

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & TAX DIVISION
MISC APPL E067 OF 2024

BETWEEN

KTK
ADVOCATES
.ADVOCATE

AND

SBM BANK (MAURITIUS)
LIMITEDCLIENT

RULING

- 1.Through a taxation ruling dated 22nd May 2025, the advocate’s bill of costs dated 30th January 2024 was taxed at Kshs. 348,647,802/-by **Hon. Chembeni L. Adisa, Deputy Registrar.**
- 2.Aggrieved, the client filed a reference by way of chamber summons dated **5th June 2025**, seeking to set aside the taxation ruling.
- 3.Conversely, the advocate filed a notice of motion dated **24th June 2025**, seeking entry of judgment in the taxed sum of **Kshs. 348,647,802/-.**

Client’s case

4. The client urges the court to set aside the taxing officer's decision that there was no valid fee agreement between it and the advocate.
5. The client urged the court to find that a valid fee agreement existed and to thereby strike out the advocate's bill of costs.
6. Alternatively, the client urged the court to re-assess the instruction fees on bankruptcy and insolvency notices and tax off correspondence and disbursement items or to remit the bill of costs to a different taxing officer for re-taxation of the various impugned items.
7. The client asserted that a binding fee agreement of **USD 130,000** existed between the parties, established via correspondence on 18th and 19th August 2022. It also asserted that the fees were fully paid by it on 20th September 2025.
8. The client contended that the taxing officer lacked jurisdiction to determine the validity of the fee agreement and should have referred the matter to a judge.
9. The client highlighted that the advocate had been fully paid **USD 157,000** under the said

agreement. It therefore argued that the award of **Kshs. 348,647,802/=** was manifestly excessive.

10.The client faulted the advocate for filing four separate bills of costs relating to different borrowers in **Misc. Applications E067, E068, E069 and E070 of 2024**. It contended that the bills of costs all relate to the same tasks already paid for, being advice on recovery, demand letters and insolvency notices. It therefore argued that the advocate is attempting to recover additional fees for work already compensated.

11.The client argued that the taxing officer erred in assessing instruction fees at **Kshs. 200,000,000/-** based on the value of the subject matter of **USD 30.7 Million**. It contended that the taxing officer failed to identify the applicable schedule of the **Advocates Remuneration Order (ARO)**.

12.The client submitted that the work done related to issuing statutory and insolvency notices which have prescribed minimum fees under **Schedule 6**. It therefore asserted that instruction fees

should first be based on the prescribed scale then increased with justification.

13.The client also faulted the taxing officer for failing to analyse the complexity of the matter, novelty of the issues, responsibility assumed and the time spent or skill deployed. It pointed out that the advocate only issued demand letters and filed statutory and insolvency notices. It thus contended that the taxing officer improperly relied on the value of the subject matter.

14.The client argued that the taxing officer erred by allowing numerous items for correspondence between it and the advocate. It contended that **Schedule 6 Part B** already includes correspondence within advocate-client costs.

15.The client faulted the taxing officer for allowing Kshs. 300,000/- in disbursements. It argued that the advocate did not produce receipts or vouchers as required under the ARO.

Advocate's Response

16.The advocate opposed the reference through grounds of opposition dated **22nd October 2025**, contending that the application does not

establish how the taxing officer erred in principle or that the award is manifestly excessive.

17. The advocate also contended that the application is fatally defective for want of substratum, was filed *in vacuo* and is without basis. It highlighted that the reference is not supported by any affidavit and there is no attachment of the impugned ruling. It faulted the client for failing to exhibit the notice of objection to the taxing officer; setting out all the items as objected to; failing to attach a copy of the taxation ruling and mixing up the issue of fee agreement and objection to taxation.

18. The advocate faulted the client for neither objecting to the taxing officer's jurisdiction nor making an application on purported fee arrangement as none exists.

19. The advocate argued that the taxing officer has jurisdiction to determine whether there is a fee agreement. That since the client submitted on the bill of costs, it accepted that it was properly before the taxing officer and cannot change its position to argue that there was a fee agreement.

Submissions

20.The client and the advocate filed written submissions dated 14th November 2025 and 10th December 2025.

