REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

FAMILY DIVISION

MISC. CIVIL APPLICATION NO. E266 OF 2024

MAIRA & NDEGWA ADVOCATES ..... ADVOCATE/APPLICANT

VERSUS

ADMINISTRATOR OF THE ESTATE

OF NELIUS MUGURU MWANGI .....CLIENT/RESPONDENT

RULING

1. Before the Chamber Summons dated 12 September 2024 seeking:

(i) That the Ruling of the Taxing Officer amended dated and delivered on 28 August 2024 and in so far as the same relates to the reasoning and determination pertaining to the Advocate/Client Bill of Costs dated 28 March 2023 be set aside;

(ii) That the Honourable Court be pleased to refer the Bill for taxation of the Applicant Advocate/Client Bill of Costs dated 28 March 2023, before another taxing officer with appropriate directions thereon;

(iii) That costs of this Application be provided for.

2. The Applicant invokes the inherent and statutory jurisdiction of this Court pursuant to Article 159(2)(d) of the Constitution, Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 9 Rules 9 and 10 of the Civil Procedure Rules

(2010), and Paragraph 11(1), (2), and (4) of the Advocates (Remuneration) Order.

3. The Application is strenuously opposed by the Respondent, the Administrators of the Estate of Nelius Muguru Mwangi (Deceased). The opposition is crystallized in a Replying Affidavit sworn on 13 December 2024 by Mr. Daniel Ndegwa Wokabi, of Kimandu & Ndegwa Advocates who act for the Respondent Estate. The Respondent urges the Court to dismiss the Reference in its entirety, with costs, arguing that the Taxing Officer exercised her judicial discretion properly, legally, and within the confines of the applicable statutory instruments, specifically the Advocates (Remuneration) Order of 2009 and its subsequent 2014 amendments.

Brief Background

4. The Applicant law firm was formally instructed in the year 2010 to take over the legal representation of the late Nelius Muguru Mwangi (hereinafter referred to as "the Deceased") in a complex web of commercial litigation. The underlying disputes arose from the operations and subsequent breakdown of a business enterprise known as "Kenda Boarding & Lodging." This enterprise was formally registered as a partnership on 16 October 1969 by 8 founding partners, including the Deceased's predecessor-in-title, Muguru Mwangi. The partnership owned, operated, and managed four highly valuable commercial real estate properties situated in prime locations within Nairobi. These properties were identified as:
    (i) L.R. No. 36/II/157 situated in Eastleigh;
    (ii) L.R. No. 209/231/5 situated along Ukwala Road;
    (iii) L.R. No. 209/230/5 situated along Solai/Race Course Road; and
    (iv) Plot No. B67 situated in Huruma, Mathare Valley.

5. The legal entanglements commenced in earnest when some partners initiated High Court Civil Suit No. 1285 of 1997, which was later consolidated

with High Court Civil Suit No. 796 of 2001. These consolidated suits primarily revolved around disputes over the management of the commercial rental properties, accountability for the massive rental income generated, and the distribution of the said income among the partners and the estates of deceased partners.

6. Subsequently, on 18 February 2010, another partner, Mr. Kaihu Karugo, filed High Court Civil Suit No. 90 of 2010 by way of an Originating Summons. This suit fundamentally escalated the conflict by seeking, *inter alia,* the formal winding up and dissolution of the Kenda Boarding & Lodging partnership pursuant to sections 30 and 46 of the Partnership Act, the appointment of a competent valuer by the Court to assess the market value of the aforementioned properties, the sale of the properties, and the distribution of the proceeds among the partners in proportion to their respective equitable shares.

7. The Applicant law firm was retained to defend the Deceased in HCC No. 90 of 2010 (OS) and to concurrently represent her overarching legal and commercial interests in the consolidated suits HCCC 1285 of 1997 and HCCC 796 of 2001. The Applicant remained firmly on record, executing their professional mandate by filing multifaceted pleadings, drawing and perusing voluminous documentation, attending numerous court hearings and mentions, and advancing the Deceased's legal interests robustly until her demise.

