

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APP. NO. E039 OF 2025

HENRY MULIRO NDOMBI.....APPLICANT

VERSUS

NATIONAL POLICE SERVICE.....1ST
RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

ATTORNEY GENERAL OF KENYA.....3RD
RESPONDENT

RULING

1. Before this Court for determination is a Reference challenging the taxation of the party-and-party Bill of Costs by Hon. F. Nyamora, who, in a Ruling delivered on 16th October 2025, assessed the Bill of Costs at Kshs. 38,690/=.

2. The Applicant, being aggrieved by the Taxing Officer’s decision, filed the present Reference by way of a Chamber Summons dated 5th November 2025, seeking the following orders:

1) Spent.

- 2) *THAT this Honourable Court be pleased to vary and/or set aside the decision of the taxing officer contained in the Ruling delivered on 16th October 2025.*
- 3) *THAT in the alternative to prayer 2 above, this Honorable Court exercises its discretionary power and be pleased to re-tax the Party and Party Bill of Costs dated 28th August 2025 and/or award such amounts as it deems fit.*
- 4) *THAT in the alternative to prayers 2 and 3 above, the Honorable Court exercises its inherent jurisdiction and refers the Party and Party Bill of Costs dated 28th August 2025 for taxation before another taxing officer.*
- 5) *THAT this Honourable Court does make such further orders and or detections as it may deem necessary in the circumstances in order for the ends of justice to be met.*
3. The Application is premised on the grounds set out on its face and is supported by the Affidavit sworn on 5th November 2025 by **Henry Muliro Ndombi**, the Applicant herein. The Applicant states that he filed a Party-and-Party Bill of Costs dated 28th August 2025 seeking taxation of Kshs. 100,040/-.

4. The Applicant avers that in a Ruling delivered on 16th October 2025, the Taxing Officer, erred by taxing the Bill at Kshs. 38,690/- and taxing off Kshs. 61,350/- under Schedule VI of the Advocates Remuneration (Amendment) Order, 2014.
5. He further states that, being dissatisfied with the taxation, he lodged a Notice of Objection dated 22nd October 2025, challenging Items 1, 9, 16, 21, 27, 34, 12, 19, 46, 24, 30, 14, 15, 16, 20, 26, 33 and 39, and requested reasons for the Taxing Officer's decision. The Taxing Officer has failed or neglected to provide the reasons for the impugned taxation, contrary to Rule 11(1) of the Advocates (Remuneration) Order, thereby causing him prejudice.
6. The Applicant avers that he objects specifically to the taxation of Item 1 on instruction fees, which he had assessed at Kshs. 48,750/-, but which the Taxing Officer reduced to Kshs. 10,000/- on the basis that Schedule VI Rule 10(c)(viii) of the Advocates Remuneration (Amendment) Order, 2014 prescribes a minimum fee of Kshs. 5,000/- which he enhanced to Kshs. 10,000/-.
7. The Applicant contends that the Taxing Officer misapplied and/or misconstrued the applicable legal principles by relying on Schedule VI Rule 10(c)(viii), a provision that relates to appeals and appellate-related applications, thereby arriving at an unduly low, oppressive, and unjust award that failed to reflect the nature and extent of the work undertaken.

8. The Respondents did not file any response to the Application.

Analysis and Determination

9. The central issue for determination is whether the learned Taxing Officer misdirected himself in law and principle in taxing the Party and Party Bill of Costs, thereby arriving at an erroneous assessment.

10. The principles governing the Court's interference with the decision of a Taxing Officer are well settled. In the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR*, the Court stated as follows:

“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. In Arthur v Nyeri Electricity Undertaking [1961] EA 492, the predecessor of this Court observed that where there has been an error in principle, the court will interfere; but questions solely of quantum are regarded as matters with which taxing officers are particularly fitted to deal, and the court will interfere only in exceptional cases.”

11. It is therefore clear that a Judge will only interfere with a Taxing Officer's discretion is warranted only where it is shown that the officer applied the wrong legal principles in assessing the costs.

12.As to what constitutes an error of principle, the Court in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board (supra)* elaborated that an example would be where the costs allowed are so manifestly excessive as to justify an inference that the Taxing Officer acted on erroneous principles, or where undue weight was placed on the difficulty, importance, or complexity of the matter. Similarly, a failure to apply the prescribed formula for assessing instruction fees under Schedule VI, or to consider all relevant circumstances of the case, would amount to an error in principle.

13.In the present case, the Applicant challenges the Taxing Officer's assessment of the instruction fee in the Party-and-Party Bill of Costs dated 28th August 2025.

14.In this regard, the instruction fee, the Applicant argues that the Taxing Officer misapplied or misconstrued the relevant legal principles by relying on Schedule VI Rule 10(c)(viii) of the Advocates Remuneration (Amendment) Order, 2014, a provision he contends, is applicable to appeals and appellate proceedings thereby arriving at an unduly low, oppressive, and unjust award that failed to reflect the nature and scope of the work undertaken.

15.It is evident from the Taxing Officer's Ruling that the instruction fee was assessed using the scale applicable to appeals. Further, it is noteworthy that the

miscellaneous application underlying the taxation was unopposed, yet the provision the Taxing Officer invoked expressly relates to opposed applications.

16. Accordingly, the Court finds that the Taxing Officer erred in principle by applying an incorrect scale for assessing the instruction fee.

17. In the circumstances, the Court finds it appropriate to remit the Bill of Costs dated **28th August 2025** for re-taxation.

18. Accordingly, the Chamber Summons dated 5th November 2025 is allowed as follows:

a) The Taxation Ruling with respect to the Bill of Costs dated 28th August 2025 is set aside and remitted for taxation by a different Taxing Officer.

b) There will be no order as to costs.

DATED, SIGNED and DELIVERED at NYERI this 17th day of February, 2026.

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STELLA RUTTO

JUDGE

In the presence of:

No appearance for the Applicant

No appearance for the Respondent

Ndati Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of **the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE