

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION

HCCOMM MISC. REFERENCE NO. E118 OF 2025

**PLEXUS ENERGY
LIMITED.....APPLICANT**

VERSUS

**SOLAR POINTS TECHNOLOGY
LIMITED.....RESPONDENT**

RULING

- 1.** This ruling is in respect to the Reference dated 10th July 2025 wherein the Applicant challenges the decision of the Taxing Officer delivered on 19th June 2025, in which the Respondent's Advocate-Client Bill of Costs dated 1st August 2024 was taxed at Kshs. 174,535.00.
- 2.** The taxation arose from proceedings relating to the Applicant's application dated 6th December 2023 seeking stay of proceedings in Small Claims Court Commercial No. E4078 of 2023, pending the determination of HCCOMM Appeal No. E317 of 2023.
- 3.** In a ruling delivered on 26th July 2024, the High Court dismissed the said application with costs to the Respondent.
- 4.** Following that dismissal, the Respondent filed its Bill of Costs dated 1st August 2024, which was subsequently taxed by the Taxing Officer on 19th June 2025.
- 5.** Dissatisfied with the decision on taxation, the Applicant filed the present reference seeking the setting aside of the

taxation and that the Bill of Costs be remitted for a fresh taxation.

6. The Application was canvassed by way of written submissions.

The Applicant's Submissions

7. The Applicant submitted that the Bill of Costs was filed prematurely, arguing that the substantive appeal had not been admitted and proceedings in the Small Claims Court were still ongoing.
8. According to the Applicant, the Taxing Officer did not exercise discretion judicially and failed to consider that the appeal was still at an interlocutory stage.
9. It was further submitted that the instruction fees of Kshs. 120,000 were improperly awarded since the Respondent had only opposed an interlocutory application.
10. The Applicant argued that the Taxing Officer ought to have applied Schedule 6 paragraph (c) of the Advocates Remuneration (Amendment) Order, 2014, which provides for fees relating to applications. In particular, the Applicant relied on paragraph (c)(vi) which provides:

“to present or oppose any other application for a temporary injunction or similar order if unopposed.”

11. The Applicant contended that under that schedule the amount chargeable would be Kshs. 3,000, or not less

than Kshs. 5,000 if opposed, and that the taxation of Kshs. 120,000 was therefore excessive and unreasonable.

12. The Applicant further submitted that assessing instruction fees for the entire appeal before the appeal had been heard would lead to double taxation once the appeal is eventually determined.

13. The Applicant therefore urged the Court to find that the Taxing Officer committed an error of principle by taxing instruction fees as though the Respondent had defended the entire appeal.

14. Reliance is also placed on ***KANU National Elections Board & 2 Others vs. Salah Yakub Farah [2018] eKLR***, where the Court observed:

“Costs are awarded to a successful party in order to indemnify him/her for the expense to which he/she has been put through having been unjustly compelled either to initiate or to defend litigation. This underscores that a moderating balance must be struck which affords the innocent party adequate indemnification, but within reasonable bounds.”

15. The Applicant therefore urged the Court sets aside the taxation and orders re-taxation before a different Taxing Officer.

The Respondent’s Submissions

- 16.** The Respondent opposed the reference and submitted that the taxation was lawful and properly conducted.
- 17.** It was argued that the Respondent was served with the Memorandum of Appeal and the application for stay of proceedings dated 6th December 2023, upon which it instructed counsel.
- 18.** Counsel for the Respondent prepared a Replying Affidavit, written submissions, attended court and argued the application, which resulted in the ruling delivered on 26th July 2024 dismissing the application with costs.
- 19.** The Respondent submitted that once the Court dismissed the application with costs, costs crystallised immediately, entitling the Respondent to file its Bill of Costs.
- 20.** Reliance was placed on Section 27 of the Civil Procedure Act, which provides that costs follow the event unless the court orders otherwise.
- 21.** The Respondent further submitted that instruction fees are earned upon instruction and commencement of work, and not upon conclusion of the entire case.

22. The Respondent relied on ***Okoth & Kiplagat Advocates vs. Board of Trustees National Social Security Fund [2007] eKLR***, where the Court stated:

“I reckon that instruction fees is an independent and static item chargeable once and is not effected or determined by the stage the suit has reached. The progress of a matter and the steps undertaken is not a factor in computing instructions fees provided it is shown that the Advocates had been instructed to undertake a brief.”

23. It was therefore submitted that the Taxing Officer correctly assessed instruction fees based on the value of the subject matter, which was Kshs. 970,260.

24. The Respondent submitted that the Taxing Officer correctly applied Schedule 6(1)(b) of the Advocates Remuneration (Amendment) Order, 2014, which prescribes:

“Kshs. 120,000 for claims between Kshs. 750,000 and Kshs. 1,000,000.”

25. The Respondent also submitted that the award of getting-up fees was proper. Under Schedule 6(3) of the Advocates Remuneration Order:

“getting-up fees shall be one-third of the instruction fees where counsel has prepared for hearing.”

26. According to the Respondent, since counsel prepared affidavits, submissions and argued the matter in court, the award of Kshs. 40,000 as getting-up fees was justified.

27. The Respondent further submitted that the Applicant has failed to demonstrate any error of principle to justify interference with taxation.

