

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC MISCELLANEOUS APPLICATION NO. E273 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

J.A. GUSERWA & COMPANY

**ADVOCATES.....ADVOCATE/
RESPONDENT**

VS

**JAMES M.
NJIIRI.....CLIENT/APPLICANT**

RULING

- 1 The Client/Applicant filed Chamber Summons application dated 17th December 2025 seeking ORDERS: -
 1. **THAT** the Honourable Court be pleased to review and /or set aside the decision of the Taxing Officer delivered on 13th November 2025, taxing and or/certifying the costs payable to the Applicant/Advocate at Kshs.2,950,500/-.
 2. **THAT** the costs of this application be in the cause.

Client/Applicant's Case

- 2 The Affiant deponed that he instructed the Advocate/Respondent, J.A. Guserwa & Company

Advocates, to act on his behalf in *Nairobi ELRC No.809 of 2020 formerly HCCC No.205 of 1998, James Mwangi Njiiri vs National Bank of Kenya*, wherein the Advocate came on record by filing a Notice of Motion dated 6th November 2019.

- 3 It is the Applicant's case that judgment was delivered in his favour on 17th April 2024 by Hon. Justice Jacob Gakeri, with the Court directing the parties to tabulate the decretal sum payable. The parties subsequently agreed on the decretal amount at Kshs. 6,103,543, as reflected in the Advocate/Respondent's letter dated 23rd July 2024.
- 4 The Applicant avers that the Advocate/Respondent filed a Party and Party Bill of Costs dated 14th October 2024 which was taxed at Kshs. 507,520 in a ruling delivered on 30th April 2025, wherein the Court confirmed that the decretal sum of Kshs. 6,103,543 was not in dispute.
- 5 It is his case that the total sum of Kshs. 6,611,063, being the decretal amount plus costs, was paid to the Advocate/Respondent. However, the Advocate withheld Kshs. 1,428,229 without offering any reasons whatsoever, leading him to file a complaint with the Advocates Complaints Commission.
- 6 He contends that as part of resolving my complaint, the Advocates Complaints Commission directed the Applicant/Advocate to file an Advocate - Client Bill of

Costs, which was the genesis of the Advocate/Client Bill of Costs dated 31st July 2025.

- 7 The Affiant deponed that upon receiving the Advocate/Client Bill of Costs dated 31st July 2025, he filed a replying affidavit dated 19th August 2025 in opposition to the bill of costs of Kshs.3,395,290 as claimed in the bill as well as written submissions dated 17th September 2025.
- 8 Being dissatisfied with the ruling of the Taxing Officer delivered on 13th November 2025, the Applicant raised several objections. He asserts that the Taxing Officer erred in principle by adopting a sum of Kshs. 9,065,903 as the value of the subject matter for purposes of instruction fees, whereas the agreed decretal sum was Kshs. 6,103,543, which was reflected in the judgment, the parties' tabulation, and the earlier ruling on Party and Party costs.
- 9 He further avers that the Taxing Officer improperly awarded costs under Item Nos. 4-15 despite the Advocate not being on record at the material time, maintaining that the Advocate only commenced acting in the matter upon filing the Notice of Motion dated 6th November 2019, captured as Item No. 16 in the Bill.
- 10 He contends that the Taxing Officer erred in awarding costs for mentions under Item Nos. 28, 35, 39, 44, 45, 51, 53, 73 and 90 without regard to the duration of the

attendances, which, according to him, did not exceed half an hour.

