

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMM MISC. APPL. NO. E028 OF 2023

KEMBOY LAW ADVOCATES.....ADVOCATE/RESPONDENT

-VERSUS-

NAROK COUNTY GOVERNMENT.....CLIENT/APPLICANT

(A Reference from the Ruling by Hon. Adisa delivered on 30th October, 2024)

RULING

1. Before me is a Chamber Summons (Reference) dated 15th November 2024 filed by the Client/applicant pursuant to the provisions of Paragraph 11(2) of the Advocates (Remuneration) Order, 2014, seeking orders that this Honourable Court sets aside the Ruling and Order of the Taxing Officer, Hon. C.L. Adisa, delivered on 30th October 2024, which taxed the Advocate's Advocate-Client bill of costs dated 18th January 2023 at Kshs.3,021,425.00 and that the said bill of costs be taxed afresh. The applicant also seeks an order for the said advocate's Advocate-client bill of costs to be taxed afresh by a different Taxing Officer other than Hon. C.L. Adisa.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. John Maiyani Tuya, the applicant's County Secretary. Mr. Tuya averred that the Deputy Registrar misapplied the provisions of Schedule 6 of the Advocates Remuneration Order, resulting in an excessive award contrary to the applicable law and that the Taxing Officer erred by disregarding the applicant's submissions and

failing to properly consider the issues raised. He asserted that these errors jeopardize the applicant's rights and risk causing injustice.

3. In opposition to the Reference, the Advocate (respondent) filed a replying affidavit sworn on 24th March 2025 by Mr. Julius K. Kemboy, an Advocate of the High Court of Kenya and the learned Counsel for the Advocate law firm. Mr. Kemboy averred that Advocate's Advocate-Client bill of costs was properly prepared in accordance with Schedule 6 of the Advocates Remuneration Order, reflecting instruction fees, preparation fees, copies, and other items, all supported by detailed pleadings, submissions, and documentary evidence. He deposed that the instruction fees, including a 50% increase as permitted under Part B of Schedule 6, were properly assessed and justified, given the complexity and importance of the matter, which involved representation of the client in a dispute spanning several years.
4. Mr. Kemboy stated that specific objections raised by the applicant regarding the taxation of various items in the Advocate's Advocate-Client bill of costs are without merit, as all charges comply with the Advocates Remuneration Order and were properly supported. He emphasized on the substantial care, skill, and labour expended over the course of the case and urged this Court to dismiss the applicant's Reference with costs, asserting that the contentions made are baseless.
5. The instant Reference was canvassed by way of written submissions. The applicant's submissions were filed on 17th July 2025 by the law firm of Maina Ngaruiya & Company Advocates, whereas the respondent's submissions were filed by the law firm of Kemboy Law Advocates on 1st October 2025.
6. Mr. Maina Ngaruiya, learned Counsel for the applicant relied on the cases of **Joreth Limited v Kigano & Associates** [2002] 1 EA 92 and **Kyalo Mbobu**

T/A Kyalo & Associates Advocates v Jacob Juma [2015] KEHC 4756 (KLR), and submitted that in regard to instruction fees, the Taxing Officer misdirected herself in assessing Kshs.1,200,000/=, which was grossly excessive given that the matter was still pending. He argued that the Taxing Officer ought to have specifically detailed the factors guiding the discretion, including care and labour, number and length of papers, nature and importance of the matter, value of the subject matter, parties' interests, complexity, and novelty of the case, rather than generalizing. Counsel further disputed the Taxing Officer's valuation of the subject matter at Kshs.45,758,170.70, arguing that the same was misapplied.

7. Mr. Ngaruiya cited the cases of **Nyangito & Co Advocates v Doinyo Lessos Creameries Ltd** [2014] KEHC 5481 (KLR) and **Tom Ojienda & Associates Advocates v County Government of Narok** [2021] KEHC 452 (KLR), and stated that the Taxing Officer erred in law by increasing the total taxed costs by 50% in an Advocate's Advocate-client bill of costs, which principle is only permissible after party and party costs have been determined. In respect to items 3, 4, 5, 12, 13, 14, 15, 22, 23, 24, 25, 27, 28, 29, 30, 35, 37, 38, 42, 43, 48 & 49 relating to drawings, copies, and perusals, Counsel argued that the Taxing Officer failed to provide specific reasoning or to cite the relevant Schedule under the Advocates Remuneration Order justifying the amounts allowed. He asserted that the Taxing Officer committed errors of law and principle warranting this Court's intervention.
8. Mr. Kere, learned Counsel for the respondent relied on the Court of Appeal cases of **Lucy Waithira & 2 others v Edwin Njagi T/A E. K Njagi & Company Advocates** [2017] KECA 272 (KLR) and **Thomas James Arthur v Nyeri Electricity Undertaking** [1961] E.A. 492, and submitted that a Judge will only interfere with a Taxing Officer's discretion in exceptional

cases where an error of principle is shown. He further submitted that discretion in taxation must be exercised judiciously and only interfered with if manifestly excessive or indicative of an error of principle.

