

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. E046 OF 2025

ALLIANCE IN MOTION GLOBAL (K) LTD.....
APPLICANT

VERSUS

ABUODHA & OMINO ASSOCIATES
ADVOCATES.....RESPONDENT

RULING

1. This is a Ruling in respect of a Reference filed by the Client/Applicant against the Advocate/Respondent dated 17th January, 2026.

Background Facts

2. The Applicant filed the Chamber Summons dated 17th January 2025 seeking the following orders;

a) The decision of the taxing master delivered on 18th December 2024 be set aside/varied and the Advocate Client Bill of Costs dated 20th August 2024.

b) Costs of this reference be provided.

3. The Application was premised on the grounds on the face of it and by the Affidavit of **Roselyn Garcia** who is a Country Manager of the Client/Applicant. She averred that the

Respondent filed an Advocate-Client bill of costs dated 20th August 2024 and demanded an exorbitant figure of **Kshs.2,345,897**. It was taxed at **Kshs.1,072,914.60**

4. The Applicant, being dissatisfied with the taxation decision, seeks to have the said decision set aside. The reasons being that the award of instruction fees of Kshs.613,040 is manifestly high and punitive in the circumstances. That it is without basis in law and is an unjust enrichment of the Advocate as the matter did not reach full hearing.
5. Thus, the Taxing Officer erred in law and misdirected herself in principle by applying the wrong interpretational principle on part B (advocate Client Costs) of schedule 6. The Respondent is not entitled to the amount of Kshs.306,520 as taxed by the Taxing Officer.
6. In reply, the Respondent filed the Replying Affidavit sworn on 30th January 2025. It was the Respondent's position that the Applicant's application is incompetent for failing to comply with the mandatory procedure under Paragraph 11 of the Advocates Remuneration Order. The argument advanced being that the Applicant did not first issue a written notice to

the Taxing Master requesting reasons for the taxation of the disputed items. It is contended that the law requires such notice before filing a Reference. Thus, failure to do so renders the application frivolous, incompetent, and fatally defective. The Respondent further notes that the matter involved significant constitutional issues under **Articles 27, 28, 29, 39, 41, 47, and 49 of the Constitution of Kenya.**

7. The Respondent explained that the case arose from departure prohibition orders issued by the **Kenya Revenue Authority** against foreign employees of Alliance in Motion (K) Ltd. This was over alleged tax arrears initially demanded at KShs.300,000,000 and later reduced to KShs.133,000,000. The matter was filed under a certificate of urgency during the Christmas Recess, requiring several court attendances by counsel. It was ultimately determined by Hon. Chacha Mwita J.(as he then was), who issued orders lifting the prohibition orders. Although the Respondent disagrees with the Taxing Master's finding that the matter did not proceed

to hearing, it acknowledged that the Taxing Master carefully evaluated each item and provided reasons for the taxation.

8. Therefore, the Applicant has failed to demonstrate any misapplication of principle or wrongful exercise of discretion by the Taxing Master that would justify interference by the Court. It is argued that the Applicant has merely cited case law extensively without showing how the taxation was erroneous, That the affidavit does not disclose sufficient grounds for setting aside the Taxing Master's findings.

Issues for determination

9. Having carefully considered the Application, the response, and the written submissions, the single issue for determination is as follows;

a) Whether the decision of the Taxing Officer delivered on 18th December 2024 should be set aside.

Analysis and determination

10. It is well established that a Court will not ordinarily interfere with the discretion of a taxing officer unless there is

an error in principle in the taxation of costs. As affirmed in **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR**, a judge sitting on a reference will only interfere where such an error is demonstrated. The Court further clarified that an error of principle may arise where the award is manifestly excessive or where undue emphasis is placed on factors such as the nature and complexity of the matter. This is a position also echoed in **Moronge & Company Advocates v Kenya Airports Authority [2014] eKLR**.

11. The Respondent had filed an Advocate-Client Bill of Costs dated 20th August 2024 in the sum of Kshs. 2,345,897.00, which was opposed by the Applicant. Upon taxation, the Bill of Costs was reduced and allowed at Kshs.1,072,914.60 pursuant to a Ruling delivered on 18th December 2024. Aggrieved by the Taxing Officer's decision, the Applicant filed the present Application.
12. It was the Applicant's case that the award of Kshs.600,000 as instruction fees in the circumstances is inordinately high and unjustified. There is no demonstrated

urgency or complexity to support such an enhancement. The Taxing Master failed to properly exercise discretion in line with established legal principles, making the award subject to challenge and potential reduction.

