



Titus Makhanu Associates & Advocates v Hall Equatorial Limited (Civil Miscellaneous Application E185 of 2023) [2026] KEHC 1122 (KLR) (9 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1122 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL MISCELLANEOUS APPLICATION E185 OF 2023
GL NZIOKA, J
FEBRUARY 9, 2026**

BETWEEN

TITUS MAKHANU ASSOCIATES & ADVOCATES APPLICANT

AND

HALL EQUATORIAL LIMITED RESPONDENT

RULING

1. By a chamber summons application dated 9th April 2024 the applicant is seeking for the following orders:
 - a. That the Honorable Court be pleased to set aside the decision and consequential orders of the Taxing Master Honorable J. Ndengeri dated 28th March 2024 in respect to agreement on fees, the sum is already paid to the applicant as fees, items on drafting, items on service of pleadings and other documents, Value Added Tax (VAT) among others.
 - b. That this Honorable Court do make any such further and/or other orders and issue any other relief it may deem just to grant in the interest of justice.
 - c. That the costs of this reference be provided for.
2. The application is supported by the grounds thereto and an affidavit of even date sworn by Abdulali Kurji who avers that the applicant filed a bill of costs (herein “the bill”) dated 22nd November 2023 and was opposed by the respondent through a replying affidavit sworn on 16th January 2024 and a supplementary affidavit sworn on 26th January 2024.
3. That on 18th March January 2024, the court directed the parties to dispose of the bill by way of written submissions and the parties complied and on 28th March 2024, the Hon. Taxing Master taxed the bill in the sum of Kshs 882,865.64.



4. However, the respondent being dissatisfied with the decision of the Hon. Taxing Master objected to it through a letter of objection dated 8th April 2024. The grounds upon which the applicant is seeking for setting aside of the decision of the Hon. Taxing Master are inter alia: -
 - a. That the Taxing Master erred when she failed to consider the parties had agreed on the fees payable and in fact a final fee note was raised by the applicant in the sum of Kshs 185,600.
 - b. That the Taxing Master erred when she failed to take into account the sum of Kshs 500,850 already paid by the respondent
 - c. That the Taxing Master also erred in finding that fees indicated in the bill for drafting were drawn to scale yet no such provision is made for in the Remuneration Order
 - d. That the Taxing Master also erred when she allowed some items of service of pleadings and other documents yet there was no evidence to support the same. That it is not shown where the purported service was affected especially by the process server who affected the same.
 - e. That the Taxing Master also failed to consider whether the applicant is entitled to full instructions fees in view of the fact that other advocates participated in the conduct of the suit.
 - f. That the Taxing Master erred in subjecting all the amounts allowed to VAT
 - g. That all the afore errors are errors of principle which warrant setting aside the Taxing Master's decision
5. However, the application was opposed by the applicant through a replying affidavit dated 14th May 2024, sworn by Titus Makhanu, an Advocate of the High Court of Kenya practicing in the law firm under the name of Messrs Titus Makhanu and Associates advocates. He avers that the Hon. Taxing Master taxed the bill in the sum of Kshs 882, 865.64 after justifying itself that the items awarded had particular reference to justification of attendances, services, copies, etc. filed by his firm and were drawn to scale. Further, all items drawn without justification were taxed off.
6. Furthermore, the fee note referred to by the respondent in its supporting affidavit and marked "AK3" is clearly not a final fee note as alleged but clearly indicates the services that the applicant was charging the respondent for. That the respondent has not presented any evidence before the court regarding its claim that there was an agreement on a fee of; Kshs 500,850 payable to the applicant.
7. That it is a requirement of law that an agreement for fees shall be valid and binding only if it is in writing and signed both by the client and the advocate. That in this case, no such agreement was duly signed. Further, the fee note sent to the respondent on 24th March 2021 was for the particular services rendered at the time and was not the final fee note. Therefore, the Hon. Taxing Master ruled correctly by awarding Kshs 339,386.95 and excluding the Kshs 185,600.
8. That the Hon. Taxing Master held that the value of the subject matter was premised on the consent judgment of Kshs 14,969,347.60 and was rightfully satisfied that the items awarded in the ruling had a corresponding justification and/or proof filed by the applicant.
9. That in any case, the respondent has not provided the particulars of the items awarded which are foreign to the Advocates Remuneration Order. Therefore, the Hon. Taxing Master's finding on instruction fee of Kshs 399,386.95 was proper in law since the subject matter of Kshs 14,969,347.60 is ascertainable from the decree dated 19th January 2024.
10. Further, the applicant was the only advocate on the court record thus negating the respondent's allegation that it was represented by two other advocates. Furthermore, the respondent has not



