



Tom Ojienda & Associates v Kwale International Sugar Co Ltd (Miscellaneous Application E952 of 2024) [2026] KEHC 1516 (KLR) (Commercial and Tax) (13 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1516 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E952 OF 2024
FG MUGAMBI, J
FEBRUARY 13, 2026

BETWEEN

PROF. TOM OJIENDA & ASSOCIATES ADVOCATE

AND

KWALE INTERNATIONAL SUGAR CO LTD CLIENT

RULING

Background and Introduction

1. For determination is the Client's Chamber Summons dated 17th April 2025, which seeks to set aside the Ruling of the Taxing Officer delivered on 8th April 2025 (the impugned Ruling) and to have the Bill of Costs remitted for re-taxation before a different Taxing Officer other than Hon. Noelle Kyanya. The impugned Ruling arose from the Advocate's Bill of Costs dated 11th November 2024, initially presented at Kshs. 47,647,573.61 and subsequently taxed at Kshs. 35,547,573.60. Dissatisfied with that outcome, the Client has lodged the present appeal.
2. I have considered the application which is supported by the affidavit of Benson Nzuka sworn on 17th April 2025 together with the replying affidavit sworn by Prof. Tom Ojienda, S.C on 2nd May 2025 in opposition to the Reference as well as the parties' respective submissions.

Analysis and Determination

3. The Advocates raises a preliminary issue that the Client's reference is premature. Their argument is that although the Client wrote to the Taxing Officer requesting reasons for the Ruling, the Client failed to await those reasons and instead proceeded to file the reference. According to the Advocates, this conduct contravenes Rule 11(2) of the Advocates Remuneration Order (ARO), which requires that a reference be filed only after receipt of the taxing officer's reasons.



4. The Client disputes this contention. They maintain that Rule 11 obliges a party to file a reference within 14 days of receipt of the Taxing Officer's reasons. In this case, the Deputy Registrar delivered a ruling on 8th April 2025. That ruling was detailed and self-contained, setting out the reasons for the taxation. Out of an abundance of caution, the Client wrote to the Deputy Registrar on 10th April 2025 seeking further reasons for the decision, but no response was forthcoming. The Client therefore filed the reference within 14 days of the ruling, in full compliance with Rule 11.
5. I am persuaded that the Client's application is not premature. Consistent jurisprudence of this Court, including in *National Oil Corporation Limited V Real Energy Limited & Another*, [2016] eKLR and *Evans Thiga Gaturu V Kenya Commercial Bank Limited*, [2012] eKLR, has clarified that the purpose of Rule 11(2) is to ensure that a party has sufficient reasons to enable them to challenge a taxation decision. Where the taxing officer has already provided comprehensive reasons in the ruling itself, a further request for reasons is unnecessary. The taxing officer cannot reasonably be expected to issue additional reasons beyond those already contained in the ruling.
6. The Client confirms that the Ruling contained clear reasons and that their subsequent request was merely precautionary. The absence of a response did not prejudice them, and they filed the reference within the statutory period. Accordingly, the objection on prematurity is without merit.

Instruction Fees:

7. The Client challenges the Taxing Officer's assessment of instruction fees, and argues that such fees were properly chargeable under Schedule 6(1)(b) of the ARO, which applies to suits where a defense or denial of liability is filed. They contend that the Taxing Officer erred in enhancing the scale fee from Kshs. 10,887,229.26 to Kshs. 15,000,000/= without justification, explanation, or consideration of the Advocate's final fee note dated 15th May 2023, which had assessed a sum of Kshs. 1,500,000/= as reasonable compensation for prosecuting the suit.
8. The Client further submits that no evidence of complexity was demonstrated to warrant the upward revision. Accordingly, they argue that the instruction fee should have been taxed at Kshs. 10,887,229.26, which was reasonable in the circumstances and did not justify any enhancement.
9. In response, the Advocate submits that the Taxing Officer correctly applied the principles of taxation, having considered the amount claimed on appeal, namely Kshs. 712,481,950.65, the significance of the claim to the parties, and the serious implications of insolvency. They further argue that the complexity of the matter and the extensive research required justified the upward revision of the instruction fees. The Advocate maintains that the fee note dated 15th May 2023 was merely an offer and did not create any contractual obligation between the parties, as it was never adopted or accepted by the Client as binding.
10. I am mindful of the settled principles governing interference with the Taxing Officer's discretion. In *First American Bank of Kenya V Shah & Others*, [2002] 1 EA 64, the Court emphasized that it will not interfere with a taxing officer's decision unless it is demonstrated that the assessment was based on an error of principle or that the fee awarded was so manifestly excessive as to amount to such an error.
11. As reaffirmed 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), taxation is not a rigid mathematical exercise but a discretionary process informed by experience. Courts will not interfere merely because they might have arrived at a different figure; intervention is justified only where the award is so disproportionately high or low as to occasion injustice.