13. Further, the Learned Taxing Officer erred in law and misdirected herself in principle by applying the wrong interpretational principle on part B (Advocate Client Costs) of schedule 6. The Respondent is not entitled to the amount as taxed by the Taxing Officer.
14. On the other hand, the Respondent urged the court not to disturb the findings of the Taxing Officer as they were accurate and based on principle.
15. It is the Court's considered view that the Applicant's contention is that the instruction fees is inordinately high and unjustifiable. This is bearing in mind that the matter did not proceed to a full hearing and was concluded via consent. It is therefore submitted that the matter relating to instruction fees, did not warrant such excessive fees.
16. It is undisputed that the matter involved constitutional rights under **Articles 27,28, 29, 39, 41, 47 and 49 of the**

Constitution. The Taxing Officer then relied on the provisions Schedule 6 Paragraph 1 (j) of the Advocate Remuneration Order 2014, which states that:

"Constitutional petitions and prerogative orders 292 Kenya Subsidiary Legislation, 2014 To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate- (ii) where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000."

17. In the case of **First American Bank of Kenya -vs- Shah and others (2002) 1E.A 64**. It was held that;

"... The high court was not entitled to upset a taxation merely because in its opinion the amount awarded was high and it would not interfere with a taxation officer's decision unless the decision was based on an error of principle or

the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.... Under the advocates remuneration order, some of the relevant factors to be considered were the nature and importance of the 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....”.

18. In considering the instruction fees, the Taxing Master pronounced herself as follows;

“The Applicant has argued that this case was complex because it involved constitutional rights under Articles 27, 28, 29, 39, 41, 47, and 49 of the Constitution, as well as tax issues concerning a substantial claim of Kshs. 133,000,000. However, complexity must be demonstrated with specific elements that make the case unique or particularly challenging.

In this matter, the case did not proceed to a full hearing or a determination on its merits. It was resolved through consent. While urgency and the stakes were high, the absence of protracted litigation or substantive

argument diminishes the claim that the case was exceptionally complex. As such, the instruction fees must be moderated to reflect this reality.

In the Muchiri W'Njuguna case, the court underscored that instruction fees must strike a balance-they should fairly compensate the advocate for the work done without resulting in unjust enrichment. The claimed amount of Kshs. 1,500,000 does not align with the effort and time reasonably required for this matter, especially since the petition did not culminate in a contested hearing.

Considering the above principles and the Provision, I find that the Applicant has not sufficiently demonstrated that the matter warranted the claimed instruction fees of Kshs. 1,500,000. While the urgency and subject matter justify an enhanced fee above the minimum Kshs. 100,000, a fee of Kshs. 600,000 is deemed reasonable.

Item one is taxed at Kshs. 600,000/= as instructions fees and amount taxed off Kshs. 900,000/=."

19. To this Court the Taxing Officer correctly noted that there was no evidence of an complexity in the matter. She cannot be faulted for making such a finding which is not adverse to the Applicant's position. However, the Taxing Officer went on to consider that the matter was urgent. This is indeed the correct position as the matter was filed during the Christmas Recess of the High Court. The Court also considered the subject matter. On this basis the Court went on to enhance the instruction fees to a sum of Kshs.600,000/=. The Taxing Officer had the discretion and was entitled to increase the instruction fees appropriately so long as the figure was reasonable. It cannot be said an increment by a factor of six is unreasonable. However, the Court has a duty to consider the enhancement of each case depending on the circumstances of each case before it.
20. It is the Court's considered view that the Client/Applicant has failed to demonstrate that there was an error in principle, and what is apparent is the Applicant's complaint that the amount awarded was high. The Court is not persuaded that the amount is excessively high.

21. In light of the above, the Application fails. As to costs, the same lie at the discretion of this Court and ordinarily follow the event. The same are awarded to the successful Respondent.

Determination.

22. The Client/Applicants application by way of a Chamber Summons

dated 17th January, 2025 is dismissed for lack of merits.

23. The costs thereof are awarded to the Advocate/Respondent.

24. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI
THIS 14TH DAY OF APRIL, 2026.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Shililu holding brief for Mr. Ndolo for the Client/Applicant

Mr. Omino for the Advocate/Respondent

Mr. John Paul - Court Assistant

