

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. E044 OF 2025

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

VERSUS

ABUODHA & OMINO ASSOCIATES
ADVOCATES.....RESPONDENT

RULING

1. This Ruling arises out of a Reference filed by the Client/Applicant dated 17th January, 2025.

Background Facts

1. 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 be remitted back for taxation before a different taxing officer.*
- b) Costs of this reference be provided.*

2. The Application was premised on the grounds on the face of it and by the Affidavit of **Roselyn Garcia** the Country manager of the Applicant. She stated that the Respondent

filed an Advocate-Client bill of costs dated 20th August 2024 and demanded an exorbitant figure of **Kshs.3, 890, 060/=**. It was taxed at Kshs.776,040/=.

3. The Applicant being dissatisfied with the taxation decision seeks to have the said decision set aside. This is for reasons that the Taxing Officer erred in in law and misdirected herself in principle in arriving at the value of the subject matter. This is by ignoring a consent filed by the parties dated 13th July 2021.
4. Subsequently, the Taxing Officer erred in law and misdirected herself in principle by applying the wrong interpretational principle on part B (Advocate Client Costs) if schedule 11 of the advocate remuneration order. This is by simply applying a mathematical formula to the instruction fees ascertained in the taxed party - party costs.
5. 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 11. That she did not, in assessing fees thereunder, including instruction fees,

exercise her discretion guided by the prescribed scale of fees in Part A.

6. Vide the Replying Affidavit sworn on 30th January 2025, the Respondent responded that the Applicant's application is incompetent and fatally defective for failure to comply with the mandatory requirements of Paragraph 11 of the Advocates Remuneration Order. It is argued that the Applicant did not write to the Taxing Master requesting reasons for the disputed items before filing the application, as required under the law. Consequently, the application is said to be frivolous and procedurally defective. The Respondent further maintains that the Taxing Master properly applied the applicable principles of taxation, considering the value of the subject matter and exercising discretion where necessary.
7. In addition, the dispute involved a sum of KShs.133,000,000 and that the matter proceeded through several tribunal attendances and alternative dispute resolution before being resolved. In her Ruling, the Taxing Master reduced the instruction fees from KShs.2,500,000 to KShs.600,000 and

provided reasons for the decision. Although the Respondent disagrees with the disallowance of KShs.500,000 claimed as getting-up fees under Schedule 6 paragraph 2, it chose not to challenge the Ruling. The Respondent, therefore, asserts that the Taxing Master carefully considered each item and provided reasons for the taxation. That the Applicant's challenge is merely an attempt to avoid paying fair legal fees for work done.

Issues for determination

8. After considering the Application, the response, and the written submissions by Counsel for the parties, the Court frames a single issue for determination;

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

Analysis

9. It is settled law that on a Reference, this Court will not interfere with the decision of the Taxing Officer on a taxation except in exceptional cases. This is where it appears that the sum allowed is manifestly excessive or low, having regard to

the nature of the suit or proceedings, so as to lead the Court to the conclusion that the taxing officer must have acted on a wrong principle in assessing the costs. **See Kipkorir, Tito & Kiara Advocates v. Deposit Protection fund Board [2005] eKLR;**

“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. In Arthur v Nyeri Electricity Undertaking [1961] EA 497, the predecessor of this Court said at page 492 paragraph 1:“where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.

10. In **Joreth Limited v. Kigano & Associates [2002] eKLR and Arthur v Nyeri Electricity Undertaking [1961] EA 497,** the Court observed that:

“where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters with which the

Taxing Officers are particularly fitted to deal and the court will intervene only in exceptional cases.”

11. It was the Applicant’s case that it produced a consent dated 13th July 2021 confirming that the dispute was settled, and this was neither disputed nor challenged by the Advocate/Respondent. The consent did not indicate an agreed sum of Kshs. 118,000,000; instead, it provided that the Appellant would pay a balance of Kshs. 51,303,011 in twelve monthly instalments. Accordingly, the value of the subject matter is Kshs. 51,303,011, being the outstanding principal tax balance.
12. On the other hand, the Respondent took the position that the amount rendered as the settlement amount was Kshs.133,668,525/-. By consent (1) THAT the principal tax payable amount to Kshs.92,684,201/- as summarized below. At the said paragraph 1, the principal tax 92,684,201/- penalty 18,536,840 interest 22,444,484/- total tax outstanding is Kshs.133,665,525/- AND NOT Kshs.51,303,011/- as purported by the Applicant.

13. It is common ground that there was a consent by the parties herein. In **Joreth Ltd v Kigano & Associates NRB CA Civil Appeal No. 66 of 1999 [2002] eKLR** the Court of Appeal outlined the principle as follows:

“We would at this stage point out that the value of the subject matter of a suit for the purpose of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable, the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

14. There is no dispute that the value of the subject matter ought to be ascertained from the settlement, which in this case is the Consent dated 13th July 2021. In the Ruling dated 18th December 2024 it is not clear where the figure of Kshs.118, 000, 000 emanated from;

“The matter was eventually settled by consent and an agreed amount of Kshs. 118,000,000

becomes the final sum payable by the Respondent.

Given that the dispute was resolved by consent, the subject value for the purpose of determining instruction fees should be based on the agreed settlement amount of Kshs. 118,000,000. Therefore, the value of the subject matter herein is Kshs. 118,000,000.00”

15. The said consent set out in details the basis for the settlement reached, the principal tax assessed, the penalties accrued and the payments already made. The Client was to apply for a waiver of some of the taxes. At the penultimate part the final tax due or agreed upon was stated as follows;

“...the Appellant shall pay the balance of the Principal Tax of Kshs.51,303,011/- in twelve monthly instalments...”

16. Having noted the existence of the consent, the Taxing Officer ought to have been guided by the settlement that is the amount in the consent dated 13th July 2021. The Court finds that the Taxing Officer erred in principle by not restricting herself to the Consent figure which formed the value of the subject matter. That is the sum of **Kshs.51,303,011/-.**

17. Therefore, the Court finds and holds that the Application has merit and is hereby allowed. The matter is remitted back to be taxed by a different Taxing Officer (other than the one who taxed the Bill) who is hereby is directed to carry out a fresh taxation of the Advocate-Client bill of costs, as to item 1 being the instruction fees. As this will have an effect on the item relating to VAT the same will similarly be taxed afresh.
18. As to costs the same lie at the discretion of this Court. Costs ordinarily follow the event. The successful Applicant is awarded the costs of the Reference.

Determination

19. The application by the Client/Applicant by way of a Chamber Summons dated 17th January 2025 is allowed in the following terms;
- a) THAT the decision of the Taxing Master delivered on 18th December 2024 is HEREBY partially set aside/varied and the Advocate-Client Bill of Costs dated 20th August 2024 is HEREBY remitted back for taxation before a different Taxing Officer (other than*

the Taxing Officer who originally taxed the Bill) on items 1 relating to instruction fees and the Item relating to VAT.

b) The Applicant is awarded the costs of the reference.

20. 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