8. Following her death, the Administrators of her Estate, the current Respondents, elected to instruct a different law firm, Kimandu & Ndegwa Advocates, to assume conduct of the matter. Consequently, a formal consent for the change of Advocates was executed and recorded in Court on 2 April 2019. This consent was expressly granted subject to the standard

professional caveat: the payment of the Applicant's accrued legal fees, which were to be either mutually agreed upon or formally taxed by the Court.

9. Attempts to reach an amicable, out-of-court settlement regarding the quantum of the legal fees proved futile. Consequently, the Applicant filed a comprehensive Bill of Costs dated 28 March 2023, meticulously itemizing the services rendered over the nine-year span of the retainer (2010 to 2019). The Applicant sought a total sum of Kshs. 1,389,835/=. This final figure was computed after granting the Respondent a credit of Kshs. 100,000/=, representing monies that the Deceased had remitted to the Applicant in instalments during the active subsistence of the retainer.

10. A critical procedural anomaly must be noted at this juncture: the Applicant erroneously titled the document "PARTY AND PARTY BILL OF COSTS". However, the substantive architectural framework of the claim (an advocate seeking remuneration from the estate of their own client), the specific items pleaded, and the explicit inclusion of a prayer for a "50% Advocates costs" increment under Item 95 of the Bill, unequivocally denoted that the document was, in substance and in law, an Advocate-Client Bill of Costs drawn pursuant to Part B of Schedule VI of the Advocates Remuneration Order.

11. The epicentre of the ensuing dispute revolves around Items 2 and 3 of the Bill. The Applicant claimed Kshs. 350,000/= as instruction fees for taking up the defence in HCC No. 90 of 2010 (OS), and an additional, separate sum of Kshs. 350,000/= as instruction fees for representing the Deceased in the older, consolidated suits HCCC 1285 of 1997 and 796 of 2001.

12. To justify these figures, the Applicant advanced the argument that the value of the subject matter—the primary metric for calculating instruction fees under the Advocates Remuneration Order—was the monetary value of the

Deceased's proportionate share in the partnership's assets. Based on professional valuation reports compiled by Centenary Valuers in January 2019 the total market value of the four properties was assessed at Kshs. 293,500,000/=. Under the 1984 Partnership Agreement, the Deceased held a 13.74% equitable share in the enterprise. Ergo, the Applicant posited that the value of the Deceased's share, and thus the subject matter of the representation, was Kshs. 40,258,200/=.

13. The Respondent fiercely contested this methodology. Through Amended Submissions dated 4 July 2023, the Respondent argued that relying on 2019 property valuations for instructions taken in 2010 was legally impermissible. Instead, the Respondent submitted that the only ascertainable value was the Deceased's initial, historical capital contribution as stipulated in the 4 April 1984 Partnership Agreement, which was a mere Kshs. 12,500/=. Proceeding on this premise, the Respondent proposed that the instruction fees should be taxed at the bare statutory minimum of Kshs. 49,000/= per suit, ultimately conceding to a total instruction fee of Kshs. 98,000/= for both matters combined.

14. The Taxing Officer delivered her inaugural Ruling, taxing the Bill at a drastically reduced, all-inclusive sum of Kshs. 218,000/=. In arriving at this figure, the Taxing Officer radically compressed the Applicant's claims, awarding a flat, amalgamated figure of Kshs. 77,000/= to cover the instruction fees for both Item 2 and Item 3.

15. Aggrieved by this outcome, the Applicant filed an application for review. The matter was placed before the High Court. During the review, a glaring and fatal error apparent on the face of the record was exposed: the Taxing Officer had inexplicably based her entire legal rationale and assessment on the record and proceedings of a completely unrelated, lower-court matter—

specifically, a Magistrate's Court case designated as CMCC 357 of 2012. Recognizing this manifest misdirection, the Honourable Judge issued an order on 4 November 2024, directing that the Bill be remitted back to the Taxing Officer for review and rectification of the record.

16. On 28 August 2024, the Taxing Officer delivered the Amended Ruling that forms the crux of the present Reference. In this amended Ruling, the Taxing Officer dutifully deleted the erroneous reference to the Magistrate's Court case and inserted the correct High Court case numbers (HCC 90 of 2010 and HCCC 1285/1997).

17. However, the correction was purely cosmetic. Crucially and controversially, the Taxing Officer made no substantive alterations to the financial quantum awarded. She maintained the instruction fees at the identical figure of Kshs. 77,000/=. She further sustained her decision to deny the application of Value Added Tax (VAT) on the strict, technical premise that the bill was titled a "Party to Party" bill, finalizing the taxation at Kshs. 218,922/= (incorporating Kshs. 150 for minor disbursements).

18. Dissatisfied with what they perceived as a mechanical, unreasoned correction devoid of genuine judicial reappraisal, the Applicant filed the instant Chamber Summons.

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

20. The Applicant, guided by the Supporting Affidavit and Further Supporting Affidavit of Ms. Susan Maira, Advocate, presents a multi-pronged attack on the amended ruling, asserting that the Taxing Officer committed several egregious errors in principle. The Applicant contends that the Taxing Officer erred fundamentally by ignoring the demonstrably high value of the subject

matter. The Applicant argues that the value was easily ascertainable from the pleadings, specifically the Originating Summons, which listed the properties, and the valuation reports submitted in the supplementary bundle. The Applicant reiterates that the total value of the properties was Kshs. 293,500,000/=, and the Deceased's 13.74% equitable share translated to Kshs. 40,258,200/=.

21. Relying on Schedule VI of the Advocates Remuneration Order 2009, the Applicant demonstrates the statutory formula for instruction fees where a subject matter exceeds Kshs. 20,000,000/=. The law dictates that the fee shall be the prescribed amount for Kshs. 20,000,000/= plus an additional 1.25% for the excess. Based on the 40-million-shilling valuation, the statutory baseline instruction fee per case exceeds Kshs. 612,000/=. Therefore, the Applicant submits that their claim of Kshs. 350,000/= per item was not only reasonable but significantly discounted. They argue that the Taxing Officer's award of Kshs. 77,000/= is an abstract, arbitrary figure divorced from the statutory mathematical dictates.

22. The Applicant vehemently argues that the Taxing Officer's action of simply replacing the citation of a Magistrate's Court case (governed by the lower tariffs of Schedule VII) with a High Court case (governed by the higher tariffs of Schedule VI), without concurrently upgrading the financial scale of the award, constitutes a profound error in principle and a failure to exercise judicial discretion.

23. To anchor their claim of manifest injustice, the Applicant furnished the Court with irrefutable documentary evidence of two companion Bills of Costs arising from the exact same litigation. The Applicant had concurrently represented other co-defendants (estates of other deceased partners) in the same partnership dispute.

24. In *HCC Misc E174 of 2023 (Estate of Wambui Kahoreria)*, the *exact same Taxing Officer* (Hon. C. Ng'ang'a) awarded instruction fees of Kshs. 500,000/= and a total taxed bill of Kshs. 934,066/=. In *HCC Misc E175 of 2023 (Estate of Wambugu Njuru)*, a different Taxing Officer (Hon. E.W. Mburu) awarded instruction fees of Kshs. 400,000/= and a total taxed Bill of Kshs. 794,969/=. The Applicant asserts that awarding a paltry Kshs. 218,000/= for identical, mirror-image legal work in the instant case is capricious, discriminatory, and violently offends the judicial principle of consistency.

25. The Respondent, leaning on the Replying Affidavit of Mr. Daniel Ndegwa Wokabi, mounts a defence predicated largely on the doctrine of judicial restraint and the sanctity of the Taxing Officer's discretion. Citing the foundational Court of Appeal decision in ***Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board*** **eKLR ,** the Respondent submits that a Judge sitting on a reference must not interfere with a Taxing Officer's assessment of costs merely on questions of quantum. Interference is only permissible if there is a demonstrable error in principle, or if the award is so manifestly excessive or low as to amount to an injustice. The Respondent insists that the Taxing Officer exercised her discretion judiciously and no such error exists here.

26. The Respondent vigorously attacks the 40-million-shilling valuation. They argue that the relevant metric for instruction fees in a suit filed in 2010 cannot be based on valuation reports generated in 2019. They maintain that the only ascertainable value at the inception of the suit was the Deceased's initial capital contribution of Kshs. 12,500/= as captured in the Partnership Agreement. Because modern property valuations were not explicitly pleaded as liquidated sums in the Originating Summons, the Respondent argues the

Taxing Officer was well within her rights to utilize her residual discretion under the proviso to Schedule VI to assign a reasonable figure, which she assessed at Kshs. 77,000/=.

