



Jowyn Credit Limited v Javier Georgiadis and Sylvester Law (Miscellaneous Civil Application E1291 of 2025) [2026] KEHC 3741 (KLR) (Civ) (19 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3741 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1291 OF 2025**

JN MULWA, J

MARCH 19, 2026

BETWEEN

JOWYN CREDIT LIMITED CLIENT

AND

JAVIER GEORGIADIS AND SYLVESTER LAW ADVOCATE

RULING

1. For determination is the chamber summons application dated 04/09/2025 filed by Jowyn Credit Ltd (hereafter the client Applicant) as against Javier Georgiadis & Sylvester Law pursuant to Section 1A, 1B, 3 & 3A of the *Civil Procedure Act* (CPA), and Paragraph 11 of the Advocates Remuneration Order (ARO) seeking inter alia -:
 - a. Spent.
 - b. Spent.
 - c. That the decision of the taxing officer delivered on 27/08/2025, the quantum awarded thereon and the reasoning with respect to the said award be and is hereby set aside.
 - d. That this honorable Court be pleased to direct the Respondent's bill of costs dated 27/05/2025 be remitted to a different taxing officer for taxation.
 - e. In the alternative to prayer (d) above, the Court be pleased to re-tax the items in the bill of costs dated 27/05/2025.
 - f. Costs of the application be in the cause.



2. The application is premised on grounds amplified in the supporting affidavit, of even date and further affidavit dated 25/02/2026, both sworn by William Mwololo Ndukue, who cites being a Director of the Applicant.
3. Javier Georgiadis & Sylvester Law (hereafter the Advocate/Respondent) on its part oppose the application by way of a replying affidavit sworn by Javier Munzala, who cites being an advocate and a partner in the Respondent firm.
4. Directions were taken on disposal of the application by way of written submissions. Only the Applicant complied. That said, the Court has considered the rival material and Applicant's submissions, to wit, it postulates that the issues for determination concern: -
 - a. Whether the chamber summons application is merited?
 - b. Who ought to bear the costs of the instant application?

Whether the chamber summons application is merited?

5. In presenting the instant applicant, the Applicant relied on among other provision Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court", to wit, this Court's inherent powers was judiciously addressed by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR and requires no restatement.
6. Alongside the above, the Applicant equally cited Paragraph 11 of the ARO, which provides that;-
 1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
7. As to the above issue, this Court has repletely drawn guidance from the dicta in *Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd* [1972] EA 162, 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 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."



See also Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others [2006] eKLR.

8. The Court of Appeal in the above case proceeded to lay down some principles to undergird the exercise of discretion by taxing officers in the assessment of costs, as follows:-

- “(a) that costs be not allowed to rise to such a level as to limit access to the courts to the wealthy only;
- (b) that a successful litigant ought to be fairly reimbursed for the costs he has had to incur;
- (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession; and
- (d) that so far as practicable there should be consistency in the awards made.”

See also Rodgers Mwema Nzioka v The Attorney General & 9 Others [2007] eKLR.

9. Similarly, Ringera, J (as he then was) in First American Bank of Kenya v. Shah & Others [2002] 1 E.A. 64 at p.69, stated; -

“First, I find that on the authorities, this 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.... Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and 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. Needless to state 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. 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.”

10. Keeping in mind the above principles, what I gather to be the gist of the Applicant’s affidavit material is that the taxing officer erred in taxing the advocate-client’s bill of costs despite the Applicant raising jurisdictional objection and evidence of a fee agreement whereas her award on taxation was excessive despite evidence of prior payments made to the Respondent’s bank account.

11. In its response, the Respondent contends that the bank statements evinced by the Applicant have been filed in multiple suits falsely claiming that they related to payments for subject matter in the bill of costs. It was further deposed that the Applicant has failed to particularize any error in principle or misconduct by the taxing officer that would justify the Court’s interference with the taxation



12. At this juncture it would be pertinent to set out in part, facets of the impugned taxing officer decision in order to contextualize the Applicant's disputation. In her ruling, the taxing officer rendered herself as follows-;

"I have considered the Respondent's preliminary objection, averments in form of the replying affidavit, the written submissions filed herein including the authorities cited therein by learned counsel for the Respondent.