- provided any evidence that the alleged two other advocates appeared in court on its behalf or filed any pleadings in court.
11. That the respondent's claim regarding VAT is not only "laughable" but also "ludicrous". That the Hon. Taxing Master subjected the final amount VAT in accordance with section 2 of the VAT Act (Cap 476) Laws of Kenya as read with section 6, and First and Third Schedule of the Act which in nutshell places legal services as taxable service at the rate of 16 % annum.
 12. That in the light of the aforesaid, the court ought not to interfere with the Hon. Taxing Master's ruling dated 28th March 2024.
 13. In addition, the chamber summons application was opposed through notice of preliminary objection dated 15th July 2024, on the grounds that, it is fatally incompetent and incurably defective for annexing the ruling dated 29th April 2024 and failing to annex bill dated 22nd November 2024. That it should be struck out forthwith.
 14. However, in response to the preliminary objection the applicant argued that:
 - a. The notice of preliminary objection is not on a pure point of law.
 - b. The notice of preliminary objection lacks any merits whatsoever.
 - c. The notice of motion objection raises factual matters as opposed to matters of law.
 - d. There is no requirement of law for a bill of costs to be annexed to the chamber summons forming the reference.
 15. The applicant also filed a notice for motion application dated 14th May 2024, seeking for the following orders:
 - a. That the Honorable Court be pleased to enter judgment in favor of the applicant/advocate against the respondent/client for the sum of Kshs 882,865.64 being the costs taxed by the taxing master.
 - b. That the taxed costs do attract interest at 14% per annum from the expiry of one month from the date of bill of costs was served upon the respondent/client being the 22nd December 2023.
 - c. That the costs of the application be provided for.
 16. The notice of motion application is supported by the grounds thereto and an affidavit sworn by Titus Makhanu an Advocate of the High Court of Kenya. He makes reference to the bill herein taxed vide a ruling dated 28th March 2024 pursuant to section 51 (2) of the Advocates Act, in the sum of; Kshs 882,865.64 and the certificate of taxation issued.
 17. He avers that the certificate is evidence of the final amount of costs and unless it is set aside or altered by a competent court, it is only in the interest of justice that the judgment should be entered as prayed for together with interest of 14% percent pursuant to Rule 7 of Advocate Remuneration Order.
 18. However, the respondent opposed the application vide a replying affidavit dated 27th June 2024, sworn by Abdulali Kurji in which he reiterates the contents of his affidavit in support of the reference herein. He avers the respondent has filed a reference filed through a chamber summons dated 9th April 2024 and until the reference is heard and determined, the application here seeking for entry of judgment cannot be granted.
 19. That in any event, the retainer of the applicant by the respondent is in dispute. As such, the certificate of taxing cannot be final as alleged by the applicant or at all.



