

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC. CIVIL APPLICATION NO. E745 OF 2024

IN THE MATTER OF: THE ADVOCATES ACT CAP. 16
LAWS OF KENYA

AND

IN THE MATTER OF: THE ADVOCATES
(REMUNERATION) AMENDMENT) ORDER, 2014

AND

IN THE MATTER OF: TAXATION OF ADVOCATE-CLIENT
BILL OF COSTS

BETWEEN

JOHN OGADA & CO.
ADVOCATES.....ADVOCATE/RESPONDENT

-VERSUS-

SUPERCLEAN SHINE
LIMITED.....CLIENT/APPLICANT

RULING

The Applications

1. There are two (2) applications under determination. The **Notice of Motion dated 22.09.2025 (the first application)** was filed by **John Ogada & Co. Advocates** (hereafter the Advocate). The first application was brought under Sections 1A, 1B, and 3A of the Civil Procedure Act and Section 51 of the Advocates Act and seeks the following orders:

- (i) THAT this Honourable Court be pleased to adopt the Certificate of Taxation dated 28th July 2025 issued herein in the sum of Kenya Shillings One Million Two Hundred and Sixty-Eight Thousand Eight Hundred and Twenty-Four Only (Kshs. 1, 268, 824/=) in relation to the Advocate/Client Bill of Costs dated 13th August, 2024 as the judgment of this court and a decree for the same be issued.*
- (ii) THAT this Honourable Court be pleased to order the Advocate/Applicant to be awarded interests on the taxed costs at court rates from the date of taxation until full payment.*
- (iii) THAT the cost of this application be provided for.*

2. The grounds supporting the first application are that the Advocate filed its Advocate-Client Bill of Costs dated 13.08.2024 (the Bill of Costs) in the present matter, seeking costs to the tune of Kshs. 1,268,824/- from **Superclean Shine Limited** (hereafter the Client) in respect of services rendered by the Advocate in **Milimani CMCC No. 7887 of 2015** (the suit) **which led to Milimani HCCA No. 287 of 2019** (the appeal); that despite the Bill of Costs being

served upon the Client on 26.02.2025 it did not elicit a response and proceeded unopposed; that the said Bill of Costs was consequently taxed as drawn and a ruling delivered on 15.05.2025 and a Certificate of Taxation dated 28.07.2025 was issued and that said Certificate of Taxation has not been varied, reviewed or set aside.

3. The Applicant has stated, further, that despite having been served with a copy of the Certificate of Taxation, the Client has failed and/or refused to settle the Advocate's taxed costs and that the Advocate is thus entitled to the prayers sought in the first application, to enable it enforce payment of the taxed costs.

Replying Affidavit

4. The Client has opposed the first application through a replying affidavit sworn by its Managing Director, **Faith Wambui Njeri**, on 13.11.2025 in which she has deposed that the first application ought to be held in abeyance pending hearing and determination of the Client's Reference which raises substantial issues that will directly

impact the said application; that the Reference is challenging the taxation ruling on various items and further seeks an enlargement of time within which to file the same; that the Client was unaware of the taxation proceedings and only came to learn that a taxation ruling had been delivered upon receipt of the Certificate of Taxation, vide a letter dated 15.08.2025 and that it would serve the interest of justice for the first application to be held in abeyance until the Reference is determined.

The Second Application

5. The Client filed **the Chamber Summons Reference dated 13.11.2025 (the second application)**. It is brought under Sections 1A, 1B and 3A of the CPA; and Paragraph 11(1), (2) and (4) of the Advocates (Remuneration) Order 2014. It is supported by the grounds set out on its body and in the Supporting Affidavit of the Client's Managing Director, **Faith Wambui Njeri**. The second application seeks the following:

(i) Spent.

(ii) Spent.