27. The Respondent defends the Taxing Officer's decision to strike Value Added Tax (VAT) from the final award. They aver that the Applicant, by their own hand, titled the document "Party and Party Bill of Costs." Consequently, the Taxing Officer correctly applied the precedent set in ***Pyramid Motors Limited v Langata Gardens Limited*** **eKLR**, which dictates that VAT is not chargeable on party-to-party reimbursements because there is no taxable supply of services between opposing litigants.

Analysis & Determination

28. The taxation of costs is governed primarily by the Advocates Act and the Advocates (Remuneration) Order, read in tandem with the Civil Procedure Act. The overarching philosophy of costs in Kenya is rooted in Article 48 of the Constitution, which guarantees the right of access to justice for all persons.

29. This constitutional imperative must be balanced against the equally valid right of an Advocate to fair, reasonable, and adequate remuneration for professional services rendered. If legal fees are permitted to escalate arbitrarily, access to the courts becomes the exclusive preserve of the wealthy. Conversely, if Advocates are subjected to manifestly inadequate taxation that impoverishes them, the legal profession will fail to attract and retain the intellectual rigor necessary to sustain the justice system.

30. This delicate equilibrium was definitively articulated by the predecessor to our current Court of Appeal in the *locus classicus* of ***Premchand Raichand Ltd*** *&* ***Another v Quarry Services of East Africa Ltd & Others (No. 3) EA***

162. In that case, Spry V-P established the four foundational pillars of taxation:

(i) Costs should not be allowed to rise to a level that confines access to the courts to the wealthy.

(ii) A successful litigant (or advocate) ought to be fairly reimbursed for the costs they have had to incur.

(iii) The general level of remuneration of advocates must be such as to attract worthy recruits to the legal profession.

(iv) So far as practicable, there should be consistency in the awards made.

31. Paragraph 11 of the Advocates Remuneration Order provides the statutory mechanism through which a party dissatisfied with the decision of a Taxing Officer may object and subsequently file a Reference. However, the jurisdiction of the Court sitting on such a reference is highly circumscribed. The Court does not sit as an ordinary appellate tribunal ready to substitute its own mathematical calculations for those of the Taxing Officer. The threshold for interference is high.

32. In ***Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board eKLR*** , the Court of Appeal laid down the definitive test:

> *"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. 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... or where the taxing officer has over-emphasized the difficulties, importance, and complexity of the suit."*

33. What, then, constitutes an error in principle? As elucidated in subsequent jurisprudence, an error in principle occurs when a Taxing Officer fails to apply the correct statutory formula provided in the Advocates Remuneration Order, takes into account irrelevant factors or fails to take into account relevant statutory factors (such as the complexity of the matter, the interest of the parties, or the volume of documentation), ascertains the value of the subject matter using a legally flawed methodology, or arrives at an award that is so manifestly excessive or so manifestly low that it shocks the judicial conscience and amounts to a sheer injustice.

34. It is through this strict jurisprudential lens that I must evaluate the Taxing Officer's amended Ruling in the present Reference. The issues for determination, therefore, are:

    (i) Whether the Taxing Officer erred in principle by elevating form over substance in characterizing the Bill as a "Party and Party" bill, thereby unlawfully denying the Applicant the award of Value Added Tax (VAT)?
    (ii) Whether the Taxing Officer erred in principle in the methodology utilized to ascertain the value of the subject matter, and consequently, in the mathematical assessment of the instruction fees?
    (iii) Whether the Taxing Officer's mechanical correction of the case reference without a commensurate review of the financial quantum, constituted an actionable error in principle?
    (iv) What are the appropriate consequential orders to be issued by this Court?

The Characterization of the Bill

35. In paragraph 6 of the amended Ruling dated 28 August 2024, the Taxing Officer pronounced as follows:

"The Applicant's party to party bill of costs dated 28th March 2023 is taxed at Kshs. 218,992. This court did not factor VAT as Party To Party costs are not a service rendered but reimbursement of costs incurred in litigation. I rely on the decision Pyramid Motors Limited vs Langata Gardens Limited (2015) eKLR..."

