

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

MISCELLANEOUS APPLICATION NO. E041 OF 2025

IN THE MATTER OF: AN ADVOCATE/ CLIENT BILL OF COSTS IN RESPECT OF MALINDI ENVIROMENT AND LAND COURT NO. 207 OF 2015 ANAS IBRAHIM HUSSEIN VERSUS KIKAMBALA HOUSING ESTATE LTD & 2 OTHERS

MANASE ANANDA CALLEB T/A M. ANANDA & CO. ADVOCATES ADVOCATE/RESPONDENT

VERSUS

ANAS IBRAHIM HUSSEIN CLIENT/ APPLICANT

RULING

1. By the Chamber Summons application dated 17th September 2025, Anas Ibrahim Hussein (the Applicant) prays for orders that:

1. Spent;

2. Spent;

3. Spent;

4. This Honourable Court be pleased to review, vary and/or set aside the Ruling of the Taxing Officer (Honourable C.L. Yalwala) dated and delivered on 3rd September, 2025 in respect of items 2 to 104 and 106 to 115 on the Advocates Bill of Costs dated 17th April 2025 and that the Advocate's Bill of costs be taxed on merit;

5. In the alternative to Prayer 4, this Honourable Court be pleased to refer the Advocate's Bill of Costs dated 17th April, 2025 back for re-taxation by a different Taxing Officer and with proper directions thereon;

6. Any Certificate of Taxation or Warrants of Attachment emanating from the Ruling of the Taxing Officer (Honourable C.L. Yalwala) dated and delivered on 3rd September, 2025 be set aside; and

7. Costs of this Application be provided for.

2. The Reference is supported by an Affidavit sworn by the Applicant and is premised on some 11 grounds that:

- i. The Taxing Officer erred in failing to adhere to the binding legal principles of taxation of Bill of Costs as espoused in the case of Premchand Raichand Ltd & Another -Vs- Quarry Services E. Africa Ltd (1972) E.A 162;**
- ii. The sum of KES 639,620.27, which the Advocate's Bill of Costs was taxed at by the Taxing Officer is untenable, excessive and unreasonable, given the value of the subject matter of the suit is Kshs. 1,800,000/=;**
- iii. The proceedings subject to the Advocate's Bill of Costs relate to a prayer of specific performance;**
- iv. Given the simplicity of the matter, the Taxing Officer misdirected himself on a matter of principle and law and thus erred in holding that a sum of Kshs. 639,620.27 was a fair figure to tax the Advocate's Bill of Costs;**
- v. The Taxing Officer failed to provide any justification for not taking into consideration**

the sum of Kshs. 320,000/= paid to the Advocate by the Client/ Applicant and the 5th Plaintiff as costs relating to drawings, perusal, filings, Court attendances and process service when taxing the Advocate's Bill of Costs;

vi. With regard to taxation of items Nos. 106 to 115 of the Advocate's Bill of Costs, the Taxing Officer erred in law in awarding the Advocate costs for disbursements which were not supported by receipts;

vii. The wrongful assessment of items of drawings, copies, correspondence, attendances, perusals and service has the knock -on effect of having similarly inordinate high Advocate- Client Costs and VAT;

viii. The Client is apprehensive that the Advocate will take steps to execute and or enforce payment of the excessive costs as assessed;

ix. The Client's application stands the risk of being rendered nugatory, unless safeguarded by an interim order of stay of execution;

x. The Client will suffer substantial loss if the application succeeds after execution has been effected as he will have no assurance of recovery; and

xi. The client is willing to provide any security that this Court may order.

3. Manase Ananda Calleb T/A M. Ananda & Co. Advocates (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 30th September 2025, the Respondent avers that the Taxing Officers assessment was done in compliance with Schedule 6 of the Advocates Remuneration Order, 2009. It is his position that the sum of Kshs. 639,620.27 was correctly assessed as the value of the property is Kshs. 1,800,000/=.

4. The Respondent avers that the Applicant has not demonstrated that he paid any legal fees in respect of the property in question being house units number C15 and C16 situated on Plot No. Kilifi/Mtwapa/867. The Respondent further avers that Kshs. 320,000/= cannot apply to the five (5) files (being E035 of 2025; E037 of 2025, E041 of 2025,

E042 of 2025 and E061 of 2025) and that the receipts issued were for file opening fees and not legal fees or disbursements.

