

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMM MISC. APPL. NO. E026 OF 2023

KEMBOY LAW ADVOCATES..... ADVOCATE/RESPONDENT

-VERSUS-

NAROK COUNTY GOVERNMENT.....CLIENT/APPLICANT

(A Reference from the Ruling of Hon. C.L Adisa, delivered on 12th August, 2024).

RULING

1. Before me is a Chamber Summons application dated 14th August 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 12th August 2024, which taxed the Advocate’s Advocate - client Bill of Costs dated 18th January 2023 at Kshs.81,595,327.00, and that the said Bill of Costs be taxed afresh. The applicant also seeks an order that the Court issues appropriate directions for the fresh taxation or assessment of the Advocate’s Advocate - Client Bill of Costs to be conducted before 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 Taxing Officer, Hon. C. L. Adisa, delivered a Ruling on 12th August 2024 taxing the Advocate’s Advocate-client Bill of Costs dated 18th January 2023 at

Kshs.81,595,327.00. He further averred that the Honourable Deputy Registrar misapplied the provisions of Schedule 6 of the Advocates Remuneration Order, resulting in awards that are inordinately high and contrary to the said Schedule.

3. Mr. Tuya contended that the learned Taxing Officer erred in law and fact by disregarding the applicant's submissions on the Bill of Costs and failing to consider the issues raised therein. He asserted that this misapplication of the applicable law and principles gravely prejudices the applicant's rights and interests and it is likely to occasion injustice to it, unless the Ruling of 12th August 2024 is set aside.
4. 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 learned Counsel for the Advocate law firm. Mr. Kemboy averred that the applicant's objections including alleged misapplication of Schedule 6 of the Advocates Remuneration Order, excessive awards, and disregard of submissions, are unfounded. He justified the instruction fees awarded by the Taxing Officer by demonstrating that the value of the subject matter as derived from the pleadings, accrued interest, counterclaim, and costs, amounted to Kshs.644,794,542.28. He asserted that the Taxing Officer properly exercised her discretion in light of the complexity, importance, and duration of the matter, as well as the labour and skill expended for over five (5) years. He maintained that the getting-up fees and other contested items were taxed in accordance with the Advocates Remuneration Order and supported by documentary evidence, and that the 50% increase applied under Part B of Schedule 6 was mandatory in Advocate - client costs.
5. The instant application was canvassed by way of written submissions. The applicant's submissions were filed on 16th 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 the Taxing Officer misdirected herself in assessing instruction fees (item 1) by awarding the sum of Kshs.35,000,000/= instead of the correct figure, based on an unverified sum of Kshs.644,794,542.28, and failed to make specific findings on relevant factors such as the care and labour required, length of documents, complexity, novelty, interest of the parties, and value of the subject matter.
7. He further submitted that the Taxing Officer also erred in taxing getting-up fees at Kshs.11,666,666/= and attendances at Kshs.10,000/=, where hearings did not occupy full days, contrary to Schedule 6(7) of the Advocates Remuneration Order. Counsel 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 argued that the Taxing Officer wrongly increased instruction fees by 50%, a provision applicable only where Party and Party costs have been taxed.
8. Mr. Kere, learned Counsel for the respondent relied on the Court of Appeal case of **Thomas James Arthur v Nyeri Electricity Undertaking** [1961] E.A. 492, and submitted that a Judge will not interfere with a Taxing Officer's discretion unless there is an error of principle, and that mere dissatisfaction with the quantum is insufficient. He maintained that the applicant failed to demonstrate that the Taxing Officer applied a wrong principle or arrived at a manifestly

excessive award, noting that taxation is not a mathematical exercise but one based on experience, judgment and a fair valuation of the work and responsibility involved. On instruction fees, Counsel contended that the Taxing Officer properly exercised her discretion in line 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).

9. Mr. Kere argued that the value of the subject matter, amounting to Kshs.644,794,542.28, was ascertainable from the pleadings when account is taken of the principal claim, accrued interest and the counterclaim, thus the instruction fee of Kshs.35,000,000/= and getting-up fees at one-third were justified. He further argued that items relating to attendances, copies and other charges were taxed strictly in accordance with Schedule 6 of the Advocates Remuneration Order and were supported by documentary evidence, and that the applicant failed to substantiate any alleged non-compliance with the Scale.
10. In respect to the 50% increase, Counsel cited the case of **Showcase Property Limited v Mugambi & Company Advocates** [2020] KEHC 3456 (KLR), and submitted that the objection was not raised before the Taxing Officer and cannot be introduced for the first time on Reference. Mr. Kere stated that the aforesaid increase was proper under 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** [2021] KEHC 12931 (KLR) and **Havi & Co. Advocates v Purma Holdings Ltd & Others** [2024] KEHC 3690.