9. On instruction fees, Counsel submitted that the Taxing Officer properly exercised her discretion in accordance with the principles set down in the case of **Premchand Raichand v Quarry Services of East Africa Ltd** [1972] EA 162 and the Supreme Court case of **Kenya Airports Authority v Otieno Ragot and Company Advocates** [2024] KESC 44 (KLR).
10. He cited the cases of **Kinyua Muyaa Co Advocates v Kenya Ports Authority Pension Scheme & 8 others** [2017] KEELRC 498, **Dennis KN Magare & another v Armajit Singh Gahir & 5 others** [2021] KEHC 12931 and **Havi & Co Advocates v Purma Holdings Limited & 2 others** [2024] KEHC 3690, and argued that instruction fees must reflect the Advocate's work, care, complexity of the matter, the value of the subject matter, and interest of the parties, as was the case herein. He asserted that the Taxing Officer properly exercised her discretion in applying these principles to the instruction fees of Kshs.1,200,000/=, considering the value of the subject matter and the labour involved.
11. It was submitted by Mr. Kere that as to other items, including drawings, copies, and perusals as listed under Items No. 3, 4, 5, 12, 13, 15, 22, 23, 24, 25, 27, 28, 29, 30, 35, 37, 38, 42, 43, 48, & 49, the Taxing Officer correctly taxed the items in accordance with Schedule 6 of the Advocates Remuneration Order and provided sufficient justification for the fees charged, including the number of folios, copies, and perusals involved. He also cited the case of **Showcase Property Limited v Mugambi & Company Advocates** [2020] KEHC 3456 (KLR), and asserted that the client's allegations lack substantiation and were not raised before the Taxing Officer.

12. Mr. Kere maintained that the Taxing Officer properly increased the taxed amount by 50% in line with the provisions of Part B of Schedule 6 of the Advocates Remuneration Order in Advocate - client costs, as affirmed in the cases of **Dennis KN Magare another v Armajit Singh Gahir & 5 others** (supra) (KLR) and **Havi & Co. Advocates v Purma Holdings Ltd & others** (supra) KEHC 3690.

ANALYSIS AND DETERMINATION.

13. I have considered the Reference herein, the grounds on its face and the affidavit filed in support thereof, the replying affidavit by the respondent, as well as the written submissions by Counsel for the parties. The issue that arises for determination is whether the Reference herein is merited.

14. The High Court's jurisdiction in respect to References has been the subject of litigation over the years. The Court of Appeal in the case of **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board** (supra) addressed itself as follows in respect to this issue :-

On 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.

15. The High Court can only interfere with the Taxing Officer's decision where there has been an error in principle and not solely on questions of quantum as that is an area where the Taxing Officer is more experienced. The said position was taken by the Court in the case of **Tom Ojienda v County Government of Meru** [2021] KEHC 7940 (KLR) as hereunder :-

"The general principles governing interference with the exercise of the taxing master's discretion were authoritatively

stated by the South African Court in Visser vs Gubb 1981 (3) 753 (C) as follows;

‘the Court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The Court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The Court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.’”

16. The first item that the client’s complaint relates to, is Item 1 on instruction fees.

The law on instruction fees is that it is based on the value of the subject matter of the suit. The Court of Appeal in the case of **Joreth Limited v Kigano & Associates** (supra), held as hereunder in respect to the value of the subject matter for purposes of taxation -

“...the value of the subject matter for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement or settlement (if such be the case) but if the same is not so ascertainable the Taxing Officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the 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.”

17.A review of the taxation Ruling delivered on 30th October 2024 indicates that the Taxing Officer identified the value of the subject matter as Kshs.45,758,170.70, and upon considering the value, the labour involved, and the importance of the matter assessed instruction fees at Kshs.1,200,000.00. The Ruling does not however disclose the basis upon which the said value of the subject matter was ascertained or demonstrate how that figure was applied in arriving at the instruction fee awarded. The record further shows that the client in its replying affidavit sworn on 29th March 2023 by Mr. John Maiyani Tuya, in opposition to the Advocate's Advocate-client bill of costs dated 18th January 2023, averred that the Advocate applied a fictitious value of Kshs.41,834,500/= yet the correct value of the subject matter in the arbitral claim was Kshs.8,842,648.00.

18.Accordingly, given the divergent positions taken by the Advocate and the client regarding the actual value of the subject matter giving rise to the taxation proceedings which form the subject of the Ruling delivered on 30th October 2024, it was incumbent upon the Taxing Officer to expressly identify the source of the value adopted and the manner in which it was utilized in computing the instruction fees of Kshs.1,200,000/=.