21.The client relied on **First American Bank of Kenya Ltd v Gulab P. Shah & 2 Others [2002] KEHC 1277 (KLR)** on instances when a judge can interfere with the decision of a taxing master, **Abincha & Co Advocates v Trident Insurance Co Ltd [2013] eKLR** and **Corporate Insurance Company Ltd v Kang'ethe & Mola Advocates [2022] KEHC 545 (KLR)** on jurisdiction of a taxing officer.

22.The client also relied on **Booth Extrusion Limited (Formerly Booth Manufacturing Africa Limited) v Dumbeyia Nelson Muturi Harun t/a Nelson Harun & Company Advocates [2017] eKLR**, where the Court of Appeal confirmed that an agreement on fees can be reached by correspondence.

23.The client further relied on **Nairobi City County v Tom Ojienda Associates [2018] KEHC 5017 (KLR)** to assert that a taxing officer must indicate

the Rules and Schedules of the Advocates Remuneration Order while assessing instruction fees; **Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR)**, that after setting out the basic fees that the taxing officer can exercise their discretion to increase the said basic fees.

24. The advocate relied on **Owners of The Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited [1989] KLR 1** on jurisdiction; **Machira & Co. Advocates v Magugu [2002] 2 EA 428** to the effect that the ARO is a complete code and there is no provision for the invocation of the Civil Procedure Rules; and **Otieno Ragot Company Advocates v National Bank of Kenya Limited [2020] KECA 894 (KLR)** where the court reinstated the decision of the taxing officer who had found that there was no advocate/client fee agreement and had proceeded to tax the bill.

25. The advocate also relied on **JA Guserwa & Co. Advocates v Uzuri Foods Limited Nairobi ELR Misc. Appl. No. E078 of 2025, [Unreported]** and **Nairobi HC C & HR Misc. Appl. No. 33 of**

2019, Maina & Maina Advocates -Vs- Benedict Kabugi Ndungu [Unreported] on the interpretation of **Rule 11 (1) of the ARO** and procedure of challenging a taxation ruling.

26. The advocate relied on **Nairobi HC Misc. Civil Case No. 52 of 2012, Lubulellah & Associates Advocates v N.K. Brothers Limited [Unreported] (Annexed as Pages 63-69)**, for the proposition that the existence of a fee agreement is one that ought to be resolved before the advocate's bill of costs was taxed. It also relied on **Kakamega HC Misc. No. E07 of 2020, Teddy Mulehi Monyo & 2 Others v Peter Gicharu Ngige [Unreported]** and **Machakos HC Misc. Reference No. E047 of 2020, Joseph Tamata Advocates v Mary Nthambi Mbuvi [Unreported]** where it was held that failure to attach a copy of the taxation ruling was an impediment to the court determining whether the taxing officer erred in principle.

27. The advocate relied on **Nairobi HC Misc. Appl. No. 46 of 2015, Abuodha & Omina Advocates v Kakuta Maimai Hamisi [Unreported]** and

Kajiado HC Misc. Appl. No. 73 of 2019, Ali Mohammed Egal v Maina & Onsare Partners [Unreported] to submit that a valid and binding agreement under **section 45 of the Advocates Act** must be in writing and signed by the client or his agent.

28. The advocate asserted that the awarded sum was based on contractual documents and charge instruments. It relied on **Kenya Airports Authority v Otieno Ragot & Co. Advocates (Petition Eo11 of 2023) [2024] KESC 44 (KLR)** and **Kisumu Civil Appeal No. 37 of 2007, George Arunga Sino t/a Jone Brooks Consultants Limited v Patrick J.O. & Geoffrey D.O. Yogo t/a Atieno Yogo & Co. Advocates [Unreported]** on the value of the subject matter.

29. The advocate submitted that the court should not interfere with a taxing officer's decision unless there is an error in principle. In support, it cited **Nairobi HC Misc. Cause No. 719 of 2009, Lubulellah & Associates Advocates v Airtime Business Solutions [Unreported], Nairobi HCCC No. 2255 of 2000, First American Bank**

of Kenya Ltd v Gulab P. Shah & Others [Unreported], Siaya HC Misc. Ref. Appl. No. E019 of 2022, Fredrick Onyango Aoro v Mary Auma Were [Unreported].

