

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. E045 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

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 be remitted back for taxation before a different taxing officer.

b) Costs of this reference be provided.

3. This Application is supported by the Affidavit of **Roselyn Garcia** the Applicant's Country Manager. She stated that the Respondent filed an Advocate Client bill of costs dated 20th

August 2024 and demanded an exorbitant figure of **Kshs.2,345,195/=** and it was taxed at **Kshs.510,896.07**.

4. 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 law and misdirected herself in principle in arriving at the value of the subject matter. This is by ignoring the laid down principle in **Schedule 11 of the Advocates Remuneration Order**.
5. The Taxing Officer erred in law and misdirected herself in principle by applying the wrong interpretational principle on part B (Advocate Client Costs) in 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.
6. Further, 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.

7. In response, the Respondent filed the Replying Affidavit sworn on 30th January 2025. The Respondent argues that the Applicant's application is incompetent for failure to comply with the mandatory procedure under Paragraph 11 of the Advocates Remuneration Order. That the Applicant did not first write to the Taxing Master requesting reasons for the taxation of the disputed items. It is contended that the law requires such written notice before filing a reference to the High Court, and failure to follow this process renders the application frivolous, incompetent, and fatally defective. In addition, that the Taxing Officer acted within her mandate and properly taxed the bill at Kshs. 510,896 from the original claim of Kshs. 2,345,195.
8. Finally, the Respondent contended that the Applicant has failed to identify any specific item of taxation that was wrongly assessed, instead lodging a blanket objection to the total amount. It is argued that such a generalized complaint does not constitute a proper reference since the Court can only review specific items where errors are demonstrated. The Respondent therefore maintained that the Taxing Officer

properly exercised her discretion, including reducing the instruction fee significantly and disallowing getting-up fees. For those reasons, the application is merely an attempt to delay payment of the Advocate's taxed costs.

Issues for determination

9. The Court has carefully considered the Application, the response, and the written submissions by the Counsel for the parties. The Court frames the sole issue for determination as follows;

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

Analysis

10. It is trite that in dealing with a Reference on assessment of instruction fees, the guiding principle is as was stated in **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board NRB CA Civil Appeal No. 220 of 2004 [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”.

11. The Respondent herein filed an Advocate-Client bill of costs dated 20th August 2024. The bill was drawn at Kshs.2,345,195.00. The Applicant herein objected to the Advocate-Client bill of costs by filing a replying affidavit dated 11th November 2024. The Advocate- Client bill of costs dated 20th August, 2024, was taxed at **Kshs.510,896.07 (Five hundred and ten thousand eight hundred and ninety-six and cents nought seven)** by a Ruling dated 18th December 2024.

12. The Applicant argued that following the Tax Appeal Tribunal’s judgment dated 6th September 2024, which partially allowed the appeal, the value of the subject matter

as pleaded was altered and could not be relied upon by the taxing master. Consequently, the taxing master ought to have been guided by Schedule 11 paragraph 9 of the Advocates Remuneration Order. It provides that where the value of the subject matter cannot be ascertained, instruction fees are discretionary, subject to a minimum of Kshs. 35,280, taking into account factors such as the nature, importance, difficulty, and urgency of the matter. Thus, the Taxing Officer failed to consider these factors and therefore applied the wrong principles.

13. In contrast, the Respondent submitted that the amount in dispute was as determined by the Taxing Officer. That in arriving at an instruction fee of Kshs. 292,895/-, which was comparatively modest, the Taxing Officer acted judiciously and in accordance with the applicable principles. Accordingly, it cannot be said that the taxing master erred or acted outside the established legal framework, as she did not merely apply a mechanical or mathematical formula, consistent with the position expressed in **Airports Authority v Otieno Ragot, Petition No. E011 of 2023.**

14. It is undisputed that the value of the subject matter was unascertainable from the judgment. This is because in the instant case the Tax Appeal Tribunal issued a judgment dated 6th September 2024 and the Appeal partially succeeded. This then informed the Taxing Officer's decision that;

“Guided by the above decision and in the absence of any evidence to the contrary and considering that the Tribunal's judgment did not conclusively determine a different value, I find it reasonable to adopt amount of Kshs. 10,289,556/= as the subject matter value for purposes of taxation.”

15. It is the Court's understanding that the Taxing Officer having found that the value of the subject matter could not be ascertained from the judgment, opted to use the pleadings and in this case the demand letter. The Court observed that this figure was derived from the pleadings and particularly the demand letter to the Applicant demanding taxes of Kshs.10, 289, 556.

16. In **Joreth Limited -Vs- Kigano & Associates [2002] EA 92**, the Court stated;

“We would at this stage, point out that the value of the subject matter of a suit for the purposes 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 Instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, and direction by the trial judge and all other relevant circumstances.”

17. Contrary to the Applicant’s argument that *“the Appeal partially succeeded and therefore the taxing master could not rely on the pleadings of the court to ascertain the value of the subject matter as the judgment completely altered the value in the Pleadings.”*; the court is of the considered view that while the Taxing Officer could not rely on the judgment to determine the value of the subject matter the same could be ascertained from the pleadings which the Taxing Officer did.

18. In **Eastland Hotel Limited v Wafula Simiyu & Co. Advocates NRB CA Civil Appeal No. 105 of 2014 [2014] eKLR**, the Court of Appeal reiterated the same position as follows:

“This Court’s decision in JORETH LIMITED v KIGANO & ASSOCIATES (supra) which was cited to us by both the appellant and the respondent, states that the value of the subject matter for purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement. But where the same is not ascertainable from the pleadings, judgment or settlement, the taxing officer is entitled to use his/her discretion to assess instruction fees. In so doing, the taxing officer will have to take into account, amongst other matters, the nature and importance of the cause or the matter, the interest of the parties, the general conduct of the proceedings and other relevant factors which may include the complexity of the case and its urgency. It is the value of the subject matter in dispute which determines the amount of instruction fees payable to an advocate. Was the taxing officer able to determine the value of the

***subject matter from the “pleadings” on record?
What are “pleadings”?***

Under Section 2 of the Civil Procedure Act, pleading includes: “A petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant.”

19. Consequently, the Court finds no reason to disturb the learned Taxing Officer’s assessment on Item 1, the instruction fees. Thus, the Application is unsuccessful.

20. As to costs the same ordinarily follow the event. The same are awarded at the discretion of this Court. There is no reason to deny the successful Respondent the costs of the Reference.

Determination

21. The Client/Applicant’s Application by way of a Chamber Summons dated 17th January 2025 is HEREBY dismissed for lack of merits.

22. The costs of the application are awarded to the Respondent.

23. 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