REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL MISCELLANEOUS APPLICATION NO. E145 OF 2024

C. B. GOR & GOR…..…….....ADVOCATE

VERSUS

KENINDIA ASSURANCE CO. LIMITED……...……..CLIENT

RULING

1. The Taxing Officer delivered the decision dated 3rd October 2024 in respect of the Advocate's Bill of Costs dated 14th June 2024. The Client being dissatisfied with the decision filed a Notice of Objection dated 14th October 2024 under Paragraph 11 (1) of the Advocates (Remuneration) Order, 2014 on the items as listed in the application.
2. That the Client required that reasons be recorded to enable the filing of a reference to a judge in chambers as envisaged by the provision of Paragraph 11 (2) of the Advocates Remuneration Order, 2014.

3. The Client being aggrieved with the decision of the Taxing Officer rendered on 3rd October 2024 filed a Reference through Chamber Summons application dated 28th October 2024 to challenge the decision.

4. The Client in the Reference prayed for orders that the decision of the Taxing Officer dated 3rd October 2024 in respect of the Bill of Costs dated 14th June 2024 be set aside, the Bill of Costs be readmitted back to another Taxing Officer and be taxed afresh and/or the court be pleased to tax afresh the items objected to and to render a decision thereto, and that costs of the Chamber Summons application be provided for and in any event, the same, if at all, be fixed and determined by this court.

5. The Reference was premised on grounds that the Bill of Costs was not drawn to scale as the items drawn are unreasonable and unjustified, and ought not have been awarded in the circumstances of the case. That the Bill of Costs appears to have been allowed as drawn notwithstanding having been formally opposed therefore an apparent error of principle by the Taxing Officer. That in allowing all the items as drawn, the Taxing Officer failed to take into account relevant factors and circumstances in the taxation of bills, and that no reasons have been availed by the Taxing Officer for rendering her decision as she did.

6. The Advocate filed a Reply to the Notice of Objection to Taxation dated 30th May 2025 and stated that despite having filed the Notice of Objection, the Client had

not filed and/or served them with a reference to the High Court as required under Rule 11 (2) of the Advocates (Remuneration) Order. That Rule 11 (2) provided that where a party objects to a decision of the taxing officer, a reference to the High Court must be made by way of chamber summons within 14 days of receipt of the reasons for the decision.

7. That neither was the reference has been filed within the prescribed time nor an application made for extension of time. That in the absence of a duly filed reference, the Notice of Objection is of no legal consequence and cannot be used to stay or invalidate the taxed costs. The Advocate therefore prayed that the Certificate of Taxation be adopted as a judgment of the court under Rule 7 of the Advocates (Remuneration) Order and that a decree be issued accordingly.

8. The Client in rebuttal filed a Further Affidavit sworn on 23rd June 2025 and stated that a notice of objection is to be given in writing to the taxing officer within 14 days after the date of the decision on the items of taxation intended to be objected to in light of Paragraph 11 (1) of the Advocates (Remuneration) Order, 2014. That an objector upon receipt of the reasons from the taxing officer ought to apply to the judge by way of reference of a chamber summons application.

9. The Client further stated that the decision of the Taxing Officer was delivered on 3rd October 2024 and subsequently a Notice of Objection dated 14th October 2024 was filed and served upon the Respondent via email on 16th October 2024, which

was within the prescribed time. That despite not receiving any reasons from the taxing officer pursuant to Paragraph 11 (1) of the Advocates Remuneration Order, the Client proceeded to file the Reference. That they subsequently made several follow ups at the registry for hearing of the application so as to effect service upon the Advocate which date was ultimately given for 10th February 2025. That thereafter, the Advocate was served with a copy of the mention notice together with the Reference via email.

10. The Client filed submissions dated 1st July 2025 in support of the Reference dated 14th October 2024 where they argued that a quick glance at the Advocates' Bill of Costs would outline that it was not drawn to scale as the items drawn thereunder were unreasonable and unjustified and ought not have been awarded in the circumstances of the case or at all.

11. On attendances, the Client opposed Items 27, 38, 41, 44, 47, 51, 54, 57, 59, 62, and 66. That there was nothing to guide the Taxing Officer in assessing proper attendances, therefore the need to call for the parent file. That pursuant to Paragraph 61 of the Advocates Remuneration Order, expenses incurred unnecessarily, of misconduct or default of the Advocate should not be charged against the Client.

12. That in instances where adjournments were at the behest of the Advocate, such attendances ought not be charged against the Client and should be taxed off.

