

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT THIKA**

**MISCELLANEOUS CIVIL APPLICATION NO. 4 OF 2024**

**DÉCOR GYPSUM BOARD LIMITED.....  
.....PLAINTIFF/APPLICANT**

**AND**

**MAKONGENI POLICE STATION  
THIKA.....1<sup>ST</sup>  
DEFENDANT/RESPONDENT  
CHEN LIN.....2<sup>ND</sup>  
DEFENDANT/RESPONDENT  
ZHU GUILIN.....3<sup>RD</sup>  
DEFENDANT/RESPONDENT  
LIN XIANHUA.....4<sup>TH</sup>  
DEFENDANT/RESPONDENT  
DECORBOARD COMPANY  
LIMITED.....5<sup>TH</sup>  
DEFENDANT/RESPONDENT**

**RULING**

**Brief facts**

1. The application for determination dated 10<sup>th</sup> September 2025 seeks to set aside and review the Taxing Master’s ruling dated 18<sup>th</sup> August 2025 on the Defendants’ Bill of Costs dated 5<sup>th</sup> June 2025.

**The Applicant’s case**

2. The applicant states that the Taxing Master delivered a ruling dated 18<sup>th</sup> August 2025 on the defendants’ party

and party bill of costs which was taxed at Kshs. 178,802.40/-. The applicant argues that item no. 1 was taxed at Kshs. 127,500/- which was manifestly excessive considering the bill is on a straightforward application for contempt of court which the defendants responded to by raising a preliminary objection which was allowed by the court and the case was closed. Further, the defendants have not shown any proof of complexity of the matter or difficulty of the question raised in the said case.

3. The applicant argues that the matter was dispensed off at the preliminary stages when the defendants raised a preliminary objection on a point of law related to the jurisdiction of the court. Therefore the matter did not progress any further but was disposed of by way of submissions upon taking of directions which lasted for less than five minutes. The applicant further argues that the correct calculation in accordance with Schedule 6(1)(a) of the Advocates Remuneration Order is Kshs. 45,000/-.

4. Parties put in written submissions.

### **The Applicant's Submissions**

5. The applicant relies on the cases of **Republic vs Ministry of Agriculture & 20 Others ex parte Muchiri W' Njuguna [2006] eKLR**; **Karen & Associates Advocates vs Caroline Wangari Njoroge [2019] eKLR** and **First American Bank of Kenya vs Shah & Others [2002] 1 EA 64** and submits that this court will only

interfere with the decision of a taxing officer in cases where there has been shown to be an error of principle.

6. The applicant submits that the taxing master ought to be guided by the scale in the Advocates Remuneration Order, 2014 Schedule 6(1) as the suit was a straightforward application for contempt of court which was responded by raising a notice of preliminary objection. As such, there was no complexity or difficulty experienced by the contemnor's advocates in prosecuting the application. The applicant argues that the correct calculation in accordance with schedule 6(1)(a) is Kshs. 127,587.50/-. To support its contentions, the applicant relies on the case of **A.W. Rogan Kamper vs Robert Grosvenor [1977] eKLR.**
7. The applicant further submits that the fee for getting up charged under item 2 is excessive considering that there was a wrong calculation on the instruction fee. Thus, the same should be taxed at Kshs. 42,529.17/-.
8. The applicant submits that items 7 -14 have been charged too high and ought to be taxed at Kshs. 2,300/- each.

### **The 2<sup>nd</sup> - 5<sup>th</sup> Respondents' Submissions**

9. The respondents submit that the taxing master correctly applied the statutory scale as the value of the subject matter was Kshs. 4 million and pursuant to paragraph 1(a) of the 6<sup>th</sup> Schedule, to defend a matter whose value is Kshs. 750,000/- to Kshs. 1 million, the instruction fee is Kshs. 75,000/-. For the amount above Kshs. 1 million an

additional 1.75% is added thus item 1 was taxed at Kshs. 75,000 + 52,500 = Kshs. 127,500/-.