ANALYSIS AND DETERMINATION.

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

12. The Court of Appeal in the case of **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board** [2005] KECA 325 (KLR) addressed itself as follows in respect to References:-

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.

13. The High Court can only interfere with the Taxing Officer's decision where there has been an error of principle and not solely on questions of quantum as that is an area where the Taxing Officer is more experienced in the job. This position was captured 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.”

14. The first item that the client’s complaint relates to is item 1 on instruction fees and getting-up 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.

15. On perusal of the Taxing Officer’s Ruling delivered on 12th August 2024, it is evident that the instruction fees was justified on the basis that the value of the subject matter was Kshs.644,794,542.28, a figure allegedly derived from the pleadings, accrued interest, and the counterclaim. While the respondent asserted that this amount was ascertainable from the record, the applicant herein contended that the sum was neither pleaded as a definitive figure nor determined by judgment, and therefore could not properly form the basis for the assessment of instruction fees.

16. A perusal of the respondent's replying affidavit reveals that he averred that the claim lodged against the applicant sought, *inter alia*, the sum of Kshs.277,697,507.13. He further averred that upon receiving instructions, the respondent filed a counterclaim seeking Kshs.133,831,129.20 together with damages. In addition, the respondent stated that the claim against the applicant included interest on the said amount for delayed payment at prevailing rates until final payment, as well as the costs of arbitration. A careful examination of the pleadings however discloses that neither party alleged nor demonstrated that the arbitral proceedings had been concluded or that an award had been rendered. As such, despite the existence of monetary claims and a counterclaim, the matter remains pending, with no final determination having been made on liability or quantum.

17. In the circumstances, this Court is not persuaded that the value of the subject matter as discernible from the pleadings was Kshs.644,794,542.28. The aggregate value of the claim and counterclaim stood at Kshs.411,528,636.33. In the absence of a judgment and/or an arbitral award, neither the Taxing Officer nor the respondent had a basis for computing interest payable on the claim against the applicant. Consequently, this Court finds that the Taxing Officer did not properly ascertain the value of the subject matter in dispute and therefore applied an erroneous figure in assessing the instruction fees.

18. It is further noteworthy that the Taxing Officer enhanced the instruction fees from Kshs.15,171,918.00 to Kshs.35,000,000/= on the basis that she considered the nature and importance of the matter, the care and labour involved, the volume and length of documents perused, and the value of the subject matter. General assertions on complexity or importance are insufficient. The Taxing Officer was required to disclose the specific factual

basis justifying the enhancement. Having substantially increased the instruction fees without providing a detailed explanation of the particular factors warranting such an increment, this Court is satisfied that the omission amounts to an error of principle, as the parties are entitled to know the considerations that informed the exercise of discretion.

19. On getting-up fees, it is provided for under Schedule 6 Part 2 of the Advocates Remuneration Order, which states as hereunder –

In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:

Provided that -

- i) this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;***
- ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15% of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;***
- iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.***

20. The import of the above provisions is that getting-up fees are only payable where a matter has been set down for hearing and the Advocate has undertaken the requisite preparatory work for trial. Although the respondent herein contended that the matter had sufficiently progressed to warrant an award of getting-up

fees, the applicant disputed both the entitlement thereto and the amount claimed. A review of the Taxing Officer's Ruling and the pleadings filed by the parties herein revealed no evidence that at the time the Advocate's Advocate - client Bill of Costs was filed, the dispute before the Arbitrator had been confirmed for hearing or had even proceeded to hearing. In the circumstances, this Court is not persuaded that the respondent was entitled to getting-up fees.