- (iii) THAT the time fixed under Paragraph 11(1) of the Advocates (Remuneration) Order 2014, within which the Applicant ought to have raised an objection to the decision of the taxing officer rendered on 15th May 2025, be and is hereby enlarged.***
- (iv) THAT consequently, the Applicant's objection to the decision of the taxing master rendered on 15th May 2025 as captured in the Applicant's letter to the taxing master dated 10th November 2025 be deemed as having been duly lodged or in the alternative, leave be and is hereby granted to the Applicant to raise and/or lodge an objection to the said decision.***
- (v) THAT upon the grant of prayers (iii) and (iv) above, the time within which the Applicant is required to file this instant reference be computed from the date of enlargement of time as per prayers (iii) and (iv) above or in the alternative, leave be and is hereby granted to the Applicant to file a reference to the taxation***

decision rendered on 15th May 2025 and that this Chamber Summons Application be deemed as duly filed and served within the stipulated timelines.

(vi) THAT the decision of the Taxing Master as per the ruling delivered on 15th May 2025 and captured in the resultant Certificate of Taxation issued on 28th July 2025 with respect to items 1 - 9, 11 - 19 and 25(b) in the Respondent's Advocate-Client Bill of Costs dated 13th August 2024 be set aside and/or varied and/or re-assessed by this Honourable Court.

(vii) THAT in the alternative and/or further to (vi) above, this Honourable Court be pleased to remit the Respondent's Advocate-Client Bill of Costs dated 13th August 2024 for fresh taxation before a different Taxing Officer.

(viii) THAT costs of the Application be provided for.

6. The grounds supporting the second application are that the ruling on taxation was delivered without prior notice to the

Client; that the Client was never served with a ruling notice to that effect and could therefore not have made arrangements for its representative to be present on the date of the delivery of the ruling; that even after delivery of the ruling, neither the Advocate nor the taxing master notified the Client that the Bill of Costs had been filed and subsequently taxed and that the Advocate only notified the Client regarding the taxation proceedings by way of a Certificate of Taxation, vide a letter dated 15.08.2025.

7. The Respondent has stated that by the time the Client came to learn of the existence of the taxation proceedings and ruling, the timelines for lodging a Reference had lapsed by more than three (3) months, thereby necessitating the prayer seeking an enlargement of time within which to file an objection and Reference out of time.
8. The Respondent has blamed the Taxing Officer for making errors during taxation, which, in view, should not be subject of this determination in view of the prayers sought in the second application.

Replying Affidavit

9. The Advocate, who is the Respondent in the second application, has opposed the second application through a Replying Affidavit sworn by **Beth Njeru** on 24.11.2025, in which she has deposed that the second application is a non-starter since the Client was at all material times aware of the suit and/or appeal proceedings which precipitated the taxation process; that furthermore, copies of the Bill of Costs and related documents and notices were duly served upon the Client on 26.02.2025 through its official email address and an affidavit of service was filed to that effect.

10. It is further deposed that the Client not only neglected and/or refused to attend the taxation proceedings, but further neglected to file any response thereto; that in the circumstances, the Client having not reasonably explained the delay in filing a Reference, is disentitled to the prayer for enlargement of time and that the Advocate stands to suffer grave prejudice if the prayer for enlargement of time is granted by incurring additional expenses and suffering a further delay in obtaining its costs.

11. The Respondent has deposed that the learned taxing master correctly assessed the Bill of Costs and urged the

court to dismiss the second application and to allow the first application as prayed and order to deposit the taxed sum of Kshs. 1,268,824/- in a joint interest earning account within 14 days, as security.

Submissions

12. The two (2) applications were canvassed simultaneously by way of oral submissions. **Mr. Amimo** representing the Client, argued that the court has power to enlarge the time required to file a Reference and reiterated the reasons for the delay in filing the Reference as stated in the second application and the supporting affidavit. He relied on the case **Muringa Company Limited v Archdiocese of Nairobi Registered Trustees [2020] KECA 761 (KLR)** where the Court of Appeal laid out the relevant factors in considering whether to enlarge the time for performing an action in law. He maintained that the Client only became aware of the taxation ruling upon service of the Certificate of Taxation.

13. He accused the taxing master for not setting out the reasons for arriving at his decision, despite there being a legal principle that in assessing costs, a taxing officer ought

to consider various factors which should feature in the reasons given for his or her decision, as held in the case of **Vipul Premchand Haria v Kilonzo & Co Advocates [2020] KECA 591 (KLR)**.