30.The advocate asserted that it carried out over 44 different and separate instructions.

31.The advocate contended that the client's submissions dated 18th February 2025 ought to be revisited in the reference. It argued that the submissions ought to be struck out as the client submitted on consolidated issues arising from matters that had not been consolidated, a violation of the law.

32.The advocate urged the court to dismiss the client's reference and to allow its application for entry of judgment in terms of the taxed costs.

Analysis and Determination

Validity of the client's application

33.The advocate argued that the reference was invalid as it is not supported by an affidavit. However, an application must not always be supported by an affidavit, for instance, where an

application is purely on matters of law. **Order 51 Rule 4 of the Civil Procedure Rules. Skair Associates Architects v Evangelical Lutheran Church of Kenya 4 others [2015] KEHC 7461 (KLR)**

34.The advocate faulted the client for failing to annex a copy of the impugned ruling. It relied on court decisions to the effect that failure to annex the taxation ruling would be an impediment to the court's determination whether there is an error of principle.

35.In this matter, the taxation ruling is on record. Therefore, the court can fully consider and determine the reference application. It is therefore distinguishable from the cases relied on by the advocate.

36.The advocate faulted the client for not filing a notice of objection against the taxation ruling as required under **Para. 11 (1) and 2 of the Advocates Remuneration Order, 2014.**

37.The impugned ruling contains reasons. Courts have held that if a taxation ruling contains reasons within it, there is no need to file a notice

of objection. **A M Kimani Co Advocates v Trident Insurance Co Limited 2016 KEHC 7549 (KLR)**

Taxing officer's jurisdiction

38. The client contended that the taxing officer lacked jurisdiction to determine the validity of the fee agreement and should have referred the matter to a judge.

39. On the other hand, the advocate asserted that the taxing officer has jurisdiction to determine whether there is a fee agreement. That since the client submitted on the bill of costs, it accepted that it was properly before the taxing officer and cannot change its position to argue that there was a fee agreement.

40. The taxing officer is empowered under **the Advocates Act** and **Advocates (Remuneration) Order** to determine the competence or validity of a bill of costs before it. These are matters of preliminary significance and include whether advocate-client relationship or fee agreement between the parties exist. **Wilfred**

**N. Konosi t/a Konosi & Co. Advocates v
Flamco Limited [2017] KECA 431 (KLR).**

41. Accordingly, I find that the taxing officer had jurisdiction to determine the validity of bill of costs based where a claim that there was a fee agreement is made.

42. The taxing officer considered the client's preliminary objection dated 5th February 2025 based on the grounds that there was an agreement by virtue of correspondence exchanged between it and the advocate on 18th and 19th August 2022 and that the fees for the work done by the advocate was agreed at USD 130,000 and that these fees were paid by it on 20th September 2022.

43. The taxing officer found that: -

“In this case the respondent relies on correspondence which is not signed by it. The correspondences do not conform to the formal requirements as envisaged by the above provisions. ... In the circumstances, I find that there was no valid agreement between the respondent and the applicant.”

44.I have read the correspondence between the advocate and the client. The advocate was retained to undertake recovery of facilities advanced to **Unifresh Exotics (K) Limited, B. N. Kotecha & Sons Limited, Welwyn International Limited** and **Pabari Distributors Limited**.

45.The client deposed that these facilities were guaranteed by **Bytewise Limited, Euro Petroleum Products (E.A) Limited, Uni Supplies & Marketing (K) Limited, Safety Auto Spares E.A Limited, Mercury Agencies Limited, Maxitower Limited, Rajesh Chhotalal Pabari, Kaushik Chhotalal Pabari, Mr Harshil Kishor Kotecha, Mr Hemal Kishor Bhangwanji Kotecha, Hala Agencies Pty Ltd and Loyal Suns Limited**. It also deposed that some of the borrowers also cross- guaranteed each other's facilities.

46.Through a letter dated 8th April 2022, the advocate informed the client what the debt recovery process would entail and that its fees would be USD 30,000/-.

47.Through another letter, the advocate confirmed that it was amenable to the client's request to discount its fees to USD 27,000/-.