- 11 The Applicant further took issue with the computation of the taxed amount, contending that the individual taxed items, including instruction fees of Kshs. 240,000, getting-up fees of Kshs. 36,000 and attendance fees of Kshs. 3,200, when aggregated with other items, would total approximately Kshs. 563,940. He argued that it was unclear how the final figure of Kshs. 2,950,500 was arrived at by the Taxing Officer.
- 12 Additionally, the Applicant avers that the Taxing Officer failed to consider or make a determination on payments already made to the Advocate. Whereas the Advocate alleged receipt of Kshs. 310,000, he maintained that he had paid a total of Kshs. 950,500/-, as evidenced in documents annexed to his replying affidavit dated 19th August 2025.
- 13 The Affiant further deponed that his advocates wrote to the Taxing Officer on 18th November 2025 seeking reasons for the impugned taxation, but no response had been received to date despite the request being made within the prescribed time.
- 14 It is the Applicant's case that he urgently requires the funds withheld by the Advocate to facilitate travel to the United States of America for specialized medical

treatment, and urged the Court to review and set aside the decision of the Taxing Officer contained in the ruling dated 13th November 2025.

Advocate/Respondent's Case

- 15 In opposition to the application, the Respondent filed a replying affidavit dated 3rd February 2026 sworn by Judith Guserwa, an Advocate of the High Court of Kenya practicing as such in the name and style of M/s. J.A. Guserwa & Company Advocates who have the conduct of this matter on behalf of the Firm.
- 16 The Affiant deponed that the instant application is time barred, stating that the ruling of the Taxing Officer was delivered on 13th November 2025, whereas the present application was filed on 17th December 2025, outside the statutory timelines prescribed for filing a reference. He contends that the application was filed without leave of the Court and urged that it be dismissed with costs.
- 17 It is the Respondent's case that the Applicant had not offered any explanation why he has filed the instant application outside time without leave since the Ruling of the Taxing Officer dated 13th November 2025 contained the reasons by the Taxing Officer in taxing the Advocate/Client Bill of Costs dated 31st July, 2025 and the

same further explained how the sum of Kshs. 2,950,500 was arrived at.

- 18 Without prejudice to the foregoing, the Respondent admitted that it received instructions to act for the Applicant in *ELRC No. 809 of 2020 between James M. Njiiri vs National Bank of Kenya Limited* where judgment was delivered in the Client/Applicant's favour in the sum of Kshs. 6,103,543/- in a matter which was quite complex.
- 19 In response to the averments contained in paragraphs 5, 6 and 7 of the Supporting Affidavit, the Respondent denied the allegation that his firm withheld Kshs. 1,428,229/- without justification, maintaining that the said sum forms part of the outstanding professional fees due to the firm, and put the Applicant to strict proof thereof.
- 20 The Respondent denied withholding Kshs. 1,428,229 as part of the professional fees that is still outstanding today without providing any reasons whatsoever and therefore put the Client/Applicant to strict proof.
- 21 It avers that the application is an abuse of the Court process and has been brought in bad faith with the intention of avoiding payment of legal fees for services rendered without any basis and/or justification.

Client/Applicant's Submissions

22 The Applicant submitted on two issues: whether the Respondent has complied with the statutory requirements relating to the present Reference Application; and whether this Reference Application has merit.

23 On the first issue, the Applicant submitted that the Rules 11 (1) and (2) of the Advocates Remuneration Order, 1962 sets out the procedure to be followed by a party who is aggrieved by the decision of a taxing officer as follows:

“(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”

24 The Respondent submitted that, being aggrieved by the ruling of the Taxing Officer delivered on 13th November, 2025, he wrote a letter of objection dated 18th November 2025 to the Taxing Officer through counsel on record, seeking reasons for the high award. The letter was delivered on 19th November 2025. However, despite the letter being delivered to the Taxing Officer within the

fourteen days prescribed by Rule 11 (1), the Respondent has yet to receive any response from the taxing officer.