5. I have carefully perused and considered the Reference as well as the response thereto. I have similarly perused and considered the submissions placed before the Court by the Learned Advocates representing the parties.
6. By this Reference the Applicant has urged the Court to be pleased to review, vary and/or set aside the Ruling of the Taxing Officer dated and delivered on 3rd September 2025 in respect of items 2 to 104 and 106 to 115 in the Advocates/Client Bill of Costs dated 17th April 2025 and that the Bill be taxed on merit. In the alternative, the Applicant has urged the Court to direct that the Bill be re-taxed by a different Taxing Officer.
7. On the other hand, the Respondent is opposed to the application and avers that the assessment was done in compliance with Schedule 6 of the Advocates Remuneration Order .

8. In ***Nyangito & Co. Advocates -vs- Doinyo Lessos Creameries Ltd [2014] eKLR***, it was held that:

“The circumstances under which a Judge of the High Court interferes with the taxing officer’s discretion are now well known. These principles are:

(1) that 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 inference that it was based on an error of principle;

(2) it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge;

- (3) if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;**
- (4) it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;**
- (5) the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;**
- (6) the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;**

(7) the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of *First American Bank of Kenya v Shah and others* [2002] 1 EA 64.

9. Again in ***Premchand Raichand Limited & Another -vs- Quarry Services of East Africa Limited & Another* (1972) EA 162**, it was held 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 is 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.”

10. In the matter herein, the Applicant has faulted the manner of taxation of items 2 to 104 and 106 to 115 of the Bill of Costs. In regard to the said items, the Learned Taxing Officer concluded as follows in the impugned Ruling:

“2. Items 2 to 102 and 106 to 115 - Court Attendances, Drawings, Correspondences, Perusals, Service, Preparing the Bill of Costs and Disbursements totaling KES 323,206

Learned Counsel for the Client/Respondent submitted that these items in the bill of costs have not been drawn to scale and are not supported by any documentation. That in the absence of any supporting documents, these items should be taxed off or taxed at the lower scale.

In regard to the said items, items 2, 3, 7, 9, 11, 14, 15, 16 to 18, 21 to 23, 26 to 29, 31 to 36, 38 to 40, 42 to 44, 46 to 48, 51, 52, 54 to 56, 58, 59, 63, 64, 67, 68, 70 to 77, 79, 80, 82 to 84, 86 to 95, 97 to 102 are all allowed as they are drawn to scale. Also items 106 to 115 on disbursements are all allowed as

drawn as they comprise of the actual fees paid as supported by the pleadings and the receipts on the Court record.

Items 4, 10, 19, 20, 24, 37, 45, 49, 60, 65, 69, 78, 81 and 96 charged at Kshs 3,000/= are each taxed off by Kshs 2,000 to allow Kshs 1,000.00 each to cover Kshs 500.00 provided for any necessary application to or formal attendance at offices of Court or registrar on routine matters, plus Kshs 500.00 transport to Malindi.

The total amount taxed off these items is Kshs 28,000.00.

Items 5, 8, 12, 13, 25, 30, 41, 50, 57, 61, 62, 66 and 85 each charged at Kshs 7,100.00 are each taxed off by Kshs 4,800.00 each to allow Kshs 2,300.00 each for attendance at court or in chambers before Judge for one hour on the ordinary scale.

The total amount taxed off these items is Kshs. 62,400.00.

The full amount taxed off all the items in this item, is therefore Kshs. 90,400.00.”

11. Upon consideration of the record, I was unable to find any basis upon which to fault the taxation of the said items. The Learned Taxing Officer has properly exercised his discretion and given cogent reasons for the amounts that were allowed. In relation to items 106 to 115 on disbursements the same were allowed as they comprise of actual fees supported by pleadings and receipts on the Court Record.
12. Again while the Applicant asserted that a sum of Kshs. 320,000/= had been paid to the Respondent, there was nothing much in support of that contention. The receipts exhibited by the Applicant related to houses Nos. C15, C16, C23 and C28 in the name of one Ibrahim Mohamed Hussein. Given that the receipts were not in the name of the Applicant, there was no material upon which this Court could arrive at the conclusion that the Taxing Officer had erred.
13. In the premises, I did not find any merit in the Reference herein. I dismiss the same and make no orders as to costs.

14. As the matters herein were related these orders shall apply *mutatis mutandis* to ELC. Misc. No. E035 of 2025, E042 of 2025, E061 of 2025 and E037 of 2025.

15. It is so ordered.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 5th day of March, 2026.

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Kituku Advocate for the Client/Applicant
- c) Mr. Ngaira Advocate for the Advocate/Respondent