Therefore, Items 38, 44, 47, 51, 54, 57, 59, and 62 were erroneously assessed. That attendances at the registry are not provided for under the Advocates Remuneration Order and as such, Items 27 and 66 ought not to have been allowed as drawn. That attendance under item 43 when judgment was delivered, the sum of Kshs. 3,000 was exorbitant and without basis. That Schedule 6 Paragraph 7 (d) of the Advocates (Remuneration) Order, 2006 provides for fees for attendance for mentions and judgment at Kshs. 1,400.

13. On service, the Client opposed Item 77 on the basis that there was no Affidavit of Service as evidence of service. That the Advocate did not specify the mode of service used in effecting service, either through a process server or substituted service. That therefore, the charged amount could only be assessed subject to production of evidence of the mode of service used.

14. On writing, receiving and perusal of letters and emails, the Client opposed Items 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 21, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 40, 43, 46, 48, 50, 53, 55, 56, 58, 60, 61, 63, 64, 68, 69, 70, 71, and 72. That these items are not provided for under Schedule 7 of the Advocates Remuneration (Amendment) Order of 2014, as they form part of the instruction fees. That allowing them separately from Item 1 of the Bill of Costs is tantamount to double billing or overcharging. The Client relied on the holding in the case of *Waiganjo Wachira & Co. Advocates v Pacis Insurance Co. Limited* (2019) eKLR.

15. On drawings, the Client opposed Items 73, 65, 52, 45, 42, 39, 37, and 26 that they are not provided for under Schedule VII of the Advocates Remuneration (Amendment) Order of 2014 as they form part of the instruction fees.

16. On disbursement, the Client opposed Items 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, and 98. That disbursements are awardable subject to proof and that they are refunds given to applicants, which can only be taxed off when receipts or documents are availed for consideration by court. That absence of filed receipts, the court should tax off the items. Reliance was on the holding in *Ngatia & Associates v Interactive Gaming & Lotteries Limited* (2017) eKLR.

17. On futuristic and speculative amounts, the Client submitted that Items 75, 76, 79, 80, 81, 82, 83, 84, and 85 relate to expenses and particulars which at the time of lodging the Bill of Costs for taxation had neither been rendered, incurred nor awarded through the taxation process itself. That these expenses ought to be taken care of pursuant to Paragraph 69 (3) of the Advocates Remuneration Order. That the items indicated should therefore be taxed off from the Bill of Costs. That further, the manner in which the items were drawn violated one-sixth rule provided for under Paragraph 77 of the Advocates Remuneration Order.

18. On VAT and increase by half, the Client opposed Items 86 and 87. That on VAT, the same should be pegged on the sum that the court shall find proper as instruction fees and attendances, similarly to the increase by half. That VAT at

16% should be charged on instruction fees excluding disbursements, interest and service fees. That the definition of services under VAT is very clear as it has been defined as any supply of business that is not of goods or money, or anything which is not a supply of goods but is done for consideration which, herein is the amount charged on instruction fees. The Client therefore prayed that this court allows the Reference by striking out the Bill of Costs.

Analysis

19. Having considered the Notice of Objection dated 14th October 2024, the Reference dated 28th October 2024, the Reply to the Notice of Objection to Taxation dated 30th May 2025, the Further Affidavit sworn on 23rd June 2025, and submissions dated 1st July 2025, the issues for determination are: -

    (a) Whether the Reference is properly before the court

    (b) Whether the Taxing Officer erred in principle

    (c) Whether this court should interfere with the taxation

    (d) What orders on costs should issue

20. On whether the Reference is properly before the court, Paragraph 11(1) and (2) of the Advocates (Remuneration) Order sets out a mandatory procedure as follows: -

(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.

21. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] KECA 325 (KLR), the Court of Appeal held that: -

"… the respondent's advocates gave notice to the taxing officer of the items he was objecting to and asked the taxing officer to furnish him with reasons for taxation for the objected items. That was within the 14 days stipulated in Rule 11 (1) of the Order. By Rule 11 (2) of the Order the taxing officer was required on receipt of the notice to record the reasons forthwith and forward them to the respondent's advocates who were then required to file a reference to the judge within 14 days from the receipt of reasons …

…

… Indeed, we are of the view, that if a taxing officer totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference"

22. The record shows that the Ruling delivered on 3rd October 2024 and Notice of Objection filed on 14th October 2024, within time. The Client contends that no reasons were supplied and proceeded to file the Reference on 28th October 2024.