12. As to whether the Taxing Officer was right to have raised the instruction fees from Kshs. 10,887,229.26 to Kshs. 15,000,000/=, the record shows that she justified her decision by reference to the value of the subject matter, which she placed at Kshs. 712,481,950.67 as per the ruling dated 17th April 2020. Applying Schedule 6 of the ARO, she arrived at a figure of Kshs. 10,887,229.26 in instruction fees and, in the exercise of her discretion, enhanced it to Kshs. 15,000,000/= against the Kshs. 20,000,000/= claimed by the Advocate.
13. The mere fact that I might have awarded a lower figure, following similar principles, is not in itself a sufficient ground to interfere with the Taxing Officer's finding. What is material is whether the Taxing Officer acted on proper principles and whether the award was manifestly excessive. In this case, it is evident that the Taxing Officer properly exercised her discretion in light of the colossal sum of Kshs. 712,481,950.67 involved and the fact that the matter carried grave implications in the context of insolvency. Demonstrably, a claim of such magnitude may not be addressed through routine intellectual input but careful, sustained, and deliberate intellectual effort.
14. I do not find the increase to have been arbitrary. On the contrary, it is my considered finding that the award falls squarely within the settled principles of taxation, which emphasize that the process is not a rigid mathematical exercise but a discretionary judgment informed by the taxing officer's experience and appreciation of the circumstances of each case.

Getting-Up Fees:

15. The Client argues that the Taxing Officer wrongly calculated the getting up fees using the enhanced instruction fee of Kshs. 15,000,000/- instead of the proper scale fee of Kshs. 10,887,229.26 provided under the ARO. On this basis, they contend that the Taxing Officer erred in principle by awarding the Advocate Kshs. 6,666,666.70 in getting up fees, whereas the correct amount should have been Kshs. 3,629,076/-.
16. From my analysis and determination of Item 1 on instruction fees, I find no basis to interfere with the Taxing Officer's assessment of getting up fees. The record demonstrates that the fees were correctly charged under Clause 2 of Schedule 6 of the ARO, which expressly provides for getting up fees to be calculated on the instruction fee allowed. Since the Taxing Officer's finding on instruction fees has been upheld, it follows that the computation of getting up fees was properly anchored in law and principle. I therefore see no error of principle or excess to warrant disturbance of the taxing officer's decision on this item.

Drawings:

17. The Client objects to the Taxing Officer's decision on items 3 and 12, arguing that annexures and authorities were wrongly charged as drawings under Schedule 6(4)(a) of the ARO, yet they do not qualify as pleadings. Specifically, they contend that in item 3, the Advocate charged Kshs. 253,400/- for drawing the Record of Appeal by including annexures, whereas only 29 folios of actual pleadings were chargeable at Kshs. 4,850/-, with Kshs. 248,550/- to be taxed off. Similarly, in item 12, the Advocate charged Kshs. 20,000/- for drawing submissions by including authorities, but only 18 folios of submissions were properly chargeable at Kshs. 3,200/-, with Kshs. 16,800/- to be taxed off. The Client therefore submits that the Taxing Officer erred in principle by allowing these charges.
18. Schedule 6(4)(a) of the ARO is intended to cover substantive pleadings and primary legal documents that demand the professional skill of an advocate in their preparation. "Drawing," as defined in Black's Law Dictionary, refers to the drafting of original legal documents, for which fees compensate the intellectual effort involved. Annexures and authorities, however, are merely copies or supporting



materials and not pleadings in their own right. Since they do not involve the intellectual exercise of drafting, charging them as drawings under Schedule 6(4)(a) amounts to an error of principle.

Disposition

19. Accordingly, the application dated 17th April 2025 succeeds only to the extent that the Advocates' Bill of Costs dated 11th November 2024 shall be remitted for re-taxation before a Taxing Officer other than Hon. Noelle Kyanya, limited solely to items 3 and 12 relating to drawings. All other grounds of the application are hereby dismissed. Each party shall bear its own costs of the application.

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

F. MUGAMBI

JUDGE

Delivered in presence of:

Mr Odeyo HB for Ms Awuor for the advocate

Court Assistant: Lillian