The issue for determination are as follows:

1. Whether I have jurisdiction to entertain the issue of retainer
2. Whether the Applicant and Respondent had entered into an Agreement on fees.
3. Whether the Respondent was properly served
4. Whether or not the Respondent's Preliminary Objection should be sustained.

On whether this Court has jurisdiction to determine a question of retainer.

13. The main issue for consideration in this matter is whether the Applicant herein was retained by the Respondent and thus entitled to costs.

The powers of the Taxing Officer are provided under Paragraph 13A of the Advocates Remuneration Order. The issue of retainer is core as it determines whether a matter can be sustained or not. I am guided by the decision of the Court of Appeal in Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited NRB CA Civil Appeal No. 154 of 2014 [2017] eKLR where the Court in holding that the Deputy Registrar had jurisdiction to determine, as a preliminary issue of whether an Advocate/ Client relationship existed as a prelude to taxation held as follows:.....

Based on the foregoing therefore, I hold that I have jurisdiction to determine the issue of Retainer.

14. Whether the Applicant and Respondent had entered into an Agreement on fees.

Section 45 of the *Advocates Act* provides that"

An agreement entered into pursuant to the above section is what can be termed as a 'retainer agreement.' As the section indicates, under such agreement, the parties 'fix' or put a cap on the Advocate's instruction fee, meaning that both parties are beholden to the amount so fixed.

15. From the foregoing it should thus be clear that the presence of a retainer is what in turn gives rise to the retainer agreement. In other words, only when the engagement and the terms thereof have been agreed upon, can the same be reduced into writing.
16. Under the proviso to Section 45 (5) of the Act, an Advocate who is a party to a retainer agreement and who has acted diligently for the client is entitled to sue and recover for the whole retainer fee should his/her client default in payment thereof.
17. It is trite that the existence of an Advocate-Client relationship is central as it gives jurisdiction to the Taxing Master to entertain a Bill of Costs.
18. In the instant case, it is not in dispute that the Advocate herein represented the Respondent in Small Claims Court at Nairobi SCCOM No.224 following the demand letter dated 18th June, 2021 and the subsequent Pleadings filed thereafter by the Advocate on behalf of the client wherein he proceeded



to act until Judgement was delivered and it is therefore clear that the Advocate was instructed by the client.

19. The act of authorizing an Advocate to act on behalf of a client constitutes the Advocate's retainer by assistance of a litigant who primarily through his/her choice and implication benefited from the labour of the Advocate. It is not the law that the Advocate must obtain a written authority from the client before commencing a matter. The participation and authority of an Advocate in a matter can be implied and discerned from the conduct of the Client.
20. It is not part of the duty of this Court to come to the aid a litigant by denying the right of the denying the right of the right of the Advocate to seek payment of his fees. My view is that the matter was handled by the Advocate with full instructions. Such instruction and /or employment brings a legal obligation, which is payment of legal fees incurred.
21. For the foregoing therefore the court finds that there existed an Advocate Client relationship in this case and the Applicant is estopped by its conduct from denying the existence of the same. Having established that the relationship between the parties was based on a retainer, nothing forbids the Applicant from filing his Bill of Costs and this court from proceeding with the taxation.

Whether the Respondent was properly served and whether the Respondent's Preliminary Objection should be sustained

22. I have carefully I have carefully considered the Bill of Costs filed by the Applicant herein. This is a matter the Applicant/Advocate was instructed in the year 2023 as per the Notice of Change of Advocates dated 4th December, 2023 and hence the applicable Advocates Remuneration (Amendment) Order is that of 2014.
23. The applicable law is Applicable law is Schedule 7 of the Advocates (Remuneration) (Amendment) No. 2 Order, 2014. In the case of Joreth Limited -vs- Kigano & Associates, Civil Appeal No. 66 OF 1997 [2002] 1 E.A 92 the Court of Appeal held as follows:-

It is therefore trite law that the instructions fees is calculated from the value of the subject matter, which is discerned from the Pleadings, Judgement or Settlement.

In the instant case, the value of the subject matter as per the Lower Court Judgement is Kshs.303,250.00. The higher scale shall be applied as the matter was defended. This item is therefore taxed at Kshs.65,000.00 as drawn.

