

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**CAUSE NO. 809 OF 2020**

**(FORMERLY H.C CIVIL SUIT NO. 25 OF 1998)**

*(Before Hon. Lady Justice Agnes Kitiku Nzei)*

**JAMES M. NJIIRI .....CLAIMANT**

*VERSUS*

**NATIONAL BANK OF KENYA LIMITED . ...RESPONDENT**

**RULING**

**Background**

1. The Court (**Dr. Jacob Gakeri, J**) delivered the Court's Judgment on 17<sup>th</sup> April, 2024 and stated, **inter-alia**, as follows:-

***“91. In the end, Judgment is entered in favour of the Claimant against the Respondent in the following terms;***

**(a) Arrears due to the Claimant but for the compulsory leave 1994 - 1999 as follows:-**

**(i) Monthly salary.**

**(ii) Entertainment allowance based on his average claim for the year.**

**(iii) Travelling allowance based on his average claim for the year.**

**(iv) House allowance as prayed for Kshs.425,600/=.**

**(v) Leave pay - to be computed by the Respondent as appropriate.**

**(vi) Leave allowance - to be computed by the Respondent as appropriate.**

**(vii) Leave travel allowance - to be computed by the Respondent as appropriate.**

**(viii) Refund of water, telephone, electricity and medical as claimed Kshs.57,077.60.**

**(b) Costs of this suit.**

**(c) Interest at court rates from date hereof till payment in full.**

**(d) Certificate of service be issued within 30 days.**

***It is so ordered."***

2. It is clear from the foregoing that it is not possible to determine the value of the subject matter in the suit herein from the Court's Judgment; as the issue of computation of the awards made by the Court in favour of the Claimant **was left largely indeterminate, with the Court ordering the Respondent to compute the same as appropriate.**
3. Parties herein appear to have successfully waded through the issue of post-judgment computation of the Judgment sum. I have gathered from the documents placed before me that a sum of **Kshs.6,103,543/=** may have been agreed on. I will, for purposes of this Ruling, treat the aforestated sum of **Kshs.6,103,543/=** as the value of the subject matter in the suit herein.

4. The Claimant is shown to have filed a Party and Party Bill of Costs dated 14<sup>th</sup> October, 2024, seeking payment of a total of **Kshs.3,263,787/=** in costs and disbursements. For taking instructions (**item no. 1 in the said bill of costs**), the Claimant sought payment of **Kshs.2,400,000/=**. The Claimant further sought to be paid **Kshs.650,000/=** as getting up fees.
5. For record purposes, both parties were, and still are, represented by Counsel.
6. In a Ruling delivered on **30<sup>th</sup> April, 2025**, this Court's Deputy Registrar, sitting as a Taxing Officer, taxed Item No. 1 in the bill of costs (**taking instructions**) at **Kshs.222,070/=**. Item No. 56 (**getting up fees**) was taxed at **Kshs.74,023/=**. The entire Party and Party Bill of Costs was taxed at **Kshs.507,520/=**. A total of **Kshs.2,756,267/=** was taxed off.
7. Dissatisfied with the Taxing Officer's said decision, the Claimant filed a Reference before this Court pursuant to

**Rule 11 of the Advocates Remuneration Order**, which provides as follows:-

**“11 (1) Should any party object to the decision of the taxing officer, he may within fourteen days from the date of 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 for his objection.**

**(3) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under paragraph (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."**

8. The application before me for determination is the Claimant's Chamber Summons dated **12<sup>th</sup> May, 2025**.

**The Chamber Summons dated 12<sup>th</sup> May, 2025**

9. The Claimant/Applicant seeks the following Orders:-

*(a) That the Court be pleased to review and/or set aside the decision of the Taxing Officer delivered on **30<sup>th</sup> April, 2025** taxing and/or certifying costs*

*due [and] payable to the Claimant/Applicant by the Respondent at **Kshs.507,520/=**.*

*(b) That costs of the application be in the cause.*

10. The application, which sets out on its face the general grounds on which it is brought, is based on the supporting affidavit of **Judith A. Guserwa Advocate** sworn on 12<sup>th</sup> May, 2025. It is stated in the said supporting affidavit, ***inter-alia:-***

*(a) that Judgment was on 17<sup>th</sup> April, 2024 delivered in favour of the Claimant for **Kshs.8,558,383.72**, together with costs of the suit and interest from date of Judgment until payment in full.*

*(b) that the Claimant's Party and Party Bill of Costs dated 14<sup>th</sup> October, 2024, to which the Respondent responded, was on 30<sup>th</sup> April, 2025 taxed in the sum **Kshs.227,070/=**.*

*(c) that the Taxing Officer did not apply the applicable scale to the sum of Kshs.8,558,383.72 in calculating the instruction fees, thereby falling into error.*

(d) that the Taxing Officer did not consider that the scale provides for instruction fee at **Kshs.2,400,000/=** and getting up fees of **Kshs.800,000/=**.

(e) that the deponent wrote to the Taxing Officer on **30<sup>th</sup> April, 2025** seeking reasons for the low award of **Kshs.507,520/=**, but **never** received any response, despite having served the letter within the required time.