36. It is an inescapable, documented fact that the Applicant explicitly titled their pleading "PARTY AND PARTY BILL OF COSTS". If one were to look no further than the title page, the Taxing Officer's logic might appear sound. However, the law demands that judicial officers look beyond the nomenclature to ascertain the substantive character of the pleadings before them. Article 159(2)(d) of the Constitution commands that courts shall administer justice without undue regard to procedural technicalities.

37. The substantive reality of the matter before the Taxing Officer was undeniable. The Applicant law firm was suing the Administrators of the Estate of their own deceased client to recover unpaid legal fees for professional services rendered pursuant to a long-standing retainer spanning nearly a decade. There was absolutely no adversarial litigation between the Applicant and the Respondent Estate that had resulted in a cost order against an opposing third party. This was entirely an internal accounting and recovery mechanism between an Advocate and a client.

38. Furthermore, a cursory perusal of the Bill itself reveals that the Applicant expressly included a prayer at Item 95 for "Add 50% Advocates costs,". This 50% increment is a statutory provision exclusively reserved for Advocate-Client costs under Part B of Schedule VI of the Advocates Remuneration Order. A pure Party and Party Bill contains no such provision.

39. The Taxing Officer's reliance on ***Pyramid Motors Limited v Langata Gardens Limited eKLR*** is a classic example of misapplying a correct legal

principle to the wrong factual matrix. The Court correctly enunciated the tax law principle that Party and Party costs do not attract VAT because there is no taxable supply of goods or services between two opposing litigants. The losing party is merely indemnifying the winning party. However, the learned Judge in explicitly included the caveat: *"The Master could only have awarded VAT if the Bills were Advocate-Client Bills..."*.

40. By elevating a typographical error in the title over the undeniable, substantive Advocate-Client nature of the dispute, the Taxing Officer committed a fundamental error of law and principle. The Applicant provided a taxable service to the Deceased. Under section 5 of the Value Added Tax Act, 2013, the Applicant is legally mandated to charge, collect, and remit VAT on their professional legal fees. By utilizing a misnomer to strip the Applicant of their statutory right (and obligation) to charge VAT, the Taxing Officer misdirected herself. I find that this constitutes an error in principle.

Ascertainment of the Value of the Subject Matter and Instruction Fees

41. The assessment of instruction fees is the cornerstone of any taxation process. It is the most heavily weighted item in a Bill of Costs, designed to compensate an Advocate for the intellectual labour, responsibility, and foundational work required to take on a brief.

42. Schedule VI, Part A, paragraph 1 of the Advocates Remuneration Order (2009 and 2014) mandates that the Taxing Officer must assess instruction fees based on the value of the subject matter, where such value can be determined from the pleadings, judgment, or settlement. Where the Bill is an Advocate-Client bill, Part B dictates that the costs shall be the fees prescribed in Part A increased by one-half (50%).

43. In the impugned Ruling, the Taxing Officer awarded a single, consolidated lump sum of Kshs. 77,000/= as instruction fees to cover both the Originating

Summons (HCC 90 of 2010) and the older consolidated suits (HCCC 1285 of 1997 / 796 of 2001). The ruling is entirely devoid of any arithmetic rationale, statutory grounding, or analytical breakdown to explain how this specific figure was reached.

44. The Respondent attempts to fortify this low award by advancing a restrictive theory of valuation. They argue that because the Originating Summons filed in 2010 did not explicitly plead a specific, liquidated, multi-million-shilling monetary claim on its face, the subject matter was either indeterminate, or it must be strictly anchored to the historical Kshs. 12,500/= capital contribution listed in the Partnership Agreement.

45. This argument betrays a fundamental misunderstanding of the law governing partnership dissolution and the valuation of assets for taxation purposes. The suits in question, particularly the Originating Summons, sought the formal dissolution of Kenda Boarding & Lodging, the valuation of its assets, and the distribution of proceeds. Under established principles of commercial law, when a partnership is wound up, the value of a partner's interest is not their historical, nominal capital contribution from decades past; it is their proportionate equitable share in the current market value of the partnership's net assets at the time of dissolution.

