

1.The challenge in the reference is the taxing officer's assessment of the instruction fees in the applicant's bill of costs dated 7.3.2025 at Kshs. 2,000,000/-.

2.The reference is brought by way of the applicant's chamber summons dated 18.6.2025, under **Rule 11(1) & (2) of the Advocates (Remuneration) Order**, seeking: -

(1) Setting aside of the Ruling by Hon. M. Shimenga, the Deputy Registrar of the High Court, dated 5th June, 2025, taxing the Applicant's Bill of Costs dated 7th March 2025, at Kes. 3,730,403.40/-.

(2) That the court re-taxes the Bill of costs or refer it for re-taxation before a different taxing officer and/or review upwards.

3.The application is premised on the following grounds.

a) The Taxing Officer erred in law and fact by taxing the Bill of Costs at an amount way below the scale provided under

**Schedule 6 of the Advocates
(Remuneration) Order.**

- b) The taxing officer failed to consider the complexity of the matter, value of the subject matter and the amount of time spent in expediting the matter.**
- c) The Taxing Officer while giving reasons for their decision stated that they did not see anywhere in the pleadings, judgment or settlement where the value of the subject matter was cited.**
- d) The value of the subject matter was indeed cited in the Bill of Costs dated 7th March, 2025 as Kes. 441,010,910/- and the same was not controverted, denied or contested by the Respondents as evidenced at paragraph 2 of the Respondents' submissions dated 13th May 2025.**
- e) The filing of this Reference is further informed by a similar taxation matter over the same subject matter, in *Misc.***

Application No. 75 of 2016 (Karanja Kiarie & Company Advocates -vs- Estate of the Late Jayantilal Haribhai Bakrania - Deceased), where this Honorable court by a Ruling and Decree of 19th March, 2018 on a bill of costs filed by the firm of Karanja Kiarie & Company Advocates against the Administrators of the estate of late Jayantilal Haribhai Bakrania (Deceased) taxed the bill of costs at Kes. 7,605,223.60/-.

f) The said taxation was based on the same subject matter as the Applicant's bill of costs, which was more than seven years ago, hence the value of the subject matter has since appreciated in value, over time.

g) According to the Advocates (Remuneration) Order, taxation for Succession matters fall under Schedule 10 which taxation for instruction fees is lower than taxation for Commercial

matters which fall under Schedule 6 of the Advocates (Remuneration) Order.

h) The Taxing Officer erred in law and in fact by taxing instruction fees for a Commercial matter at a lower scale than for a Succession matter, yet the Advocates (Remuneration) Order specifies otherwise.

i) The suit is a very complex matter involving three companies with a variety of assets collectively co-owned by the late Jayantilal Haribhai Bakrania (Deceased), whose estate faced dissipation through family wrangles.

4.j) Unless this application is certified urgent and the orders sought are granted in the first instance, there is a real likelihood that the Respondents will continue to dispose of the assets, thereby exposing the Applicant to great prejudice and harm.

5.The applicant submitted that while the taxing officer stated that she did not see anywhere in the

pleadings, judgment or settlement where the value of the subject matter was cited, value of the subject matter was indeed cited as item number 1 in the Bill of Costs as KES. 441,010,910.00/-.

6.The applicant pointed out that the figure was never controverted, denied or contested by the respondents as evidenced by paragraph 2 of their submissions dated 13.5.2025.

7.The applicant's stated that its bill of costs was based on a valuation on the respondent companies that had been carried out by **Knight Frank** after the orders of the Court dated 9.10.2019. He asserted that as per the valuation report dated 7.12.2020, respondent companies' assets were valued at KES. 291,010,910/- as of the date of the valuation. He submitted that since the assets valued are fixed, they should have appreciated and are worth about Kes. 441,010,910/- as quoted in the bill of costs.

8.The applicant submitted that considering the nature of the suit, the importance of the matter, the interests of the parties, the general conduct of the proceedings and the number of hours taken in

perusing the instructions and the court file, preparing the necessary pleadings and paperwork and reading, researching and preparing for hearing of the matter. Also taking into consideration the hours put into the submissions and complex hearing in the matter, considering the volume of this kind of the matter and the number of hours of attending before the judge and advising the clients, a sum of **Kes. 8,820,218.20/-** as instruction fees is reasonable.

9.The applicant relied on **Joreth Limited v Kigano & Associates (2002) 1EA 92 at 99** and **Kariuki v Equity Bank Limited & another (Civil Case 343 of 2009) [2022] KEHC 221 (KLR), Supreme Court in Kenya Airports Authority v Otieno Ragot and Company Advocates (Petition E011 of 2023) (2024) KESC 44 (KLR) and Peter Muthoka and Another v Ochieng and 3 Others NRB CA Civil Appeal No. 328 of 2017 [2019] eKLR**

10.The respondents conceded that the initial computation of the alleged excess instruction fees in their submissions was premised on the

assumption that the value of the subject matter was ascertainable from the pleadings, judgment or settlement.