11. Documents annexed to the said supporting affidavit include copies of the Court's Judgment delivered on **17<sup>th</sup> April, 2024**, the Taxing Officer's Ruling delivered on **30<sup>th</sup> April, 2025**, and the Claimant's Advocates letter to the Taxing Officer dated **30<sup>th</sup> April, 2025** and shown to have been served/received in the Court's Registry on **5<sup>th</sup> May, 2025**, within the fourteen days period provided for in **Rule 11(1) of the Advocates Remuneration Order**. The Taxing Officer is **not** shown to have responded to the said letter, and a Certificate of Costs is shown to have been issued on **14<sup>th</sup> May, 2025**, despite there having been on record the aforementioned letter dated **30<sup>th</sup> April, 2025**. The Taxing is

not shown to have recorded the issues/objection raised in the said letter dated 30<sup>th</sup> April, 2025.

12. The application is opposed by the Respondent vide a replying affidavit of **Chrispus N. Maithya** sworn on 14<sup>th</sup> July, 2025. It is stated in the said replying affidavit, ***inter alia:-***

(a) *that after a flurry of correspondence exchanged between Counsel for the parties, the decretal sum was eventually settled in the sum of **Kshs.6,103,543/=.***

(b) *that from the reading of the Taxing Master's Ruling, the Honourable Taxing Master explained the basis of taxing the instruction fees as she did.*

(c) *that the Respondent not only accepted the Taxing Master's Ruling, but the Bank proceeded to swiftly settle the taxed costs to the Claimant's Advocates, **in the sum of Kshs.507,520/=.***

(d) *that the Taxing Master's determination of the fees payable under Item **Nos. 1 and 26** of the Claimant's Party & Party Bill of Costs was fair and just, and ought not to be disturbed. That the*

*Respondent Bank owes the Claimant nothing more in terms of costs, and the Court should dismiss the Reference with costs to the Respondent, and mark the matter as concluded.*

13. Documents annexed to the said replying affidavit include copies of the Claimant's Advocates' letter dated 23<sup>rd</sup> July, 2024 and an RTGS Remittance Slip dated 19<sup>th</sup> May, 2025 **(for Kshs.507,520/=)**.
14. It is to be noted that according to the Court's record, the said remittance was effected **after** the Court had on **16<sup>th</sup> May, 2025** given directions on service of the Reference herein, which had been filed under a certificate of urgency. There is on record an affidavit of service of one **Anthony S. Lyuba** (a Court Process Server) sworn on 20<sup>th</sup> May, 2025 and an **email** indicating that both the Reference and the Court's directions given thereon were served on **Friday 16<sup>th</sup> May, 2025 at 3.52 p.m.**

15. Parties filed written submissions for and against the Reference, pursuant to the Court's directions in that regard, which I have considered.
16. The single issue for determination is whether the Orders sought by the Claimant/Applicant are merited.
17. The suit herein was a defended suit. The Schedule of the Advocates Remuneration Order applicable in taxing the Claimant's Party & Party Bill of Costs dated 14<sup>th</sup> October, 2024 is Schedule VI-A paragraph 1(b). The said Schedule has been **amended** numerous times over the years, each time **varying** the amounts payable in costs; both for taking instructions, getting up fees, court attendances, taking copies, perusals etc. A taxing officer **must** always state the schedule/scale Edition of the Advocates Remuneration Order that was applicable at the time of filing suit/taking instructions. Failure to do so, as apparently happened in the present case, makes it hard, or even impossible for this Court to **accurately** determine the correctness or otherwise of the Taxing Officer's impugned decision.

18. Further, Schedule VI of the Advocates Remuneration Order is not just a **catalogue** of figures. It states as follows at paragraph 1 thereof:-

**“The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it.”**

19. The foregoing provision obligates a Taxing Officer **to give reasons for exercising his or her discretion in one way or the other**. The taxing officer’s impugned decision herein is largely silent on the foregoing.

20. I have perused the entire Court record, and the matter has not come across to me as one where the only consideration in assessing instruction fees ought to have been the aforesaid **“Judgment sum”**. The Taxing Officer ought to have explained the basis of the exercise of her discretion in taxing the instructions fees as she did. The donation of discretion to Taxing Officers in matters taxation of costs is, in my view, based on the fact that no two suits and/or proceedings are identical, though the value of the subject

matter in each may be similar. Exercise of the donated discretion is meant to cater for issues like the length of time taken in conducting proceedings, complexity of the issues involved, the number of parties in a suit, e.t.c. Discretion cannot have been given by the law where there does not exist the possibility of differing decisions regarding similar value of subject matter, depending on the circumstances of each individual suit.

21. For the foregoing reasons, I find and hold that the orders sought by Claimant/Applicant are merited. The Chamber Summons application dated 12<sup>th</sup> May, 2025 is allowed in the following terms:-

**(a) The Taxing Officer's decision delivered on 30<sup>th</sup> April, 2025 taxing the Claimant's Party and Party Bill of Costs dated 14<sup>th</sup> October, 2024 at Kshs.507,520/= and the Certificate of Costs issued on 14<sup>th</sup> May, 2025 are hereby set aside.**

**(b) The Claimant's Party and Party Bill of Costs dated 14<sup>th</sup> October, 2024 shall be taxed a fresh by a Taxing Officer other than Honourable Aziza Ajwang.**

**(c) The sum of Kshs.507,520/= shown to have been paid to the Claimant's Advocates on 19<sup>th</sup> May, 2025 during the pendency of the application herein shall be held by the said Advocates pending the fresh taxation, and shall be taken into account upon such taxation.**

**(d) Each party shall bear its own costs of the application.**

22. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS  
10<sup>TH</sup> DAY OF APRIL 2026**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Miss Okondo for the Claimant

Miss Kavagi for the Respondent

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