48.Through a letter dated 27th July 2022, the advocate issued a deposit request note for USD 150,000/-. By an email dated 18th August 2022, the client requested a discount. On the same date, the advocate forwarded the revised deposit request note dated 19th August 2022 for USD 130,000/-.

49.The client also exhibited remittance advices confirming payment of USD 157,000/-.

50.From my assessment of the above, there was no fee agreement between the advocate and the client in the sense of section 45 of the Advocates Act.

51.Hence, I agree with the taxing officer's finding that there was no binding fee agreement between the advocate and the client.

Distinct and separate instructions

52.The client faulted the advocate for filing four separate bills of costs relating to different borrowers in **Misc. Applications E067, E068,**

E069 and E070 of 2024. It contended that the bills of costs all relate to the same tasks, being advice on recovery, demand letters and insolvency notices.

53.The advocate asserted that it carried out over 44 different and separate instructions.

54.In the bill of costs dated 30th January 2024, the advocate listed 44 instructions relating to the recovery proceedings for USD 30,703,680.12 (Kshs. 5,033,868,355.67/-) against **Pabari Distributors Limited and other guarantors.**

55.The bill of costs dated 30th January 2024 in **Misc E068 of 2024**, is in respect of instructions relating to recovery proceedings in respect to **B. N. Kotecha & Sons Limited** for USD 38,633,033.90 (Kshs. 6,333,885,907,91/-).

56.The bill of costs dated 30th January 2024 in **Misc E069 of 2024**, is in respect of instructions relating to recovery proceedings against **Unifresh Exotics (K) Limited** for USD 60,499,169.64 (Kshs. 9,918,838,862/-).

57.The bill of costs dated 30th January 2024 in **Misc E070 of 2024** is in respect of instructions relating

to recovery proceedings in respect of USD 32,757,533.63 (Kshs. 5,370,597,966.63/-) against **Unifresh Exotic (K) Limited** and **Welwyn International Limited, Rajesh Chhtalal Pabari** and **Kaushik Chhotalal Pabari**.

58.The client confirmed that it advanced facilities to **Unifresh Exotics (K) Limited, B. N. Kotecha & Sons Limited, Welwyn International Limited** and **Pabari Distributors Limited**. It also confirmed that the facilities were guaranteed by various entities.

59.Therefore, the court finds that the bills of costs relate to recovery of debts but from different and separate persons arising from different and separate facilities. They relate to instructions to undertake debt recovery measures for outstanding loan facilities issued to the four different borrowers. Hence, the instructions are separate and distinct. The argument by the client that the advocate deployed same tasks is misplaced.

Instruction fees

60.The client argued that the taxing officer erred in assessing instruction fees at **Kshs. 200,000,000/-** based on the value of the subject matter of **USD 30.7 Million**. It contended that the taxing officer failed to identify the applicable schedule of the **Advocates Remuneration Order (ARO)**.

61.The client submitted that the work done related to issuing statutory and insolvency notices which have prescribed minimum fees under **Schedule 6**. It therefore asserted that instruction fees should first be based on the prescribed scale then increased with justification.

62.The client also faulted the taxing officer for failing to analyse the complexity of the matter, novelty of the issues, responsibility assumed and the time spent or skill deployed. It pointed out that the advocate only issued demand letter and filed statutory and insolvency notices. It thus contended that the taxing officer improperly relied on the value of the subject matter.

63.The advocate asserted that the awarded sum was based on contractual documents and charge

instruments. It argued that the court should not interfere with the taxing officer's decision if there is no error on principle.

64. The taxing officer found that: -

“The Advocate rightly draws attention to the immense value of the subject matter and the multiplicity of proceedings. In view of the multiple and distinct instructions, the substantial value of the subject matter, and the high level of responsibility assumed by the Advocate, time spent, research done and skill deployed by counsel I find that instruction fee of Kshs. 200,000,000/- is fair and just in the circumstances.”

65. The taxing officer did not indicate the schedule of the ARO used to assess the instruction fee.

66. Courts have held that the taxing officer must first recognize the basic instructions fee payable before venturing to consider whether to reduce or increase it. **Nyangito & Co Advocates v Doinyo Lessos Creameries Ltd [2014] eKLR and Nairobi City County v Tom Ojienda Associates [2018] KEHC 5017 (KLR)**

Applicable scale

67.The next question is what scale of the ARO is applicable?