20. At the conclusion of the arguments by the parties, it is the considered opinion of this court that the preliminary objection be dealt with first.
21. In that regard, the same was disposed of vide filing of submissions. The applicant in submissions dated 15th July 2024 referred the court to the case of; Mukisa Biscuits Manufacturing Company Ltd versus West End Ltd (1969) EA 698 where Sir Charles Newbold discussed what correctly constitutes a preliminary objection.
22. It is submitted that a preliminary objection raises a pure point of law capable of disposing of the lawsuit, is argued on the assumption that all the facts pleaded by the applicant are correct, is not blurred by factual details calling for evidence, and does not call upon the court to exercise its discretion. The case of; Zippora Njoki Kangara versus Rock and Pure Limited and 3 others 2021 eKLR was also cited.
23. Further references are akin to appeals that are against the decision of a Magistrate, hence appeal rules apply mutatis mutandis to references. Accordingly, for a judge to interrogate the proceedings of a reference for purposes of ascertaining whether or not the taxing officer erred in any way while rendering his or her decision, a judge considering such reference must be guided by the lower court's record.
24. That, the failure to annex the bill to the reference the respondent denied the Honorable Court the opportunity to painstakingly interrogate the taxation proceedings. Further, the court cannot conclusively ascertain whether or not the Hon. Taxing Master erred in her decision.
25. That in the case of; Odhiambo versus Ogutu, Environment and Land Miscellaneous Application No. 9 of 2021 (20220 KEHC 3526, the court held that a reference without a bill of costs and the ruling of the taxing master was fatally incompetent and dismissed it. The court was urged to dismiss the reference herein.
26. However, in response submissions dated 22nd July, 2024, it was argued that the case number where the bill was taxed is the same one in which the reference and the preliminary objection is filed and in dealing with the reference, the Honourable Court is using the same file which has all the preliminary pleadings and documents filed before the taxing officer including the bill in question.
27. The respondent reiterated that the preliminary objection herein is not on pure points of law as stated in the case of Mukisa (supra). The case of Oraro vs. Mbaja (2005) eKLR was also relied on where (Rtd) Hon. Justice Ojwang, reiterated what preliminary objection constitutes. Similarly, reference was made to the case of Independent Electoral and Boundaries Commission v. Jane Cheperenger and 2 Others, (2015) eKLR where the court discussed what constitutes improperly filed preliminary objection.
28. The case of Odhiambo versus Ogutu (supra) was distinguished, on the ground that it was rendered by a court of concurrent jurisdiction and that it was based on appeal that was prima facie defective and was not rendered pursuant to a preliminary objection or filed under paragraph 11 of the Advocates Remuneration Order.
29. It was argued that the preliminary objection hearing is blurred by factual details and calls for evidence and based on a clear misapprehension of the law and being used as a sword than a shield.
30. At the conclusion of the arguments of the parties on the preliminary objection I find that the only issue to determine is whether the reference herein is defective for failure to avail the bill.
31. The provisions of the law that guide filing of a reference are provided for under Order 11 of the Advocates Remuneration Act, which states as follows:



- (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
32. Pursuant to the afore provisions there is no requirement for filing of bill of costs alongside the reference. Furthermore, the file in which the reference is filed being the same as the file of taxation the court can take judicial notice of the bill.
33. Finally, Article 159 of *the Constitution* of Kenya, requires that:
- (2) In exercising judicial authority, the courts and tribunals shall be guided by Inter alia the following principles—
 - (d) justice shall be administered without undue regard to procedural technicalities;
34. Based on the afore finding the preliminary objection raised herein has no merit and I dismiss it accordingly.
35. As regard the reference, there are several issues raised, the first issue relates to the item on drafting. The respondent in its submissions dated 30th November 2024, contends that the Hon. Taxing Master erred in holding that the items; 4, 7, 10, 13, 16, 17, 20, 21, 22, 24, 26, 27, 29, 30, 32, 34, 36, 39, 41, 43, 47, 49, 52, 55, 56, 57, 60, 61, 64, 65, 67, 68, 69, 71, 72, 73, 74, 78, 79, 80, 81, 83, 85, 86, 87, 89, 90, 91 and 92, were drawn to scale arguing that Schedule 6 of the Advocates Remuneration Order does not have any provision for costs for drafting. That in addition items No(s); 73, 74, 75, 78, 79 are duplicated.
36. However, the applicant in submissions dated 29th November 2024, argues that paragraph 4 of Schedule 6 of the Advocates Remuneration Order provides drawing of documents while paragraph 6 provides for correspondence.
37. In dealing with this items, the Hon Taxing Master, stated that:
at paragraph 22 of the ruling noted the repetition and stated as follows: -
- “22. There appeared to have been a repetition of numbering, for purposes of clearing any confusion that may arise, the court shall accord the itemized bill at page 10 71A-79H. Item 72A is taxed at Kshs 2, 300/= record has it that the did not proceed to full hearing”