10. The respondents rely on the cases of **Kipkorir Tito & Kiara Advocates vs Deposit Protection Fund Board [2005] eKLR** and **Joreth Limited vs Kigano & Associates [2002] KECA 153 (KLR)** and submit that interference with the tax master's assessment is only warranted where it is demonstrated that the tax master misdirected himself on matters of principle. There is no indication that the amount taxed was so excessive as to amount to an error in principle as the value of the subject matter was Kshs. 4 million.

### **Issue for determination**

11. The main issue for determination is whether the applicant has made out a case for the review or setting aside of the taxing master's assessment.

### **The Law**

12. **Rule 11 of the Advocates Remuneration Order** provides:-

**(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.**

13. The taxation ruling was delivered on 18<sup>th</sup> August 2025. The applicant wrote to the taxing officer on 1<sup>st</sup> September 2025 notifying him that they objected to the instruction fees and requested for reasons for the ruling. The court sent a certified copy of the ruling on 3<sup>rd</sup> September 2025 outlining the reasons and the applicant filed the instant reference on 10<sup>th</sup> September 2025 which is within the 14 days for filing the current application. Thus, the application has been filed timeously.

**Whether the applicant has made out a case for the review or setting aside of the taxing master's assessment**

14. The law is settled that a court will only interfere with the taxing master's decision where there is an error of principle. In **Republic vs Ministry of Agriculture & 2 Others ex parte Muchiri W'njuguna & 6 Others [2006] eKLR** it was held:-

**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 that 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.**

15. In **Machira & Co. Advocates vs Magugu [2002] 2EA** where Ringera J (as he then was) held that:-

**As I understand the practice relating to taxation of bill of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to a judge in accordance with paragraph 11 of the Advocates Remuneration Order.**

16. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents' party and party bill of costs is dated 5<sup>th</sup> June 2025 and was drawn for Kshs. 310,300/-. The taxing master taxed the said bill at Kshs. 178,802.40/-. The respondents argued that their assessment of costs was governed by Schedule 6 of the Advocates Remuneration Order 2014 and on item no. 1 on

instruction fees they proposed a sum of Kshs. 200,100/-. The applicant disputes the said amount arguing that it is excessive. It is deposed by the applicant that the amount for item No. 1 ought to be Kshs. 45,000/-. However the applicant in its submissions disputes the said sum and argues that the amount to be taxed ought to be Kshs. 127,587.50/-. It is not in dispute that the applicable schedule is Schedule 6(1)(c) of the Advocates Remuneration Order as the 2<sup>nd</sup> to 5<sup>th</sup> respondents defended the contempt proceedings. The value of the subject matter is determinable at Kshs. 4 million. Thus pursuant to paragraph 1(a) of the schedule 6 to defend a matter whose value is Kshs. 750,000/- to Kshs. 1 million, the instruction fees is Kshs. 75,000/-. For fees above Kshs. 1 million the fees is an additional 1.75% which is Kshs. 52,500/-. Thus the total fees is Kshs. 75,000 + Kshs. 52,500 = Kshs. 127,500/-.

17. The applicant contests the instruction fees in its reference however in its submissions, getting up fees and the attendances are also contested. I have perused the respondents submissions and noted that they put in their submissions upon being served with the reference and thus only responded to the instruction fees. It would therefore not be appropriate to address the other issues raised in the submissions which the respondents had no privity to address in their response and in the submissions. It is trite law that submissions are not pleadings and the applicant should not raise new issues in its submissions.

That notwithstanding, the applicant although has contested the bill of costs has not full and clearly put out its arguments for it contests the issue of instruction fees but argues that the fees ought to be Kshs. 127,000/-. Further the applicant contests the getting up fees but the record shows that the taxing master did not tax any getting up fees. The applicant has failed to demonstrate that the taxing master committed an error of principle, or that the taxed amount was manifestly excessive so as to justify interference by this court.

18. I find no merit in this application and I hereby dismiss it with costs to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents.

19. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED  
AT THIKA THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026.***

**F. MUCHEMI  
JUDGE**