28. Reliance is placed on ***Kipkorir, Titoo & Kiara Advocates vs. Deposit Protection Fund Board [2005] eKLR***, where the Court of Appeal held:

“Mere dissatisfaction with the amount allowed by the taxing master is not sufficient.”

29. The Respondent therefore urged the Court to dismiss the reference with costs.

Issues for Determination

30. From the pleadings and submissions, the following issues arise for determination:

- a) *Whether the Bill of Costs was premature.***
- b) *Whether the Taxing Officer applied the correct principles of taxation.***

- c) ***Whether the taxation improperly treated the proceedings as if the main appeal had been heard on merits.***
- d) ***Whether the Applicant has demonstrated an error of principle warranting interference with the taxation.***

Analysis and Determination

- 31.** On whether the Bill of Costs was premature, it was not disputed that the Applicant's application dated 6th December 2023 seeking stay of proceedings was dismissed with costs on 26th July 2024.
- 32.** Under Section 27 of the Civil Procedure Act, costs follow the event unless the court orders otherwise. The dismissal of the application therefore crystallized the Respondent's entitlement to costs in respect of that application.
- 33.** The Respondent was thus entitled to file a Bill of Costs arising from the dismissal of the application. However, the critical question is the proper basis upon which those costs should have been taxed.
- 34.** The jurisdiction of this Court when considering a reference from taxation is limited.
- 35.** In ***First American Bank of Kenya vs. Shah & Others [2002] 1 EA 64***, Ringera J (as he then was) stated:

“The court will not normally interfere with the exercise of discretion by the taxing officer

unless the taxing officer erred in principle in assessing the costs.”

36. Similarly, the Court of Appeal in ***Kipkorir, Titoo & Kiara Advocates vs. Deposit Protection Fund Board*** [2005] eKLR held:

“The High Court will only interfere with the taxing officer’s decision if it is based on an error of principle or the fee awarded is manifestly excessive.”

37. An error of principle may arise where the taxing officer misapprehends the nature of the proceedings being taxed or applies the wrong scale or basis for determining instruction fees.

38. On whether the taxation was based on an incorrect premise, it was not disputed that the proceedings that gave rise to the impugned taxation concerned a discrete interlocutory application for stay of proceedings pending appeal as the substantive appeal itself had not been heard or determined.

39. The record however shows that the Taxing Officer assessed instruction fees at Kshs. 120,000 based on the value of the subject matter in the appeal, namely Kshs. 970,260, under Schedule 6(1)(b) of the Advocates Remuneration Order.

40. With respect, I note that this approach treated the matter as if the Respondent’s advocates had been

instructed to defend the appeal itself, rather than merely to oppose an interlocutory application for stay of proceedings.

- 41.** It is trite that instruction fees must reflect the nature and scope of the work actually undertaken. This is the position that was stated in ***Joreth Limited vs. Kigano & Associates, Civil Appeal No. 66 of 1999***, the Court of Appeal stated:

“Instruction fee is an independent and static item charged once only and is not affected or determined by the stage the suit has reached.”

- 42.** While instruction fees are indeed earned once instructions are given, the nature of those instructions must be correctly identified. Where the instructions relate only to an interlocutory application, the instruction fee must be assessed in that context. In ***Premchand Raichand Ltd vs. Quarry Services of East Africa Ltd [1972] EA 162***, the Court stated that costs should not be allowed to rise to such a level as to confine access to the courts to the wealthy.

- 43.** The Taxing Officer must therefore ensure that the fee awarded is commensurate with the work done and the nature of the proceedings.

- 44.** In the present case, the taxation appears to have proceeded on the assumption that the Respondent’s advocates were defending the substantive appeal, yet the costs being taxed arose only from an application for stay

of proceedings pending appeal. The appeal itself had not been heard, and the Respondent's advocates had not undertaken the substantive work associated with defending an appeal.

45. Consequently, the instruction fee assessed on the basis of the entire subject matter of the appeal was based on an incorrect premise.

46. I also note that the Taxing Officer also awarded getting-up fees of Kshs. 40,000.

47. Under Schedule 6(3) of the Advocates Remuneration Order, getting-up fees are:

“one-third of the instruction fee where the advocate has prepared for hearing.”

48. Getting-up fees are however typically awarded where a matter has been prepared for hearing on the merits.

49. In the present case, the proceedings concerned an interlocutory application rather than a hearing of the substantive appeal. I find that the award of getting-up fees therefore flowed from the same erroneous premise that the matter had been prepared for substantive hearing.

50. Having considered the pleadings, submissions and authorities cited, I find that the Taxing Officer proceeded on an incorrect basis by assessing the Bill of Costs as though the Respondent's advocates had been instructed to defend the substantive appeal, yet the costs in question arose solely from an interlocutory application for stay of

proceedings pending appeal. This constituted an error of principle warranting interference by this Court.

51. Accordingly, I find that the reference is merited and I therefore make the following orders:

- a) ***The Applicant's reference dated 10th July 2025 is allowed.***
- b) ***The ruling of the Taxing Officer delivered on 19th June 2025 is set aside.***
- c) ***The Respondent's Advocate-Client Bill of Costs dated 1st August 2024 is remitted for fresh taxation before a different Taxing Officer.***
- d) ***The Applicant shall have the costs of this reference.***

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH, 2026.

HON. W. A. OKWANY

JUDGE

12/03/2026

FOR APPELLANT No appearance

FOR THE RESPONDENT No appearance

COURT ASSISTANT Abdirizak