



**Rachier & Amollo LLP v Kenya Bureau of Standards (Miscellaneous Cause E813 of 2022)
[2026] KEHC 1514 (KLR) (Commercial and Tax) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CAUSE E813 OF 2022
FG MUGAMBI, J
FEBRUARY 13, 2026**

BETWEEN

RACHIER & AMOLLO LLP APPLICANT

AND

KENYA BUREAU OF STANDARDS RESPONDENT

RULING

Background and Introduction

1. This Ruling determines the reference application dated 16th November 2023, emanating from an application No. 33 of 2020 for review and stay of judgement and orders of the Supreme Court as delivered on 18th December 2020.
2. The Client’s alleged failure to settle the Advocate’s legal fees resulted in the filing of an Advocate’s Bill of Costs dated 25th October 2022. By a Ruling delivered on 2nd November 2023, the Bill was taxed at Kshs. 5,800,000/= (hereinafter referred to as “the impugned Ruling”). This Ruling has given rise to the present reference application, wherein the Advocate seeks to have the impugned Ruling set aside and invites this Honourable Court to undertake a fresh taxation of the matter.
3. The Client raised a preliminary issue, contending that the reference application was filed prematurely and is therefore incurably incompetent and fatally defective, on account of the Advocate’s failure to attach the reasons and/or Ruling of the taxing officer at the time of filing. The Client argues that such omission offends the mandatory requirements of the Advocates Remuneration Order (ARO) and renders the reference unsustainable.
4. I note, however, that as averred in the Supplementary Affidavit sworn on 19th December 2023 by Dr. Jotham Okome Arwa on behalf of the Advocate, the impugned Ruling was subsequently secured,



albeit outside the statutory 14-day window. Although no detailed explanation has been offered for the delay, it has been acknowledged by both parties that the Ruling in question was one in a series of Rulings delivered by the taxing officer.

5. Importantly, the Advocate has set out the reasons for seeking this reference, and those reasons have been substantively responded to by the Client. At no point did the Client assert that it was unaware of the grounds underpinning the impugned Ruling. On the contrary, both parties were fully cognizant of the issues they are litigating in the present reference. Having examined the impugned Ruling, I am satisfied that, it contains clear grounds and reasons. In these circumstances, there would be no utility in requiring the taxing officer to furnish additional reasons.
6. Since no prejudice has been occasioned to either party by the Ruling not being filed contemporaneously with the reference application, the objection raised cannot stand.
7. The Advocate raises a further preliminary issue, contending that the Respondent's Replying Affidavit dated 8th January 2024 is improperly on record. He submits that a reference application is, in essence, a first appeal arising from dissatisfaction with the taxing officer's decision. Consequently, the general principles of appellate procedure apply, under which new evidence cannot ordinarily be introduced at the appellate stage. In his view, the Client has not provided any justification for failing to present the contested evidence before the taxing officer, having instead relied solely on Grounds of Opposition and written Submissions.
8. The Advocate further argues that the Respondent has not met the threshold for admission of new evidence as articulated in *Kenya Airways Limited V Aviation & Allied Workers Union Kenya & 3 Others*, [2014] eKLR. That test requires a party to demonstrate that the evidence was unavailable at the time of trial, that due diligence was exercised in attempting to obtain it, and that the evidence is material enough to potentially affect the outcome.
9. He emphasizes that the taxing officer, by virtue of paragraph 13A of the ARO, exercises original jurisdiction and possesses full powers to summon witnesses and examine evidence. Accordingly, the proper forum for introducing such material was before the taxing officer, not at the appellate stage. This position, he notes, was affirmed by the Court of Appeal in *C.B. Gor & Gor V Oriental Commercial Bank Limited*, [2018] eKLR, which recognized the taxing officer as the trial court with authority to handle evidentiary matters.
10. Given that the Client has offered no explanation for its failure to present the evidence earlier, the Advocate urges the Court to adopt the reasoning in *Pioneer General Assurance Society Ltd V Lutta*, (2004) 2 KLR 322, where it was held that the admission of new evidence on appeal is an exceptional measure rather than the norm. On this basis, he prays that the Replying Affidavit, particularly paragraphs 4 to 26, be struck out.
11. In response, the Client disputes the Advocate's objection and maintains that the matters complained of were indeed brought to the attention of the taxing officer. Specifically, the Client points to paragraphs 3 to 18 of its Submissions on the Bill of Costs dated 10th January 2023 (at pages 40–43 of Annexure 37 to the Replying Affidavit). The Client further asserts that the factual issues were supported by documents duly produced in its List and Bundle of Documents dated 15th December 2022.
12. I have carefully considered the pleadings placed before me. Paragraphs 4 to 26 of the Client's Replying Affidavit in response to the reference merely sets out the chronology of the dispute between the parties and makes reference to documents which are substantially the same as those already produced in the List and Bundle of Documents dated 15th December 2022. This chronology had in fact been recounted by the Client in its written submissions on the Bill of Costs. In light of this, I am not persuaded by the