- 25 He submitted that he proceeded to file the present reference application in accordance with Rule 11 (2), which grants an aggrieved party 14 days from the date of receipt of the reasons by the taxing officer to apply to a judge for review by way of chamber summons. No response was received from the Taxing Officer after the notice of objection as prescribed by Rule 11 (1).
- 26 On the final issue, the Applicant submitted that the Taxing Officer erroneously used an amount of Kshs.9,065,903 to determine the instruction fees. However, that amount is not in the pleadings, not in the judgment, and not in the decree. The parties in *Nairobi ELRC Cause No. 809 of 2020, formerly HCCC No. 205 of 1998*, tabulated and agreed that the decretal amount was Kshs. 6,103,543, as directed by the court in the judgment that was delivered on 17th April 2024. This amount was further indicated in the Respondent's letter dated 23rd July 2024 and in the ruling on Party and Party costs dated 30th April 2025.
- 27 The Applicant placed reliance in ***Joreth Ltd v Kigano & Associates [2002] eKLR***, where the Court of Appeal found that the value of the subject matter for purposes of taxation of costs should be ascertained from the pleadings, judgment or settlement, but if not

ascertainable, the Taxing Officer has discretion to assess instruction fees depending on inter alia the nature and importance of the matter.

- 28 The Applicant argued that had instruction fees for a decretal sum of Kshs.6,103,543 should be Kshs.330,105 after increasing by 50% as provided for under Part B of Schedule 6 of the Advocates (Remuneration) (Amendment) Order 2014.
- 29 On items relating to work done prior to the Respondent coming on record, it was submitted that the Taxing Officer erred in allowing items Nos. 4-15, yet the Respondent only came on record upon filing item No. 16 the Notice of Motion dated 6th November, 2019. It was argued that the Respondent should not charge fees for work done by another advocate, thus, items 5-15 of the Advocate Client Bill of costs should have been taxed off.
- 30 On fees for mentions, the Applicant submitted that the Taxing Officer erred in allowing items Nos. 28, 35, 39, 44, 45, 51, 53, 73 and 90 as drawn, sessions did not last more than half an hour each. Therefore, the amounts in these items should be taxed off in line with the actual time spent in court by the Respondent.
- 31 On getting up fees, the Applicant submitted that under Paragraph 2 of Schedule 6 of the Advocates

(Remuneration) (Amendment) Order 2014, such fees ought to be one-third of the instruction fees.

32 On fees paid by the Applicant and amounts withheld by the Respondent, the Applicant submitted that the Taxing Officer omitted relevant factors by failing to make any finding on payments made by the Applicant, despite there being a dispute about these amounts. He highlighted that the Respondent claims to have received Kshs.310,000, whereas the Respondent annexed documents to his replying affidavit demonstrating that he paid a total of Kshs.950,500 in advance legal fees to the Applicant.

33 Reliance was placed on ***V Chokaa & Co Advocates v Essajee Amuee (EA) Limited [2025] KEELRC 589 (KLR)***, where the court set aside a taxation because the Taxing Officer failed to consider evidence of prior payments made by the client. It noted that allowing the advocate to ignore these payments would constitute unjust enrichment.

34 The Applicant further submitted that item No.112 on the Advocate Client Bill of costs is an admission that the Respondent retained Kshs. 1,428,229, which is part of the decretal amount and costs received on behalf of Applicant, from National Bank of Kenya. Additionally, no reason has been given to the Applicant to date why this amount has been withheld and argues this amount should be released to the Respondent.

35 The Applicant submitted that in ***Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR)***, where the Supreme Court held that taxation is not a mechanical exercise. Fees must be reasonable and reflect the "fair value" of work done to prevent advocates from being unjustly enriched by astronomical subject matter values.

Respondents' Submissions

36 The Respondent submitted, as a preliminary point of law, that the instant Reference Application is fatally defective for being filed outside the statutory timelines, thereby depriving this Court of jurisdiction to entertain it.

37 It was submitted that is trite law that a preliminary objection ought to be based on a pure point of law that has the potential of disposing of the entire suit as upheld, ***in Mukisa Biscuits Manufacturing Co. Ltd v. West End. Distributors [1969] EA 696.***

38 The Respondent submitted that it is not in dispute that the Taxing Officer delivered the ruling on 13th November, 2025 taxing the Advocate/Client Bill of Costs at Kshs. 2,950,500 in favour of the Firm of M/S. J. A. Guserwa & Company Advocates out of which credit is given for Kshs. 1,000,000 leaving an outstanding balance of Kshs. 1,959,500.