23. The law is settled that where reasons are contained in the ruling, time begins to run from the date of the ruling. In *Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited* [2012] KEHC 4274 (KLR), the court held that: -

"… First, and foremost, the above provisions presuppose that in delivering their decisions on taxation, the taxing officers only pronounce the results of the taxation without the reasons behind them. In most cases, the court is aware that, taxing officers, in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons, thereafter. In such circumstances it would be foolhardy to expect the taxing officer to redraft another "ruling" containing the reasons …"

24. Further, a party is entitled to file a Reference where reasons are discernible from the ruling. In *Twiga Motors Limited v Dalmas Otieno Onyango* [2015] KEHC 8106 (KLR), the court held that: -

> *"In the absence of any affidavit evidence by the Plaintiff annexing copies of the decision it wanted the court to review, the letter giving the taxing master notice of the items it was objecting to and response from the Taxing Master with a view to establishing whether or not its application was filed timeously, the court had no option but not to attach any weight to the said application, the Defendant's Replying Affidavit and written submissions by both the Plaintiff and the Defendant. Notably, it was not clear to the court to what the Defendant was responding to as there was no affidavit that had been sworn by the Plaintiff in support of its application."*

25. In the circumstances, this court finds that the Notice of Objection was properly filed and the Reference was filed within time. The Advocate's objection on competence therefore fails.

26. On whether the Taxing Officer erred in principle, the principles guiding interference with taxation are well established. In *Premchand Raichand Ltd v Quarry Services of East Africa Ltd* [1972] EA 162, the court held that: -

> *"That costs must not be allowed to rise to such a level as confine access to the court to the wealthy; That a successful litigant ought to be fairly*

reimbursed for the costs incurred; That the general level of remuneration of advocates must be such as to attract recruits to the profession, and,; that so far as practicable there should be consistency in the awards made; the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party."

27. Similarly, failure to consider relevant factors or taking into account irrelevant factors amounts to an error in principle. In *First American Bank of Kenya Ltd v Shah & 2 others* [2002] KEHC 1277 (KLR), it was held that: -

"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."

28. On lack of reasons, the Client's primary complaint is that the Taxing Officer failed to provide reasons. This court has perused the ruling and finds that there is no detailed justification for the taxation of the impugned items and the ruling does

not explain how the figures were arrived at. Failure to give reasons is itself an error of principle as it denies this court the basis upon which to review the taxation.

29. On attendance, the Client challenged several attendance items as unnecessary or excessive. Under Paragraph 61 of the Advocates Remuneration Order, costs arising from unnecessary steps or advocate's default should not be borne by the client.

30. The Taxing Officer allowed the impugned items without demonstrating whether the attendances were necessary or whether the adjournments were attributable to the Advocate. This constitutes an error in principle.

31. On correspondence, perusal and drawings, the Client argued that these items are subsumed under instruction fees. In *Waiganjo Wachira & Co. Advocates v Pacis Insurance Co. Ltd* (2019) eKLR, the Court held that duplication of charges through separate billing for items already covered under instruction fees amounts to overcharging.

32. This court finds that the Taxing Officer failed to interrogate whether the items amounted to double billing or they were properly chargeable under Schedule VII.

33. On disbursements, it is trite that disbursements must be strictly proved. In *Ngatia & Associates Advocates v Interactive Gaming & Lotteries Limited* [2017] KEHC 2789 (KLR), the court held that: -

"It is for that reason that the Rules of taxation demand that disbursements be shown separately at the bottom of the bill of costs and there must be presentation of receipts or proof at the time of taxation before the award is made by the taxing officer."

34. The allowance of disbursement items without proof was therefore erroneous.

35. On futuristic or unincurred items, items relating to future or unincurred expenses are not recoverable. Such items offend the principle that only incurred and ascertainable costs are taxable. The Taxing Officer erred in allowing such items.

36. On VAT and increase by one-half, VAT and increase by one-half must be based on properly taxed items. Where the foundational items are improperly assessed, consequential items such as VAT and increase must also fall.

37. On whether this court should interfere with the taxation, a Judge will only interfere where there is an error of principle or the award is manifestly excessive or unjustified. Having found multiple errors, this court is satisfied that the taxation cannot stand. In *Arthur v Nyeri Electricity Undertaking* [1961] EA 497, the Court held that where taxation is fundamentally flawed, the proper order is to remit the Bill for re-taxation.

38. On costs, considering the relationship between the parties prior to the fallout, each party to bear its own costs.

Determination

39. Accordingly, this court makes the following orders: -

(a) The Reference dated 28th October 2024 is hereby allowed.

(b) The ruling and taxation by the Taxing Officer delivered on 3rd October 2024 is set aside in its entirety.

(c) The Advocate/Client Bill of Costs dated 14th June 2024 is remitted for fresh taxation before a different Taxing Officer.

(d) Each party to bear its own costs.

Dated and **delivered virtually** at **Mombasa** this **19th day** of **March, 2026**

……..

HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of: -

N/A by the Applicant

Ms. Achieng Advocate for the Respondent

Ms. Getrude, Court Assistant