14. Whilst borrowing from the decision rendered in **Njeri v Mathenge [2022] KEHC 14977 (KLR)**, the advocate argued that irrespective of whether or not a response is filed in respect of a Bill of Costs, a taxing officer must satisfy himself or herself as to whether the said Bill of Costs was drawn to scale; which was not the case in this instance. The advocate has therefore faulted the learned taxing master here, for taxing the Bill of Costs as drawn, without providing reasons thereof, among other mistakes. He urged the court to allow the second application.

15. **Miss Njeru** counsel for the Advocate, submitted that the court should take into account various factors in determining whether to enlarge time, as was laid out by the Supreme Court in the case of **Nicholas Kiptoo Korir Arap Salat v IEBC and 7 Others [2014] KESC 12 (KLR)**.

16. In respect of the first application, counsel has contended that the Client was duly served with the requisite taxation

documents but did not file a response and therefore the matter proceeded *ex parte* and that the taxing master acted properly in taxing the Bill of Costs as drawn. Counsel relied on the decision in **Imarika Sacco v Katana [2025] KEELRC 1135 (KLR)** where the court reasoned that the date on which a taxation ruling is made available to the respective parties is key in ascertaining when the time for filing a Reference begins to run.

17. It is counsel's submission that the delay in the present instance has not been sufficiently explained and that whether or not to allow a party to file a Reference out of time lies with the discretion of the court; that it is evident in the present instance that the second application is both a mere afterthought and a delaying tactic, and that the Advocate stands to be prejudiced if the Client is allowed to file the same out of time.

18. On the merits of the second application, counsel has maintained that no error of principle or law subsists in the impugned taxation decision, adding that in making his assessment the learned taxing master considered the written submissions placed before him.

19. It is therefore counsel's contention that there is no reason for interfering with the taxation ruling. That in the circumstances, the second application ought to be dismissed with costs, paving way for the first application to succeed as prayed.

20. In his rejoinder, **Mr. Amimo** argued that time would run from the date on which a copy of the taxation ruling was supplied to the parties and that the delay in filing the Reference is not inordinate and has been sufficiently explained.

21. He has likewise argued that there is no need for provision of security to be made since the two (2) applications can be dispensed with expeditiously.

Analysis and Determination

22. I have considered the rival material canvassed in respect of the two (2) applications. In my considered view, the second application ought to be determined first. This will determine the fate of the first application.

23. I have understood the second application to be seeking, in prayers (c), (d) and (e) given that prayers (a) and (b) are spend. The pending prayers therefore seek:

(i) Enlargement of time within which to file the Reference in respect of the Taxing Officer's ruling delivered on 15/5/2025.

(ii) The letter of the Client/Applicant dated 10/11/2025 be deemed as the Reference or to grant leave to the Client in the alternative to lodge an objection to the ruling dated 15/5/2025.

(iii) Computation of time within which to file Reference from the date when the time to file the Reference is granted or to grant leave to the Client to file a Reference in the alternative.

24. Prayers (f) and (g) of the second application seem to be the Objection to the Ruling delivered on 15/5/2025 or the Reference. To my mind therefore, it is prudent to determine the issue whether the Client, who is the Applicant in the second application, has provided sufficient evidence to demonstrate that it was not aware of the ruling.

25. I have read the record. The Client/Advocate Bill of Costs is dated 13/8/2024. The matter was placed under Civil Division's Taxation Rapid Results Initiative of 2024 and allocated to Hon. Mumassabba on 28/8/2024 for

determination. On 28/8/2024, Ms Njeru for the Advocate attended court and informed the Hon. Deputy Registrar that the date had been served on the Client. The Hon. Deputy Registrar did not tax the Bill because the file was before a Judge pending a Judgment. The file was returned to the Civil Division for directions.