Advocate's contention that the Replying Affidavit introduces new matters. Rather, it reiterates and supports issues that were already canvassed before the taxing officer and therefore forms part of the record properly available to this Court.

13. Since both objections have failed, I shall now proceed to determine the reference on its merits. I have identified the following issues for determination:
 - i. Whether the taxing officer erred in principle in taxing the Advocate Bill of Costs at 5,800,000/=.
 - ii. Whether the undisputed sum of Kshs. 5,800,000/=, the costs and interests thereto ought to be remitted to the Advocate.

Whether the taxing officer erred in principle in taxing the Advocate Bill of Costs at 5,800,000/=:

14. The Advocate takes issue with the taxing officer for failing to recognize that party-and-party costs had already been negotiated and settled through a letter dated 7th May 2021 and a consent recorded on 14th June 2021. According to the Advocate, this omission was material because advocate-client costs are ordinarily derived from party-and-party costs, which are then increased by one-half as expressly provided under Schedule 6 of the ARO.
15. Further, the Advocate challenges the taxing officer's decision to assess separate fees for both the Advocate and Senior Counsel Paul Muite. It is argued that the taxing officer gravely misdirected herself by, on the one hand, acknowledging that Paul Muite, SC had been properly instructed by the Client, yet on the other hand denying him instruction fees. In addition, the taxing officer is faulted for failing to consider the substantial value of the arbitral award, quantified at USD 15,401,504.70, as well as the complexity and significance of the matter.
16. The Client, on the other hand, contends that the proper basis for determining the value of the subject matter in taxation proceedings must ordinarily be drawn from the pleadings, the judgment, or the settlement. However, where, as in the present case, the subject matter is unascertainable because the application for review sought purely non-monetary reliefs, the taxing officer is entitled to exercise discretion in assessing costs. In support of this position, the Client relies on the authorities of *Murgor & Murgor V Central Bank of Kenya & Another*, Nairobi HCC No. 694 of 2018; and *Mwaniki Gachuba T/A Mwaniki Gachuba Advocates V Gyto Security Company Limited*, (unreported).
17. The Client further submits that the Advocate did not pursue any monetary claim amounting to USD 15,401,504.70, and it is therefore erroneous to suggest that the subject matter was valued at that figure. Since the application was one for review of a judgment, the provisions of Schedule 6 Paragraph 1(a) of the ARO which apply to suits where the subject matter is ascertainable in monetary terms, are inapplicable. Instead, the taxing officer correctly invoked Schedule 6 Paragraph 1(k), which governs matters where the subject matter cannot be quantified in monetary terms.
18. Additionally, the Client emphasizes that the taxing officer properly considered the nature and importance of the cause, the interests of the parties, the value involved, and the general conduct of the parties. In doing so, she exercised her discretion judiciously and fairly. The Client also notes that even though the services of Paul Muite SC could not be distinguished from those of the Advocate, as recognized in *Aldrin Ojiambo T/A Ojiambo & Co Advocates V National Bank of Kenya Ltd & Another*, [2014] eKLR, the taxing officer nonetheless awarded him KES 2,000,000/= for the application to review a judgment.
19. In determining this issue, I am guided by the well-established principle in *First American Bank of Kenya V Shah & Others*, [2002] 1 EA 64, which affirms that this Court will not readily interfere



with the discretion of a taxing officer. Interference is only justified where it is demonstrated that the taxing officer's decision was founded on an error of principle, or that the fee awarded was so manifestly excessive as to amount to such an error.