19.In the circumstances, this Court finds that in awarding instruction fees of Kshs.1,200,000/=, the learned Taxing Officer did not properly exercise her discretion and thereby misapplied the provisions of Schedule 6 of the Advocates Remuneration Order. The award of instruction fees is therefore unsustainable and it is accordingly set aside.

20.Having disturbed the award on instruction fees, this Court finds that the award under the head of getting up fees stands disturbed and it is hereby set aside as it is computed as a percentage of the instruction fees. Therefore, any error of

principle affecting the assessment of instruction fees as is the case herein, automatically vitiates the award of getting-up fees.

21. The applicant's Reference further challenges the Taxing Officer's findings on drawings, copies and perusal as outlined under items No. 3, 4, 5, 12, 13, 14, 15, 22, 23, 24, 25, 27, 28, 29, 30, 35, 37, 38, 42, 43, 48, & 49. Schedule 6(4) (a)(i) of the Advocates Remuneration Order states that:-

“Concise statement, plaint, written statement of defense, interlocutory application, notice of motion or chamber application, originating summons, affidavit, petition of appeal, interrogatories, agreement for compromise, adjustment or satisfaction of suit, or for Reference to arbitration or any other pleading not otherwise provided for:-

i) four folios or less 1,100

ii) in excess of four folios; additional per folio after the first four folios 150”

22. Schedule 6(5)(a) of the Advocates Remuneration Order, on the other hand provides that copies of the plaint, written statement of defence, affidavit, petition of appeal, cross-objection to the petition, interrogatories, replies to interrogatories, agreement in satisfaction of suit or for Reference to arbitration, exhibits, bill of costs, and any other document shall be charged at the rate of Kshs. 25 per folio. There is therefore no need and/or justification to disturb the awards under those heads.

23. The Taxing Officer in her Ruling clearly noted that drawings are taxed at Kshs.1,100.00 for four folios or less and an additional Kshs.150.00 per folio for those in excess of four folios, whereas copies are taxed at Kshs. 25.00 per folio before concluding that items No. 3, 4, 5, 12, 13, 14, 15, 22, 23, 24, 25, 27, 28, 29, 30, 35, 37, 38, 42, 43, 48, & 49, were taxed as drawn.

24. In the premise, I am persuaded that in taxing the aforesaid items, the Taxing Officer properly exercised her discretion and was guided by the provisions of Schedule 6 of the Advocates Remuneration Order.

25. The final issue concerns the increase of taxed costs by 50% under Part B of Schedule 6. The provisions that set out when legal fees can be increased by half are provided for under Schedule 6B of the Advocates Remuneration Order, which states that: –

“As between advocate and client the minimum fee shall be -

a) the fees prescribed in A above, increased by 50%; or

b) the fees ordered by the Court, increased by 50%; or

c) the fees agreed by the parties under paragraph 57 of this order increased by 50%; as the case may be, such increase to include all proper attendances on the client and all necessary correspondences.”

26. Bearing in mind the above provisions, I am satisfied that by increasing the taxed costs by 50%, the Taxing Officer applied the correct legal principles in line with the provisions of Part B of Schedule 6 of the Advocates Remuneration Order. However, as the award under Item No. 1 on instruction fees and getting up fees has been interfered with and set aside, the overall sum of the taxed costs has consequently been affected, thereby vitiating the resultant award.

27. In the end, this Court is satisfied that the applicant has demonstrated errors of principle in the taxation of Item No. 1 on instruction fees and the consequential computation flowing therefrom. These errors substantially affect the quantum awarded, and if allowed to stand, they would occasion an injustice to the applicant.

28. This Court finds that the Reference dated 15th November 2024 is partly successful and it is allowed in the following terms: -

- i) **The Ruling and Order of the Taxing Officer, Hon. C. L. Adisa, delivered on 30th October 2024 in respect to item No. 1 on instruction fees and getting up fees, and the consequential application of the 50% increase is hereby set aside;**
- ii) **The Advocate's Advocate-Client bill of costs dated 18th January 2023 is hereby remitted for fresh taxation before a different Taxing Officer other than Hon. C. L. Adisa, for taxation of item No. 1 on instruction fees, getting up fees and the consequential application of the 50% increase. The same shall be strictly taxed in accordance with the provisions of Schedule 6 of the Advocates Remuneration Order; and**
- iii) **Since the applicant is partly successful, each party shall bear its own costs.**

It is so ordered.

DATED, SIGNED and DELIVERED at KIAMBU on this 10TH day of APRIL, 2026. Ruling delivered through Microsoft Teams Online Platform.

**NJOKI MWANGI
JUDGE**

In the presence of:-

Mr. Kaloki h/b for Mr. Maina Ngaruiya for the client/applicant

Mr. Kere for the Advocate/respondent

Ms Julia - Court Assistant.

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