

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

ELC MISC REFERENCE APPLICATION CASE NO. E004 OF
2024

WILLS ONKOBA.....
APPLICANT

-VERSUS-

SOPHIA JEPTOO.....
RESPONDENT

**(Being a reference seeking to set aside or vary the
Ruling of Hon. S M MOKUA (CM) made on 20th February
2024 In Kapsabet MCELC E009 of 2022)**

RULING

1. The present ruling pertains to the applicant’s reference by way of Chamber Summons dated 1st March 2024 through Kalya and Company Advocates for orders infra;

- a) That the decision of the Taxing Officer as evidence in the ruling delivered on 20th February 2022 with

respect to items 1-13 and 15-20 in the bill of costs dated 4th April 2023, be set aside and taxed afresh by this Honourable Court.

b) That in the alternative, the Honourable Court be pleased to order the Respondent's Bills of Costs dated 4th April 2023 be assessed/taxed afresh by another taxing master.

c) That costs of the application be provided for.

2. The foundational basis of the reference is the applicant's annexed affidavit of nineteen paragraphs sworn on even date by the applicant and a copy of the accompanying ruling delivered on 20th February 2024. Briefly, the applicant averred that the Taxing master omitted to consider relevant factors, the special circumstances and that there was no documentation in support of the of the award which is excessive and not in line with **Order 21 Rule 9A of the Civil Procedure Rules 2010.**

3. Further, the reference is founded upon the grounds, inter alia;

a) That the Learned Hon. Taxing Master erred in principle and in law in taxing the bill of costs at **kshs. 170,550/=**.

b) That the learned Hon. Taxing Master failed to take into account the value of the subject Matter and the simplicity of the case while assessing the fee payable under instructions fees.

c) That the learned Honourable Taxing Master omitted to consider relevant factors and/or didn't address himself to the importance of the cause/matter, the amount involved, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances.

d) That the amount awarded is too high and without regard to the provisions of the Advocates

Remuneration order such that it amounts to an injustice.

e) That in view of the above it is only fair and just that the Taxing Master's decision be set aside and the bill be taxed afresh in the interest of justice and fairness.

4. The respondent opposed the reference by a replying affidavit of sixteen paragraphs sworn on 8th December 2025 by her counsel Faith Aketch who averred and urged the court not to interfere with the Tax Officer's decision and dismiss the reference with costs. That the Taxing Officer correctly and duly utilized the value of the subject matter adjudged by the court at **Kshs. 5,000,000/=** which is reasonable and not excessive. That no extraneous factors included therein.

5. Further, it is averred that the Taxing Officer confirmed items on the record and struck off a number of them in the bill of costs. That the said officer scrutinized and weighed

the bill against the Advocates Remuneration Order referred to in the ruling in respect of advocates work done.

That thus, the Taxing Officer's decision be upheld in the interest of justice and fairness.

6. In the submissions dated 5th February 2026, learned counsel for the applicant stated that the Taxing Officer applied wrong principles in the assessment of the bill of costs and that as such, the ruling be set aside. That the taxed costs are excessive and not commensurate to the services rendered in the case.

7. Counsel urged the court to rely on the case of **Joreth Ltd vs Kigano & Associates 2002 1 EA 92. KRA vs Otieno Ragot & Company Advocates (2024) eKLR** on the principles of taxation of bill of costs. That also the court be guided by the principles set out in **Premchand Raichand Ltd & another vs Quarry Services of East Africa Ltd & others (1972) E.A 162** as summarized by Richard

Kuloba in his book entitled **Judicial Hints on Civil Procedure, 2nd Edition, page 118 to 119.** That therefore, the bill of costs be taxed at **Ksh. 53,000/=** only.

8. By the respondent's submissions dated 7th January 2026, twin issues namely whether the Taxing officer's ruling is in synchrony with the legal principles and that it be upheld, are delineated therein. Reliance was made on the case of **Mua vs Loki & Associates Advocates {2025} KEHC 14357 (KLR)** on the grounds upon which a court can interfere with the decision of Taxing Officer. That the approach to quantum in such a matter, is the court's discretion as held in **Ochieng, Onyango, Kibet and Ohaga Advocates vs Adopt A Light Ltd (2007) eKLR.**
9. It was also submitted that the Taxing Officer considered the monetary value of the subject matter being the principal basis for the assessment of amount of costs in such a matter. That **Rule 1 of the 7th Schedule of the**

Advocates Remuneration Order was adopted in the assessment of the instruction fees. That there are no worthy assertions or proof to interfere with the Taxing Officer's ruling. That in the result, the reference be dismissed and the applicant to bear costs which follow event under section 27 of the Civil Procedure Act Chapter 21 Laws of Kenya.

