. The respondents contended that the ruling delivered on 10th December, 2024 by the taxing officer ought to be set aside and the bill or costs dated 21st July, 2023 dismissed.

6. The second application is the chamber summons dated 22nd July, 2025 filed by the respondents, and it is expressed to be brought under **paragraphs 11 and 12** of the **Advocates Remuneration Order** and **Article 159** of the **Constitution** seeking the following orders:-
 1. *That this honourable court be pleased to set aside the ruling delivered on 10th December, 2024 by honourable Vincent Kiplagat arising from the respondent's advocate/client bill of costs dated 21st July, 2023 which was taxed at Ksh.1,073,150/=.*

 2. *That this honourable court be pleased to dismiss the respondent's advocate/client bill of costs dated 21st July, 2023 as any costs due were settled.*

 3. *That costs of this application be provided for.*

7. The application is premised on the grounds on its face, and further supported by the affidavit of Makarios Andreas Tillyrides which was sworn on even date, and on behalf of the respondents. The respondents deposed that they were represented by Kiarie Kariuki & Githii company advocates in the main suit, and that the applicant was only briefly instructed to come on record on their behalf and only filed a notice of change of advocates and attended the matter twice for mention before the deputy registrar before they withdrew the said instructions.
8. The respondents deposed that the firm of Kiarie Kariuki & Githii company advocates proceeded to handle the matter to its conclusion following the collapse of the applicant's brief participation, and that they paid the applicant a sum of Kshs.300,000/- which they acknowledged receipt. For this reason, the applicant is not entitled to any additional costs.
9. The respondents deposed that the ruling delivered on 10th December, 2024 ought to be set aside and the advocate/client bill of costs dated 21st July, 2023 dismissed in its entirety with costs.
10. The application was opposed by the replying affidavit of Kyalo Mbobu on behalf of the applicant sworn on 5th August, 2025. The applicant deposed that the instant application is an attempt to deny the fact that the respondents duly instructed the applicant to

act on their behalf in the suit. Further, that what matters is that instructions were acted upon, and that being the case and given that the value of the suit properties the subject-matter of the proceedings was in excess of Kshs.500,000,000/- they are entitled to decent instructions fees.

- 11.** The applicant deposed that there is no justification in the averment at paragraph 9 that the ruling delivered on 10th December 2024 ought to be set aside, and that if anything, that order ought to be enhanced in light of undisputed value of the suit properties herein.
- 12.** The respondents filed a further affidavit in response thereto which was sworn on 15th September, 2025. The respondents deposed that contrary to the averments made by the applicant, the actual nature of work that they did in the matter was filing a notice of change of advocates and attending two mentions before the deputy registrar in which the matter of representation was in issue.
- 13.** Both applications were canvassed through written submissions. The applicant filed its written submissions dated 17th November, 2025. The respondents filed their written submissions dated 30th October, 2025.

14. I have considered both applications, the replies thereof and the written submissions as well as the authorities cited. The issue for determination is whether both applications are merited.
15. Both parties in this matter challenge the ruling delivered 10th December, 2024 by the taxing master arising from the applicant's advocate/client bill of costs dated 21st July, 2023 which was taxed at Ksh.1,073,150/. The applicant contends that the amount was low and undervalued the work they did, while the respondents contend that all the applicant did was to file a notice of change of advocates and attend the court twice during mentions and as such, they were represented in the matter by a different firm of advocates until finalization of the suit.
16. **Section 13 of the Advocates (Remuneration) Order** provides for taxation of cost as between advocate and client on application of either party and states:-
- “The taxing officer may tax costs as between advocate and client without any order for the purpose upon the application of the advocate or upon the application of the client, but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation, and in such event the advocate shall not be bound by or limited to the***

amount of the bill rendered in summarized or block form.”

17. “Client” is defined under the Advocates Act:-

“includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ an advocate and any person who is or may be liable to pay to an advocate any costs;”

18. It is not in dispute that the applicant herein filed the notice of change of advocates to enter appearance on behalf of the respondents, but they later withdrew instructions from the applicant and moved forward with a different firm of advocates. As quoted in the provisions above, the very act of instructing the applicant formed an advocate-client relationship, and thus the applicant’s firm was entitled to instruction fees.

19. In assessing instruction fees, the Court of Appeal in the case of **Joreth Limited v Kigano & Associates [2002] eKLR** relied upon by the applicant held that:-

“We would at this stage point out that the value of the subject matter of a suit for the 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 so 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 cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

20. Since there is no current market valuation of the suit property, and the applicant did not conduct the hearing of the matter and did not represent the respondent to the conclusion of the matter, it is evident that the taxing master exercised discretion in assessing the advocate-client fees due.

21. It was held by the Court of Appeal in the case of **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005]** eKLR that:-

“Where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.

22. In **Republic vs. Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others** Ojwang, J(as he then was) expressed himself *inter alia* as follows:-

“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.... 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 manifestly excessive as to justify an interference that it was based on an error of principle.”

23. Based on the above precedents, this court can only interfere if there was an error in the manner the taxing master assessed the fees, and there is none that can be established in this matter. Thus, this court finds both chamber summons dated 25th March, 2025 and 22nd July, 2025 respectively as lacking in merit and consequently, they are hereby dismissed with no order as to costs. It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 16TH DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
16/02/2026.**

In the presence of:

Ms. Benson Arunga - Court assistant

*Ms. Salmer Watiri holding brief for Ms. Christine Githii for the
Respondent*

Mr. Linet Chamia for the Applicant

ORIGINAL