Item No. 2, 4, & 6- These items are not provided under Schedule 7 of the Advocates Remuneration Order, 2014. They are therefore taxed off

Items No.3, 5, 7, 13-20 - These items relate to perusals, drawings, service, making copies, attendances and Disbursements, which are supported by receipts. They are reasonably drawn to scale and I tax them as drawn.

Advocate and Client Costs

The Advocates Remuneration (Amendment) Order 2014 Schedule VII B on Advocate and Client costs provides that:

As between Advocate and Client the minimum fee shall be-

The fees prescribed in A above, increased by 50% ;or

The fees ordered by the Court, increased by 50%; or



The fees agreed by the parties under Paragraph 57 of this Order increased by 50%; as the case may be, such increase to include all proper attendances on the Client and all necessary correspondences.

Total Kshs.73,300.00

Add ½ Kshs.36,650.00

Total Kshs.109,950.00

Add VAT 16% Kshs.17,592.00

Disbursements Kshs.7,450.00

Total Kshs.134,992.00

Conclusion

Based on the foregoing therefore, the Advocate-Client Bill of Costs dated 27th May,2025 and filed in Court on 30th May,2025 is hereby taxed at Kshs.134,992.00 (Kenya Shillings one hundred and thirty four thousand, nine hundred and ninety-two).

24. With the above in reserve, the Court of Appeal in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR stated as follows in respect of reference before a Judge;

“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. 15. 15. In *Arthur v Nyeri Electricity Undertaking* [1961] EA 497, the predecessor of this Court said at page 492 paragraph I:

“where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.

An example of an error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles – see *Arthur v Nyeri Electricity Undertaking* (supra) or where the taxing officer has over emphasized the difficulties, importance and complexity of the suit (see *Devshi Dhanji v Kanji Naran Patel* (No. 2), [1978] KLR 243. We have no doubt that if the taxing officer fails to apply the formula for assessing instructions fees or costs specified in schedule VI or fails to give due consideration to all relevant circumstances of the case particularly the matters specified in proviso (1) of schedule VIA (1), that would be an error in principle. And if a judge on reference from a taxing officer finds that the taxing officer has committed an error of principle the general practice is to remit the question of quantum for the decision of taxing officer (see - *D’Souza v Ferrao* [1960] EA 602. The judge has however a discretion to deal with the matter himself if the justice of the case so requires (see *Devshi Dhanji v Kanji Naran Patel* (No. 2) (supra).

25. Here, in light of the Applicants’ contestations, as may concern the question of jurisdiction of the taxing officer to entertain the bill of costs concerning whether there existed an advocate client relationship, the learned taxing officer was well guided by the decision in *Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited* [2017] KECA 431 (KLR), hence her determination cannot be faulted.
26. As may concerns the issue whether the award was excessive despite evidence of prior payments made to the Respondent, I have taken the liberty of perusing the bill of costs and response filed thereto. I note



in the response, it evinced copies of bank statements purporting to demonstrate prior payments to the Advocate to wit, it thus argues that the advocate had been dully paid and therefore the latter is estopped from bringing the bill of costs for taxation. Evidently, the Advocate assailed the said bank statements as having been used in other matters to feign payment of fees in the said matters, and likewise as is in the instant matter.

27. A review of the impugned taxation decision, the taxing officer failed to address herself to the issue despite the Applicant's challenge of the same in its response and submissions thereto. The taxing officer ought to have addressed herself to each issue, and failure to do so, the Applicant's contestation that the award may have been excessive does not seem far-fetched. As is, this Court is hamstrung towards addressing itself to the issue given the Taxing Officer omission.

Specifically, on whether or not this Court can proceed to interfere with the exercise of discretion by the taxing officer and or whether there was an error in principle in addressing the question of fees earlier received. In the result, the Applicant's reference is found to be merited and is allowed. Consequently, the decision of the taxing officer dated 27/08/2025 is set aside and the bill of costs will be taxed afresh before a different taxing officer.

28. Applying my discretion on the matter, I proceed to award the Applicant/client costs of the application however capped at Kshs. 3,000/-

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 19TH MARCH, 2026.

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JANET MULWA.

JUDGE

