

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT CIVIL MISCELLANEOUS CASE NO. E035 OF**

**2025**

**BIASHARA SACCO SOCIETY  
LIMITED.....APPLICANT**

**-VERSUS-**

**MICHAEL MWANGI KINYUA.....  
RESPONDENT**

**JUDGEMENT**

1. Before this Court is the Chamber Summons dated **18<sup>th</sup> June 2025** by which the Applicant **BIASHARA SACCO SOCIETY** seeks the following orders:-

**“(a) THAT the Taxing Masters orders dated 05/06/2025 be set aside and the Bill be taxed afresh.**

**(b) THAT costs of this application be provided for.”**

2. The Summons which was premised upon **Rule 11(2)** of the Advocates **Remuneration Order 2014** was supported by the affidavit of even date sworn by **ANTHONY MWANGI NGANGA** an Advocate of the High Court of Kenya.
3. The Respondent **MICHAEL MWANGI KINYUA** opposed this reference. The reference was canvassed by way of written submissions. The Applicant filed the written submissions dated **9<sup>th</sup> September 2025**, whilst the Respondents relied upon their written submissions dated **26<sup>th</sup> August 2025**.
4. The claimant filed a matter before the Co-operative Tribunal and a judgment was on **25<sup>th</sup> July 2024** entered in favour of the Respondent. The Respondent thereafter filed party and party Bill of Costs dated **22<sup>nd</sup> April 2025** for an amount of **Kshs. 437, 941.68**. The Bill was opposed by the present applicant.
5. Vide a ruling delivered on **5<sup>th</sup> June 2025** **Hon. L. MBACHO, Deputy Registrar (Taxing Master)** taxed the Bill at **Kshs. 329,635/=**. Being dissatisfied with that decision the Applicant filed this reference.

### **ANALYSIS AND DETERMINATION**

6. I have carefully considered the reference, as well as the written submissions filed by both parties. It is clear that the only bone of contention in this matter is the amount awarded as Instruction Fees which was taxed at **Kshs. 220,000/=**. The Applicant did not oppose any of the other items which were taxed as drawn.
7. The Taxing officer set the value of the subject matter of the suit at **Kshs. 3,856,371** being the arrears outstanding on the claimant's loan which led the Appellant to advertise and sell the property by public auction. I cannot fault this finding.
8. **Section 51 D** of the Advocates (Remuneration) Order provides as follows:-
- “51 D subject to paragraph 22 the remuneration applicable to proceedings before Tribunals other than those under schedule 8 and 9 of this order except where otherwise prescribed under the Act setting up the Tribunal, is that set out in schedule. 11”**
9. This therefore means that **Schedule 11** is applicable in this case. In arriving at the figure of **Kshs. 220,000** as

instruction fees the Taxing Master did place reliance upon the provision of Schedule 11.

10. In **JORETH LTD -VS- KIGANO & ASSOCIATES [2002]** **eKLR** the court stated as follows:-

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

11. I am satisfied that the Taxing Master did not commit any error of principle of law. She properly exercised her judicial discretion in taxing the Bill. Accordingly I find no merit in

this reference. The same is dismissed in its entirety. Costs are awarded to the Respondent.

**Dated in Nyeri this 27<sup>th</sup> day of February, 2026.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**