26. The record shows that the file was placed before the Hon. Wambo, a Deputy Registrar in the Civil Division on 17/10/24. The record shows no attendance of the parties before Hon. Wambo on that date and on 31/10/2024. However, on 17/12/2024, the record shows that Ms Njeru for the Applicant was present in court. The record does not show the indication that the matter would be mentioned on 4/3/2025. The record, however, shows that an email dated 26/2/2025 from jogadalaw@gmail.com was sent to supercleanshinltd@yahoo.com serving the Bill of Costs dated 13/8/2024, Written Submissions and Mention Notice dated 4/3/2025. That Mention Notice cautioned that if the Client failed to attend court, directions would be issued, their attendance notwithstanding.

27. The record of 4/3/2025 shows that there was representation for the Advocate/Applicant but not the Client/Respondent. The Hon. Deputy Registrar fixed the Ruling for 16/4/2025 but as I have stated in this ruling, the ruling was delivered on 15/5/2025. There are no records of the proceedings of 16/4/2025.

28. I have also noted from the record that on 15/8/2025, the Advocate/Applicant sent another email through the same email address to the Client/Respondent forwarding a letter dated the same day enclosing a Certificate of Taxation for their attention and action.

29. Upon consideration thereof, I am persuaded that the Advocate has tendered credible material to support the averments of service of the said documents upon the Client. The Client did not deny that the recipient email address belongs to it. If anything, the Client admitted to having received the Certificate of Taxation on 15.08.2025 forwarded to it via the same email address. I am satisfied that the Client was aware of a mention date of 4/3/2025 but did not attend court. I am also satisfied that the Client

knew, as early as August 2025 at least, that the Bill had been taxed and a Certificate of Taxation issued.

30. The client did not take any action until November 2025 when it instructed the current advocate to come on record in this matter. The current advocates for the Client sent a letter of objection dated 10/11/2025 to the Court followed by filing of the second application dated 13/11/2025. That was about six (6) months after the ruling on taxation was delivered and is certainly outside the stipulated timelines.

31. My careful consideration of this matter shows that it is not true that the Client only came to learn of the existence of the taxation proceedings upon being served with the Certificate of Taxation. The record shows that he had been served with the mention notice for 4/3/2025 but did not attend court. Although taxation took place on the date slotted for mention, for which the Hon. Deputy Registrar is to blame, the Client cannot claim ignorance of the Certificate of Taxation that was served to it as shown in this ruling.

32. I place blame on the Client who did not remain vigilant on the Advocate/Client Bill of Costs. I did not see any evidence of denial of the instructions by the Client to the Advocate in the matter giving rise to the contested Bill of Costs. For this reason alone, I would have declined to listen to the Client/Applicant in the second application. I have however considered the applicable law, being Paragraph 11 of the **Advocates (Remuneration) Order 2014** which allows any party to object to the decision of the taxing officer. I have also considered that under the same provision this court is clothed with the discretion to enlarge the time fixed for filing the objection. I am also guided by the decision in **Nicholas Kiptoo Korir Arap Salat v IEBC and 7 Others [2014] KESC 12 (KLR)** where the Supreme Court rendered stated that:

“(T)he underlying principles a court should consider in exercise of such discretion include;

1. *Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;*

2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

3. Whether the court should exercise the discretion to extend time, is a consideration to be made a case- to-case basis;

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;

5. Whether there will be any prejudice suffered by the Respondent if the extension is granted;

6. Whether the application has been brought without undue delay.

...”

33. Having read the court file and considered this matter, it is my view that while the Client/Applicant in the second application slept on his right, this court will give it a lifeline for the reasons that I am not happy with the manner the Hon. Deputy Registrar handled the Bill of Costs. Firstly, on 4/3/2025, the matter was coming before the court for mention and not taxation. It was a Mention Notice that was served on the Client to attend and not a hearing/taxation date. Secondly, the Hon. Deputy Registrar was cursory in

the manner he handled the taxation. This can be seen in the brief ruling he rendered, which shows no efforts on his part to at least go over the items thoroughly and explain how he did not tax the Bill. It is not enough in my view to state that ***“I find that there is no justifiable cause to interfere with the Bill of Costs.”*** That may be so, but at least he ought to have gone over item by item and make his findings accordingly.