21. Given that getting-up fees are computed as a percentage of the instruction fees, any error of principle affecting the assessment of instruction fees as is the case herein, vitiates the award of getting-up fees as well.
22. The Reference herein further challenges the Taxing Officer's findings on attendances. A perusal of Schedule 6(7) of the Advocates Remuneration Order reveals that it makes a clear distinction between attendances lasting half an hour or less, one hour, and a whole day. The applicant contended that certain attendances were taxed as full-day attendances contrary to what was borne out by the record. In her ruling, the Taxing Officer expressly acknowledged this distinction, stating that attendance for one hour attracts Kshs.2,300/=, half a day Kshs.5,000/=, a whole day Kshs.10,000/=, attendance before the Deputy Registrar Kshs.1,000/=, and attendance at the Registry Kshs.500/=.
23. Item No. 3 of the Bill of Costs, which related to attendance before the Arbitral Tribunal for the first preliminary meeting, was taxed at Kshs.5,000/=, with Kshs.2,100/= being taxed off. In my view, this amounted to a proper exercise of discretion within the scale by the Taxing Officer. What is provided for is attendance of one hour, taxed at Kshs.2,300/= on the ordinary scale and Kshs.3,000/= on the higher scale. Item No. 19, which related to attendance at the Tribunal for filing, was taxed as drawn at Kshs.500/=, in conformity with

Schedule 6(7)(b) of the Advocates Remuneration Order. I therefore find no basis to interfere with this award.

24. Item No. 20, which related to service upon the claimant, was taxed as drawn at Kshs.5,000/=. Notably however, the Taxing Officer did not provide any explanation or justification for arriving at the said figure, which is not expressly provided for under Schedule 6(9) of the Advocates Remuneration Order governing service. This Court is therefore persuaded that the said award must be set aside.

25. The applicant further contended that in taxing item Nos. 11, 13, 17 and 18 as drawn, the Taxing Officer failed to be guided by the provisions of Schedule 6 of the Advocates Remuneration Order. Item No. 11 related to the drawing of two folios of the respondent's list of witnesses and was taxed at Kshs.1,100/=. Item No. 13 related to the drawing of eight folios of the respondent's witness statement and was taxed at Kshs.1,700/=. Item No. 17 related to the drawing of 361 folios of the respondent's list and bundle of documents and was taxed at Kshs.54,650.00.

26. 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

27. I am persuaded that in taxing item Nos. 11, 13, and 17 as drawn, the Taxing Officer was properly guided by the provisions of Schedule 6 of the Advocates Remuneration Order. Item No. 18, which related to the making of 1,083 copies was taxed at Kshs.27,075.00. I am satisfied that it was assessed in accordance with Schedule 6(5)(a) of the Advocates Remuneration Order, which 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.

28. Item No. 27, which related to attendance before the Tribunal for hearing when leave to amend the statement of defence was granted and hearing dates were set, was taxed at Kshs.10,000/=. This Court is however of the considered view that where leave to amend is granted and fresh hearing dates are fixed on the same day, it is implausible that the matter proceeded for hearing for the whole day so as to justify taxation at the full-day rate. I am therefore not satisfied that the Taxing Officer properly exercised her discretion or adhered to the provisions of Schedule 6(7) of the Advocates Remuneration Order, thereby warranting interference of the said award by this Court.

29. In regard to items No. 37, 40 & 48, which relate to attendance before the Arbitral Tribunal for hearing which were taxed at Kshs.10,000/=:, with Kshs.5,000/= being taxed off, I am satisfied that the Taxing Officer was properly guided by the provisions of Schedule 6(7) of the Advocates Remuneration Order. Consequently, there is no basis for disturbing those awards.

30. 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.*

31. In line of 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 certain items including Item No. 1 on instruction fees and getting-up fees, as well as item Nos. 20 and 27 have been interfered with, the overall sum of the taxed costs has consequently been affected, thereby vitiating the resultant award.

32. This Court is therefore satisfied that the client has demonstrated errors of principle in the taxation of item No. 1 on instruction fees and getting-up fees, item Nos. 20 & 27 and the consequential application of the 50% increase. These errors substantially affect the quantum awarded and if allowed to stand, would occasion an injustice to the applicant.

33. In light of the foregoing, this Court finds that the applicant's Reference dated 14th August 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 12th August 2024 in respect to item No. 1 on instruction**

fees and getting-up fees, item Nos. 20 & 27 and the consequential application of the 50% increase are hereby set aside;

- ii) The Advocate's Advocate - Client Bill of Costs dated 18th January 2023 shall be remitted for fresh taxation before a different Taxing Officer other than Hon. C. L. Adisa, for taxation of item No. 1 on instruction fees and getting-up fees, item Nos. 20 & 27 and the consequential application of the 50% increase. That shall be done strictly 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.