38. Notably, the parties addressed the Hon. Taxing Master on the issue of whether the Advocates Remuneration Order provides for costs for drafting or not.
39. In submissions dated 22nd February 2024 and supplementary submissions dated 14th March 2024, the respondent argued that drafting cannot be equated to drawing and referred the court to the Black Law’s Dictionary (9th) Edition definition of drafting.
40. The applicant on its part in submissions dated 6th March 2024 referred the court to Black Law’s Dictionary (9th) Edition which defines drawing as preparing or framing a legal document. The applicant further argued that the items the respondent claims to be repeated were annexures in the defendant’s replying affidavit and that the applicant is not claiming for drafting them but for perusal only.
41. However, the Hon. Taxing Master did not address that issue of whether drafting is provided for under the Advocates Remuneration Order or not and/or the arguments advanced by the parties at all.
42. Be that as it may, the term “draft” is not used Advocates Act, however, the terms; “draw”, “drawn” “drawing” and/or “drawer” are used in the Advocates Act under Sections 34 (1)(a), 34B (2), 35 and 66.
43. Paragraph 4 of Schedule 6 of the Advocates Remuneration Order is headed; “drawing” and relates to drawing of pleadings and other documents and states as follows: -
 - (a) Concise statement, plaint, written statement of defense, interlocutory application, notice of motion or chamber application, originating summons, affidavit, petition of appeal, interrogatories, agreement for compromise, adjustment or satisfaction of suit, or for reference to arbitration or any other pleading not otherwise provided for—
...
 - (d) All other documents (including proofs of witnesses and evidence) so far as necessary per folio. Kshs.180
 - (e) Bill of costs per folio Kshs 180
 - (f) Affidavit or return of service Kshs. 240
 - (g) In relation to sub-paragraphs (a)(ii), (b)(ii), (c)(ii) and (d), the court may direct that the costs of any repetitive or unnecessary matter shall be disallowed.
44. Further, paragraph 6 relates to correspondence states as follows; (a) Letters before action or other necessary letters Kshs 1,000 or per folio Kshs 118.
45. It is therefore clear that the bone of contention herein is the term “drafting” used in the bill rather than “drawing”, as used in the Advocates Remuneration Order. The question is; in view of the fact that the Hon. Taxing Master did not resolve this issue should this court deal with it, I shall revert to answer this question later.
46. The next issue relates to services, where the respondent submits that the Hon. Taxing Master erred in allowing items; 9, 10, 28, 45, 50, 54, and 77 due to lack of supportive evidence of service.
47. However, the applicant in response submission argues that Schedule 6 paragraph 9 of the Advocates Remuneration Order provides manner of calculating fees for services, where if service is within three (3) Kilometres of the Registry the sum provided is Kshs 1,400 and any additional Kilometres over three (3) then such amount as reasonable is awarded.