11.The respondents, however, submitted that the taxing officer correctly noted at page 4, paragraph 1 of the ruling that the value of the subject matter did not form part of the pleadings, judgment or settlement.

12.The respondents therefore asserted that the Taxing Master properly invoked discretion under **Schedule VI A, proviso (j) of the Advocates Remuneration Order** to assess the instruction fees.

13.The respondents highlighted that the taxing officer correctly noted that the suit was commenced by way of a plaint seeking prerogative orders, thereby falling within Schedule VI A proviso (j); Appreciating that the matter was opposed; and awarding instruction fees of Kshs. 2,000,000/=, which was well above the statutory minimum of Kshs. 100,000/= prescribed under Schedule VI A, proviso (j) (ii).

Analysis and Determination

14.As a general rule, a ‘...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 so manifestly excessive as to justify an inference that it was based on an error of principle...’ **First American Bank Ltd v Shah & another [2002] 1 EA 64 the High Court** stated that: -

15.An error in principle was described thus: -‘to take into account irrelevant factors or to omit to take into account relevant factors...’ **First American Bank Ltd v Shah & another ibid.**

16.And also stated ‘...some of the relevant factors include the nature and importance of the cause or matter, the amount or value of this subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial judge...not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him...” **First American Bank Ltd v Shah & another ibid.**

17. See also Peter Muthoka & Anor v Ochieng & 3 Others [2019] eKLR

18. The applicant argued that the taxing officer ought to have determined the value of the subject matter based on the value of the respondent companies' assets of KES. 441,010,910.00/- given in the bill of costs. He relied on a valuation report by Knight Frank dated 7.12.2020 to support the value. However, he indicated that value of the assets as per the report was KES. 291,010,910/- and that he estimated that the value of the assets which were fixed and had appreciated in value since the report was prepared.

Instruction fees

19. In the impugned ruling, the taxing officer considered the items drawn in the applicant's bill of costs. She noted that with respect to item 1, that the applicant sought Kshs. 8,455,163.65 on the basis that the total value of the respondents' property was Kshs. 441,010,910/-.

20. The taxing officer applied the principles on the determination of the subject matter set out in

**Eastland Hotel Ltd v Wafula N. Simiyu & Co.
Advocates [2014] eKLR.**

21. These principles were well established in **Joreth Limited vs Kigano & Associates [supra]** as follows: -

“The value of the subject matter of a suit for purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all relevant circumstances.”

22. The taxing officer observed as follows: -

“I have not seen anywhere in the pleadings, judgment or settlement where the value of the subject matter was cited.

For this reason I shall disregard the instruction fees that has been based on the total value of the subject matter.”

23.The taxing officer therefore noted that the cause was instituted by a plaint application which sought prerogative orders. She thus applied **Schedule 6 (1) (j) of the ARO** and taxed the instruction fees at Kshs. 2,000,000/-.

24.The applicant acknowledged that the taxation proceedings related to a commercial matter and not a succession cause. Therefore, the reference made to the **similar taxation matter over the same subject matter, in Misc. Application No. 75 of 2016 (Karanja Kiarie & Company Advocates v Estate of the Late Jayantilal Haribhai Bakrania - Deceased)**, emanating from succession is misplaced.

25.In my considered opinion, the taxing officer was correct in finding that the value of the subject matter was not ascertainable from the pleadings, judgment or settlement.

26.I am not persuaded that there is an error of principle in determining the instruction fees to

warrant interference with the taxing officer's decision.

Other heads

27.The applicant challenged the taxing officer's assessment of other heads relating to correspondences and letters, perusal of document or pleading, drawing of any document or pleading, attendance to confirm filing of certificate of urgency, hourly and whole day court attendances, service within 3 KM. He urged the court to revise them upwards.

28.The respondents urged the court to maintain the taxing officer's assessment of these heads.

29.Proper guidance comes from the decision in **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd [1972] EA 162**, where **Spry, V-P.** stated at p.164 that: -

“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, and

particularly where he is an officer of great experience, merely because it thinks the award somewhat is 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.”

30. In light of the principles applicable and the taxation undertaken of costs herein, I am not persuaded that the taxing officer's assessment under the other heads is so low or high as to amount to an injustice to either party to warrant the court's interference.

Disposal

31. Accordingly, the applicant's reference application dated 18.6.2025 is dismissed with costs for want of merit.

Dated, signed and delivered at Nairobi through Microsoft Teams online application this 19th day of February, 2026

F. Gikonyo M

Judge

In the presence of: -

Sagusuga for Applicant

Kipkenda for Respondent

Ms. Tarus for Tirop for respondent

CA - Ivan/Aggrey