34. The law is settled on the issue as to when decision of the taxing officer can be interfered with. In **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] KECA 325 (KLR)** the Court of Appeal held thus:

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”

35. The Court went ahead to reason that an error of principle would include an excessive award on costs or an overemphasis on factors such as the nature and complexity

of the matter at hand. See **Moronge & Company Advocates v Kenya Airports Authority [2014] eKLR.**

36. The merits of the second application are anchored on the grounds that the learned taxing officer committed an error of principle in his assessment of the Bill of Costs; that he did not set out any reasons guiding his assessment; and that there was no proof of the respective documentation upon which the costs were sought and taxed. It seems to me that the taxing officer, upon finding that the Bill of Costs was unopposed, proceeded to **'tax it as drawn'** under **Schedule 6, Part B** of the **Advocates (Remuneration) Order, 2014**. From the contents of the aforesaid ruling, it is apparent that the same neither restated the submissions presented before the learned taxing officer, or reference any evidence or documentation relied upon in the assessment exercise or set out the reasoning guiding the assessment on the various items.

37. It is my view that the learned taxing officer ought to have addressed himself on each of the items sought and justify the assessments made, as was affirmed by the Court of Appeal in the case of **Vipul Premchand Haria v Kilonzo**

& Co Advocates [2020] KECA 591 (KLR), where the Court stated as follows:

“Now, it is not in contest that the advocate was within rights to elect to charge fees under Schedule V instead of IV of the ARO and he properly informed the client in writing as he rendered the bill of costs. Once the client was dissatisfied with the bill, it fell upon the taxing master to tax it. Such taxation, much as it lies in the taxing officer’s discretion, is governed by clear principles. In other words, the discretion is a judicial one to be judicially and judiciously exercised. It is not to be exercised whimsically or capriciously in accordance with personal inclination. And the matters the taxing officer takes into consideration should be apparent from the reasons that she gives for her decision. It is those reasons that give an indication whether or not the discretion reposed in the taxing officer was properly exercised.”

...

Clearly, there were no findings made by the taxing master on the complexity, importance, interest of the parties and the general conduct of proceedings. No reasons were assigned for the blanket taxation of the bill as drawn. In fact, a proper reading of the taxing master's words seems to suggest to me that she proceeded from the assumption, patently erroneous, that so long as an advocate has signified to his client the election to charge under Schedule V, the taxing officer has no role to play in the taxation save to tax it as drawn."

38. As stated in **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd**, taxation is not a mathematical exercise. While the taxing officer enjoys wide discretion in undertaking an assessment on a Bill of Costs, it is imperative that the reasoning and manner of assessment be set out, in order to demonstrate the justification for assessment made.

39. For the reasons advanced in this Ruling, it is my finding that the taxing officer committed an error of principle in taxing the Bill of Costs. This calls for the interference with the decision of the taxing officer. Having made the above conclusion, it means that the first application, which essentially seeks to have the Certificate of Taxation resulting from the impugned taxation ruling adopted as the judgment of the court and that the Advocate be awarded interest thereon, cannot be considered on its merits.

40. Consequently, I issue the following orders:

a) The first application (being the Notice of Motion dated 22.09.2025) is hereby held in abeyance to await taxation of the Advocate/Client Bill of Costs.

b) The second application (being the Chamber Summons Reference dated 13.11.2025) succeeds in that the letter of objection dated 10.11.2025 and the Chamber Summons Reference dated 13.11.2025 are hereby deemed to be properly on record upon payment of requisite filing fees, where applicable.

c) That the taxation officer's ruling delivered by the Deputy Registrar on 15.05.2025 together with the

resultant Certificate of Taxation be and are hereby set aside and the subject Advocate-Client Bill of Costs dated 13.08.2024 shall be taxed afresh before a different taxing officer.

d)The Advocate is at liberty to amend the first application to align it with the new Certificate of Taxation once fresh taxation is done.

e)Each party shall bear own costs for the second application.

41. It is so ordered.

Dated, signed and delivered this 17th February 2026.

**S. N. MUTUKU
JUDGE**