48. The parties had also argued the issue before the Hon. Taxing Master with the respondent in its submissions dated 22nd February 2024, arguing that no evidence was provided for where the service was effected and the distance, and where the distance was indicated there was no evidence to support the costs of service.
49. Notably, the Hon. Taxing Master in the taxation decision stated that: -
- “ A bill of costs just like any other application requires justification. It is incumbent upon the applicant to provide material in support of the items drawn. For instance, this court makes particular reference to justification of attendances, services copy etc.”
50. The Hon. Taxing Master taxed items 9 and 10 as drawn and on items 28, 45, 50, 54 and 77, the Hon. Taxing Master addressed the same as follows: -
- “Items 28, 45, 50, 54 and 76 are taxed at Kshs. 1,610/- the court took judicial notice of the location of the defendant’s counsel office. The court further took notice of the fact that the applicant claimed for items that required proof but did not avail proof. The court awarded them none the less.”
51. It is noted that the afore items relate to service pleadings, notices and correspondence upon the defendant’s advocates. However, no affidavit and/or return of service were filed to prove the same.
52. Notably, although the Hon. Taxing Master acknowledged lack of evidence to support the costs of these but still awarded the sum sought. Does this prejudice the respondent? Is that a ground to set aside the taxation decision?
53. The next issue concerns instruction fees wherein the respondent in submissions dated 30th November 2024 argues that the Hon. Taxing Master erred in awarding the applicant full instruction fees as the applicant abandoned instructions mid-way.
54. However, the applicant in submissions dated 29th November 2024 argues that he received instructions and prepared the necessary pleadings. That instructions fee is an independent and static item chargeable once pegged on the value of the subject matter and not determined by the stage the suit has reached as held in the case of; Okoth & Kiplangat Advocates vs Board of Trustees National Social Security Fund [2007] eKLR.
55. Further, the court in Nyangito & Co Advocates vs Doinyo Lessos Creamries Ltd [2014] eKLR held that fees payable to an advocate in an advocate/client bill is not reduced on the basis that the party retained several advocates to appear for it.
56. Notably, the issue was canvassed before the Hon. Taxing Master where the respondent in submissions dated 22nd February 2024 argued that it was represented by three different advocates and that the applicant withdrew his services midway on 15th March 2021. Further, the applicant cannot claim to be entitled to full instructions fees as the work was not just done by him and he is only entitled to a third of the instruction fees.
57. In response submissions dated 6th March 2024 the applicant argued that an advocate who receives instructions is entitled to full instructions fees once he reduces the instruction to pleadings. That the applicant received instructions and prepared the necessary pleadings which were relied on up to the conclusion of the matter as no other pleadings were filed by the advocates that came after.



58. However, the Hon. Taxing Master in the ruling delivered by the stated that; “item number 1 is taxed at Kshs 399, 386.95/= the bill is premised on consent judgment of Kshs 14, 969, 347.60”
59. It is clear that the Hon. Taxing Master did not address the arguments raised by the parties on the issue of instruction fees. Again does the failure to address the issue prejudice the respondent?
60. The next issue is the agreed fees payable. The respondent submits that the parties had agreed on the fees payable and as a result the applicant on 24th March 2021 raised a fee note of a total amount of Kshs. 661,200 indicating an outstanding balance of Kshs. 185,600.
61. That on 13th July 2023, the applicant sent a letter reminding the respondent to settle the outstanding failure of which the applicant would file its bill of costs. That from the wording of the reminder the applicant was only claiming the balance of Kshs. 185,600, which if the respondent had paid the applicant would not have filed the bill of costs. As such the only outstanding legal fees the applicant can claim is the total fo Kshs. 185,600.
62. However, the applicant in response submissions dated 29th November 2024, referred the court to section 45(1) of the Advocates Act which stipulates that an agreement for fees shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.
63. The applicant argues that, in the present case, there is no written agreement that was availed. As a consequence, a fee note cannot be equated to a fee agreement as held in the case of Hillary Cheboi Chelimo T/A CK Advocate vs China State Construction Engineering Corporation Ltd [2022] eKLR.
64. Further the High Court lacks jurisdiction to deal with the question of the agreement at this stage and relies on the case of M/S Lubuleliah & Associates Advocates vs N K Brothers Ltd [2014] eKLR.
65. It suffices to note that the respondent in submissions dated 22nd February 2024 and supplementary submissions dated 14th March 2024, argued that the fees between it and the applicant and/or firm of Makhanu Odhiambo & Co Advocates was agreed at Kshs. 570,000 as evidenced by correspondence at pages 418 and 425 of the applicant’s bundle of documents and pages 4 and 14 of the replying affidavit which was not challenged or controverted.
66. The applicant relied on similar arguments as herein, arguing that in submissions dated 6th March 2024 that there was no written agreement availed and that a fee note did not equate to a fee agreement.
67. The afore argument was not addressed by the Hon. Taxing Master as to whether there was an agreement to fees or not.
68. The other issue relates to payments already made. The respondent submits that the Hon. Taxing Master did not take into account payments already made to the applicant in the sum of Kshs. 475,600 as captured in the fee notes annexed as AK3 and AK4 in the replying affidavit of Abdulali Kurji dated 9th April 2024. Further, the applicant did not challenge the averments in the replying affidavit.
69. However, in response submissions, the applicant argues that the respondent has failed to provide any cogent evidence by way of bank statement or cheque of the said payments and failed to discharge both the legal and evidentiary burden of proof under section 107 and 109 of the Evidence Act (Cap 80) Laws of Kenya.
70. It suffices to note that the respondent in submissions dated 22nd February 2024, before the Hon. Taxing Master argued that the respondent and the applicant and/or the firm of Makhanu Odhiambo & Co Advocates agreed for a fee of Kshs. 570,000 out of which the respondent paid the sum of Kshs. 384,400