46. The Originating Summons explicitly listed 4 prime commercial properties in Nairobi. The Applicant did not leave the Taxing Officer in the dark; they submitted professional valuation reports demonstrating that the properties were collectively worth Kshs. 293,500,000/=. Applying the Deceased's undisputed 13.74% shareholding, the value of the Deceased's interest—and thus the subject matter of the representation—was Kshs. 40,258,200/=.

47. The Supreme Court recently provided definitive guidance on this exact issue in ***Kenya Airports Authority v Otieno Ragot & Company Advocates (SC***

Petition E011 of 2023) KESC 44 (KLR)**.** The apex Court held that while determining value from a final judgment is straightforward, determining it from pleadings can be complex. However, the Court emphasized that a Taxing Officer is not bound by a superficial reading of the Plaint; they must exercise judicial discretion, guided by the proviso to Schedule VI, to ascertain the true value and importance of the matter.

48. This aligns with the Court of Appeal's earlier holding in ***Peter Muthoka & Another v Ochieng & 3 Others eKLR*****,** which affirmed that where value is not strictly apparent as a liquidated sum, the Taxing Officer possesses the discretion to assess a just fee, taking into account the nature of the suit, the volume of documentation, and the interest of the parties. A Taxing Officer cannot simply throw their hands up and award a baseline minimum when empirical evidence of the asset values underlying the dispute is placed before them.

49. Even if we apply the mathematical strictures of the Advocates Remuneration Order 2009, an award of Kshs. 77,000/= correlates to a subject matter value of exactly Kshs. 1,000,000/=. It defies all logic, commercial reality, and judicial reason to conclude that a fiercely contested, decade-long High Court litigation involving the winding up of a partnership that owns four commercial buildings in Nairobi has a total subject matter value of one million shillings.

50. Furthermore, by amalgamating the instruction fees for two entirely distinct sets of litigation (an Originating Summons and a set of consolidated ordinary civil suits) into a single, arbitrarily low figure, the Taxing Officer failed to apply the statutory formula per suit. As established in ***Kipkorir Titoo***, a failure by a Taxing Officer to give due consideration to the formula for assessing instruction fees, or a failure to consider the proviso elements (complexity, time, responsibility), constitutes an error in principle.

51. I find that the Taxing Officer committed a grave error in principle by completely disregarding the value of the partnership assets in a dissolution suit. The award of Kshs. 77,000/= is manifestly low, mathematically unsupportable under the ARO, and represents a whimsical rather than a judicial exercise of discretion.

The 'Cosmetic' Correction of the Case Reference

52. The procedural history of the Taxing Officer's rulings reveals a systemic failure that warrants the intervention of this Court.

53. In her initial Ruling dated 25 August 2023, the Taxing Officer explicitly referenced the record and proceedings of a Magistrate's Court case, CMCC 357 of 2012, as the basis for her assessment of the complexity and value of the work done. It is a fundamental tenet of the Advocates Remuneration Order that proceedings in Subordinate Courts are taxed under the significantly lower tariffs of Schedule VII, whereas High Court proceedings are taxed under the higher, more expansive tariffs of Schedule VI.

54. When the High Court detected this error on the face of the record, the matter was remitted back to the Taxing Officer for review. A judicial directive to correct the misidentification of the forum (from a Subordinate Court to the High Court) is not a mere directive to correct a typo; it is a substantive legal mandate requiring the Taxing Officer to reappraise the entire bill under the correct, higher statutory schedule.

55. In the amended Ruling of 28 August 2024, the Taxing Officer simply struck out "CMCC 357 of 2012", inserted the High Court reference numbers, and maintained the exact same mathematical computations and final total of Kshs. 218,922/=. This action is legally indefensible. If the original assessment of Kshs. 218,000/= was genuinely formulated under the misapprehension that the Taxing Officer was evaluating a relatively minor

Magistrate's Court dispute, then the subsequent realization that she was actually dealing with a complex, high-value High Court commercial dispute should have triggered an automatic, statutory escalation of the fees under Schedule VI. By retaining the identical quantum, the Taxing Officer effectively, and unlawfully, applied Magistrate Court tariffs to a High Court litigation.