68.The client submitted that the work done by the advocate as indicated in the bill of costs dated 30th January 2024 was limited to making demand and issuing statutory and insolvency notices. It submitted that Schedule 6 paragraph (1) (e) (ii) of the ARO provides a sum of KES. 2,000/- as instruction fees chargeable in bankruptcy proceedings and schedule 6 paragraph 1 (f) (iii) of the ARO provides for a sum of Kshs. 15,000/- as the instruction fees chargeable in insolvency proceedings.

69.The client asserted that based on schedule 6 paragraph (1) (e) (ii) and (f) (iii), instruction fees is not assessed based on the value of the subject matter as the minimum instruction fees have already been provided. Therefore, it contended that the taxing officer committed another error of principle by relying on the value of the subject matter.

70.The advocate challenged the client's proposition that instruction fees should be assessed at Kshs. 124,000/-. It highlighted that the value of the subject matter is over Kshs. 5 billion with multiple causes of action against multiple parties.

71.The advocate highlighted that the bill of costs and the supporting affidavit set out the debt owing from Pabari is US \$ 30,703,680.12 (about Kshs. 5,033,868,357.67).

72.The advocate asserted that in pursuing recovery, it initiated separate processes against the principal borrowers, guarantors (both corporate and individual) and issued statutory notices for sale and to initiate insolvency proceedings.

73.The advocate submitted that it completed the instructions and that there was nothing else that was required of it other than the client to instruct auctioneers to sell the properties and for the insolvency petitions to be filed.

74.I have considered the divergent positions. It is not disputed that the instructions given to the advocate were to provide debt recovery or collection services. This included issuing demands

to the borrowers and guarantors, statutory notices of sale and insolvency notices.

75.Which schedule of ARO is applicable?

Of Bankruptcy proceedings

76.I have perused **Schedule 6 of the ARO**. It is captioned 'Costs of Proceedings in the High Court' Paragraph 1 (e) is captioned 'Bankruptcy proceedings'. It encompasses the presentation or opposition of a debtor's petition, application or opposition of a discharge. It also encompasses the creditor's application for issue of a bankruptcy notice, to apply or oppose a creditor's petition and an application for or oppose a discharge.

77.In this case, the instructions were for debt collection, not to institute the bankruptcy/ insolvency petitions. The advocate issued the demand notices, statutory notices as well as insolvency notices-as appropriate- to the borrowers and guarantors as a debt collection strategy.

78.The advocate stated that it completed the instructions and that there was nothing else that was required of it other than the client to instruct

auctioneers to sell the properties and for the insolvency petitions to be filed.

79. Therefore, in the circumstances, schedule 6 of ARO is not applicable.

80. The applicable scale is schedule 5 on fees in respect of business the remuneration for which is not otherwise prescribed. Part II on alternative method of assessment provides: -

“1. INSTRUCTIONS

Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule.”

81. Having found that schedule 5 is applicable, the taxing officer ought to apply it in assessing the instruction fees.

82. I do not find any error in the other items.

Of the deposit

83.The taxing officer also ought to consider the deposit paid by the client to be deducted from the awarded sum to be prorated amongst the four separate bills of costs and taxation awards in Misc Applications E067, E068, E069 and E070.

84.I find that it is appropriate for the advocate- client bill of costs to be remitted for fresh taxation on the instruction fee before a different taxing officer.

Disposal

85.The client's application dated **5th June 2025**, is partially allowed, in the following terms: -

(1) The part of the taxation ruling dated 22nd May 2025 relating to the taxation of the instruction fees, is set aside.

(2) The advocate-client bill of costs dated 30th January 2014 be remitted for taxation of the instruction fee under Schedule 5 of ARO before a different taxing officer.

(3) By this ruling, the advocate's application is rendered premature. In the circumstances, it is dismissed with no orders as to costs.

(4) Each party to bear own costs in respect of the client's application.

**Dated, signed and delivered at Nairobi through
Microsoft Teams online application this 12th
day of March, 2026**

F. Gikonyo M

Judge

In the presence of: -

Donald for Advocate

Kiragu Kimani/Ondieki for Client