leaving a balance of Kshs. 185,600. That the applicant failed to mention the said payment plus the filing fees of Kshs 70,350 in the bill of costs.

71. Notably, the applicant did not address this issue in its submissions before the Hon. Taxing Master.
72. Again the Hon. Taxing Master did not address the issue in the taxation decision.
73. The question remains whether the taxation decision can be set aside on that ground that most of the issues raised in the submissions of the parties were not addressed.
74. The other issue concerns value added tax chargeable on legal service and which is not contested by the respondent in that it is a statutory requirement but is challenged in that it is allowed on instruction fees that is disputed.
75. However, the applicant reiterates that VAT is a statutory reduction chargeable on instructions fees and disbursements and therefore the Hon. Taxing Master was correct in subjecting the final award to VAT.
76. Finally, the applicant cites section 27 of the *Civil Procedure Act* and the case of; Sonko vs Clerk, County Assembly of Nairobi City County & 12 others [2022] eKLR to argue that costs follows the event and be awarded upon dismissal of the reference.
77. Be that as it were, in addressing the circumstance under which the court may interfere with the decision of the taxing master, the Supreme Court of Kenya in Petition (Application) No. E024 of 2023 together with Applications No. E030, E034 & E038 of 2023; Nairobi Bottlers Limited vs Mark Ndumia Ndungu & Coca Cola Central, East & West Africa Limited stated as follows: -
 - (8) This Court, in the case of Fredrick Otieno Outa v Jared Otieno Odoto & 3 Others SC Petition No 6 of 2014; [2023] KESC 75 (KLR) highlighted the following principles to be considered in an application for setting aside a taxation decision:
 - “(11) A certificate of taxation will be set aside, and a single Judge can only interfere with the taxing officer’s decision on taxation if;
 - a. there is an error of principle committed by the taxing officer;
 - b. the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy;(and I may add, conversely, if the award is so manifestly deficient as to amount to an injustice to one party).
 - c. the court is satisfied that the successful litigant is entitled to fair reimbursement for the costs he has incurred, (and I may add, the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party); and
 - d. the award proposed is so far as practicable, consistent with previous awards in similar cases.
78. Having considered the application, in the light of the materials before the court, it is evident that the Hon. Taxing Master did not consider the submissions by the parties on the bill, as a result the decision is incomplete and the sum awarded cannot be deemed to be fair and/or reasonable.
79. Furthermore, the Hon. Taxing Master having found that there was no evidence to support certain items but none the less awarded them without justification, renders the amount awarded to be deficient as to constitute an injustice and/or that the discretion of the Hon. Taxing Master was exercised arbitrarily.



80. In the given circumstances, it is the finding of this court that the decision of the Hon. Taxing Master cannot be upheld and is set aside accordingly. That the bill herein be taxed afresh before a different taxing officer.
81. In view of the fact that, the reference arose from the decision of the Hon. Taxing Master, it is ordered that each party meet its own costs.
82. Finally following the afore finding of this court, the application seeking for entry of judgment cannot be heard.

DATED, DELIVERED AND SIGNED ON THIS 9TH DAY OF FEBRUARY, 2026

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr Makhanu for the Applicant

Mr Wainaina for the Respondent

Hannah: court Assistant