10. I have carefully considered the entire reference, the response thereto as well as the rival submissions together with the issues identified and the authorities cited therein. So, is the reference meritorious?

11. It is important to note that term 'assessment of costs' interchangeably termed as 'taxation' is not fatal as **Rule 2 of the Advocates Remuneration Order 2014** relied upon at paragraph 7 of the ruling, relates to assessment of costs. The former and the latter terms are used before the Magistrates' court and Superior Courts respectively. In

that regard, this court cannot interfere with the assessment of the bill of costs by the Taxing Officer unless there is an error of principle or the costs are manifestly excessive as noted in **First American Bank of Kenya Ltd-vs-Shah & others 2002 1 EA 64.**

12. This reference is not a rehearing but a review process of the matter under section 11 of the Advocates Act Chapter 16 of the Laws of Kenya and paragraph 11 of the Advocates Remuneration Order. It is a reconsideration of the principles applied in the ruling by the Taxing Officer regarding the bill of costs. The bottom line is to determine whether there is manifest error of principle by the nature of the reference and whether the Officer exercised his discretion judicially and not whimsically in arriving at the ruling.

13. In the reference, the duty of this court is to consider if the Taxing Officer took into account factors including the

value of the subject matter in arriving at the ruling. In the case of **Benson Adega & 2 others-vs-Kibos Distillers Limited & 5 others {2020} KESC 36 (KLR)**, the Supreme Court of Kenya noted that in such a determination, the Taxing Officer must exercise discretion judicially and not capriciously.

14. Where the value of the subject matter is not easily ascertainable from the pleadings, judgment or settlement, the court can use discretion to assess a reasonable fee based on the nature, complexity and importance as held in **Joreth Ltd-case (supra)**.

15. Clearly, the value of the subject matter at Kshs **5,000,000/=** is disclosed at paragraph 4 of the ruling. Further, paragraphs 1 and 2 of the ruling reveal the nature of the claim and the outcome of the suit which was struck out.

16. In arriving at the figure in the assessment of costs, the Taxing Officer applied the relevant principles including the value, nature and complexity of the subject matter. I subscribe to the decision in the case of **Nairobi Bottlers Limited -vs- Mark Ndumia Ndungu & another (2024) eKLR** where the Supreme Court of Kenya referred to the general principles applicable and remarked;

‘.....There are no mathematical formulae to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances.’

17. Similarly, in **Kenya Airports Authority case (supra)**, the Supreme Court of Kenya was of the considered view that assessment of costs should focus on reasonable compensation for work done or fair reimbursement in a case and noted that;

'...Of importance, what amounts to reasonable costs can only be determined on a case-by-case basis'

18. In the instant reference, it is evident that the Taxing Officer observed that the parties failed to agree on costs, taxed off amounts and reached his informed finding thus;

'After striking off a cumulative total of Kshs 11, 900/= the party and party costs are assessed at Kshs. 170, 550/='

19. To that end, I am of the considered opinion that the Taxing Officer did not either include or omit relevant factors, correctly understood the subject matter, noted the general conduct of the proceedings and assessed costs that are reasonable in the ruling. There is no wrong principle applied therein as held in **Tanui-vs-Siele (2024) eKLR**. Furthermore, the costs as assessed follow event within the discretion of the court judicially exercised

for the ends of justice; see **Jasbir Singh Rai & others vs Tarlochan Singh Rai & others (2014) eKLR**. Therefore, I find no justification to interfere with or set aside the Taxing officer's ruling.

20. Accordingly, the instant reference lacks merit and the same is hereby dismissed with costs to the respondent.

21. It is so ordered.

Dated and **Delivered** at **Kapsabet** this 17th day of March 2026.

HON. G.M.A. Ong'ondo

JUDGE

In the presence of;

1. Ms. Kesei learned counsel for the applicant
2. Ms. Aketch learned counsel for the respondent
3. Walter, court assistant