20. This position has been consistently reiterated in subsequent authorities. In *Republic V Medical Practitioners & Dentist Board & 2 Others Ex-parte Mary A. Omamo-Nyamogo*, [2017] KEHC 9241 (KLR) and *Republic V Minister for Agriculture; W'Njuguna & 8 Others (Ex parte)*, [2006] KEHC 3504 (KLR), judicial pronouncements emphasize that taxation is not a rigid mathematical exercise but rather a discretionary process informed by the taxing officer's experience and appreciation of the circumstances of each case. The mere fact that a court might have arrived at a different figure is not sufficient ground for interference. Judicial intervention is warranted only where the award is so disproportionately high or unreasonably low as to occasion injustice.
21. In the present matter, the retainer agreement dated 21st December 2020 is not in dispute. Its terms expressly provided for the application of the ARO and further allowed the Advocate to appoint and be led by Senior Counsel Paul Muite, for the Client.
22. The taxing officer awarded instruction fees for the Counsels under Schedule 6 Paragraph (k) on the basis that the application for review fell within the category of "other matters" where the subject matter is not readily ascertainable. The question that begs is whether the taxing officer ought to have based her assessment of instruction fees on other alternative criteria that are available in the ARO.
23. More specifically, three possible scenarios emerge. First, whether the instruction fee should have been pegged to the value of the subject matter, notwithstanding the contention that the review application sought non-monetary reliefs; second, whether the taxed and agreed party-and-party bill of costs, already settled between the parties, ought to have guided the assessment of the advocate-client fees, given that the latter are ordinarily derived from the former with an increment of one-half; and third, whether the existing retainer agreement between the parties, which expressly provided for scale fees and recognized the appointment of Senior Counsel, should have been given effect in determining the appropriate instruction fee.
24. This choice, as clarified in *Kinyua Muyaa & Co Advocates V Kenya Ports Authority Oesin Scheme & Others*, [2017] eKLR, ultimately rests on the advocate's prerogative when drawing his bill of costs. The taxing officer is bound to assess the bill as presented, subject only to the limits of the ARO and established principles of taxation. In the present case, the instruction fees are not expressly discernible from the retainer agreement between the parties, which did not stipulate a fixed or agreed figure.
25. Consequently, the taxing master was entitled to evaluate the bill on the basis of the value of the subject matter as advanced by the Advocate. It is significant that the Advocate has not sought to impugn the taxing officer's finding that 'in this particular case, the Applicant has charged a sum of Kshs. 25,632,482.76 based on USD 15,401,504.70 as the value of the subject matter'.
26. That being the case, the argument advanced by the Advocate, that the taxing officer ignored the fact that the party-and-party bill of costs had already been agreed upon and a consent recorded, is misplaced. The Advocate himself elected to draw his bill on the basis of the subject matter, and once that choice was made, the taxing officer was duty-bound to assess the bill within that framework. The taxing officer correctly addressed herself to the issue by finding that the application before the Supreme Court was one for review, which did not rest upon any ascertainable monetary value.
27. In exercising her discretion, she went further to consider the relevant factors, namely: the work undertaken by the Advocate, the nature and importance of the cause, the interests of the parties,



the value involved, and the general conduct of the proceedings. On the basis of this assessment, she enhanced the basic fee and justified her award in clear terms, stating:

“... given the work done by the Respondent, the nature and the importance of the cause, the interest of the parties, the value involved and the general conduct of proceedings, I find a sum of Kshs. 2,000,000/= to be a fair figure in the Instruction fee.”

28. As I have already observed, the mere fact that this Court might have awarded a higher or lower figure is immaterial. What is material is whether the taxing master applied the correct principle in arriving at her decision. Having carefully reviewed the record, I find no error of principle that would justify interference. The taxing officer’s discretion was exercised judiciously, and the award of Kshs. 2,000,000/= as instruction fees cannot be said to be excessive or unjust.
29. I equally find no fault in the determination that the Advocate was entitled to retain the services of Senior Counsel Paul Muite, who was expressly designated as lead counsel in the matter. This arrangement flowed directly from the retainer and confidentiality agreement of 21st December 2020, which clearly authorized the Advocate to engage Senior Counsel. By consenting to this arrangement, the Advocate assumed an obligation to meet the costs of Senior Counsel, hence the reason that the said sum was treated as a disbursement recoverable by SC Muite through the Advocate. I do believe that the other issue is rendered moot by these findings.

Disposition

30. Accordingly, the application dated 16th November 2023 is dismissed with costs to the Client.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13TH DAY OF FEBRUARY 2026.

F. MUGAMBI

JUDGE

Delivered in presence of:

Ms Kale HB for Mr Kimutai for KBS, the Client

Ms Maina HB for Dr Arwa for the advocate

Court Assistant: Lillian