56. This failure to logically follow through on the correction of the record constitutes a glaring error in principle. It renders the amended Ruling inherently defective, irrational, and liable to be set aside.

The Principle of Consistency and Manifest Injustice

57. The final, and perhaps most damning, ground advanced by the Applicant relates to the total collapse of consistency in the taxation process. As noted earlier, the fourth pillar of the ***Premchand Raichand*** doctrine is that "so far as practicable there should be consistency in the awards made".

58. The Applicant provided the Court with certified evidence of two companion Bills of Costs arising from the exact same consolidated litigation (HCC 90 of 2010 and HCCC 1285 of 1997/796 of 2001). The Applicant firm had concurrently represented the estates of other deceased partners in the very same partnership dispute. The structure, substance, timeline, and underlying subject matter of these companion bills were practically identical to the instant bill.

59. The very same Taxing Officer who assessed instruction fees at Kshs. 500,000/= for the Estate of Wambui Kahoreria in December 2023, assessed instruction fees at a mere Kshs. 77,000/= for the Estate of Nelius Muguru Mwangi in August 2024, for identical legal representation in the identical litigation.

60. While it is universally acknowledged that taxation is not an exact science and relies heavily on the individual discretion of the Taxing Officer, judicial discretion is not a license for arbitrary, unpredictable caprice. Discretion must be exercised rationally, objectively, and against the backdrop of precedent. Where multiple cases share the exact same factual matrix, the same degree of complexity, the same duration, and the same underlying subject matter value, the awards generated by the judicial system must reside within a predictable, consistent, and logically defensible bandwidth.

61. A radical, unexplained deviation from established patterns in identical cases results in manifest injustice. The Taxing Officer offered absolutely no rationale in her amended Ruling to justify why the representation of the Nelius Muguru Mwangi Estate was valued at less than one-fourth the value of the representation of the Wambui Kahoreria Estate.

62. I, therefore, find, as a matter of fact and law, that the award of Kshs. 218,922/= is manifestly low, structurally inconsistent with parallel judicial determinations arising from the same cause of action, and symptomatic of an improper, erratic application of judicial discretion. This inconsistency constitutes a profound error in principle.

63. For the exhaustive reasons delineated above, I find that the Applicant's Chamber Summons dated 12 September 2024 is meritorious and succeeds. The Court makes the following orders:

    (i) The amended Ruling of the Taxing Officer (Hon. C. Ng'ang'a, Deputy Registrar) dated and delivered on 28 August 2024, regarding the taxation of the Applicant's Bill of Costs dated 28 March 2023, is hereby set aside in its entirety.

(ii) The Applicant's Bill of Costs dated 28 March 2023 is remitted to the Deputy Registrar to be assigned for taxation *de novo* before a Taxing Officer other than Hon. C. Ng'ang'a;

(iii) In conducting the fresh taxation, the assigned Taxing Officer is hereby strictly directed to adhere to the following parameters:

a. The Bill of Costs shall be treated, evaluated, and assessed substantively as an Advocate-Client Bill of Costs governed by Schedule VI, Part B of the Advocates Remuneration Order (2009/2014), entitling the Applicant to the requisite 50% increment on instruction and related fees.

b. The Taxing Officer shall assess the instruction fees by ascertaining the value of the subject matter based on the Deceased's proportionate equitable share of the Kenda Boarding & Lodging partnership assets at the time of the litigation.

c. The Taxing Officer must take mandatory judicial notice of the awards rendered in the companion cases (HCC Misc E174/2023 and HCC Misc E175/2023) to ensure consistency and prevent manifest injustice, adjusting the award logically based on the specific work done by the Applicant herein.

d. The Applicant shall be entitled to the inclusion of **Value Added Tax (VAT)** at the prevailing statutory rate on the final taxed professional fees.

(iv) The costs are awarded to the Applicant.

DATED AND DELIVERED AT NAIROBI THIS 30 DAY OF MARCH 2026

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

for the Advocate/Applicant: Mrs Ndegwa h/b Mrs Maira

for the Client/Respondent: Ms Mugala h/b Mr Ndegwa

Court Assistant: Lucy Mwangi