- 39 It was submitted that the applicable procedure is governed by Paragraph 11 of the Advocates (Remuneration) Order provides for the applicable procedure in filing a reference application and mandatorily requires an aggrieved party to file a reference within fourteen (14) days from the date of the decision.
- 40 The Respondent submitted that the reasons for the award by the Taxing Officer are usually contained in the ruling which the parties had a copy of before the lapse of the 14-day statutory time limit, hence, there was no need to prompt the Taxing Officer for reasons as to why he made the award which would be absurd.
- 41 The Respondent submitted that the the Claimant/Applicant opted to write to the Taxing Officer the letter dated 18th November, 2025 indicating that he objects the entire decision instead of filing the reference application within the time limit since he already had a copy of the ruling, therefore, the Court should dismiss the application with costs for want of substantive and procedural compliance.
- 42 It was further submitted that the Reference Application dated 17th December, 2025 was filed approximately 35 days after delivery of the ruling, well outside the prescribed 14-day period. The Respondent argued that no application for enlargement of time under Paragraph 11(4) of the Advocates (Remuneration) Order was ever made,

rendering the Application incompetent and an abuse of the court process.

43 It is the Respondent's submission that the instant application is time barred, therefore, this Court lacks jurisdiction to entertain the Reference Application which ought to be dismissed with costs. It cited ***Mauwa & Co Advocates v JRS Group Limited [2023] KEELRC 98 (KLR)*** and ***Chaudhri & Associates v Lady Lori (Kenya) Limited [2025] KEELRC 1490 (KLR)***.

44 On whether the application has merit, the Respondent submitted the legal threshold for review of the Taxing Officer's ruling is founded under Rule 33 of the Employment and Labour Relations Court (ELRC) Rules, which permits review only on specific grounds, namely discovery of new and important evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made, error apparent on the face of the record, need for clarification, or any other sufficient reason.

45 It is the Respondent's submission that the Client/Applicant has not demonstrated any new evidence and/or apparent error on the face of the record that was not within their control, therefore, the instant application fails on these limbs.

- 46 The Respondent argued that the Client/Applicant has not demonstrated any sufficient reasons touching on specific aspects of the ruling that require the review of the Taxing Officer's decision, therefore, the application fails on all limbs provided under Rule 33 of the Employment and Labour Relations Court Rules.
- 47 It is the Respondent's submission that the Client/Applicant has not demonstrated that the Taxing Officer erred in principle in making his determination in the ruling dated 13th November, 2025 and this demonstrates that the instant Application is made in bad faith and calculated to deny the Advocate/Respondent fees for legal services rendered.
- 48 I have examined all the averments and submissions of the parties herein. The applicant filed their reference averring various reasons as to why the taxation by the taxing master was erroneous. The respondent opposed the application and also filed a preliminary objection averring that the reference was filed late.
- 49 In relation to the preliminary objection raised, the respondent aver that the reference was filed late outside the statutory timelines allowable. The ruling of taxing officer was delivered on 13/11/2025 taxing the bill of costs of kshs 2,950,500 in favour of the respondents herein and for which the respondent aver they have given credit of

kshs 1,000,000/- leaving an outstanding balance of kshs 1,959,500/-.

50 Para 11 of the advocates (remuneration) order provides as follows:

" 11(1) should any party object to the decision of the taxing officer, he may within fourteen days after the decision, give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) the taxing officer shall forthwith record and forward to the objector the reason for his decision and those items and the objector may within fourteen days from the receipt of the reason apply to a judge by chamber summons which shall be served on all the parties concerned setting out the grounds of his objections....."

51 From this provision, it is apparent that the applicant may seek reasons for the decision from the taxing master within 14 days. The applicant still has another 14 days to file the reference upon getting the reasons for the taxation.

52 In the current application the applicant wrote to the Deputy Registrar on 18/11/2025 objecting to the taxed bill and seeking reasons for the award. There is no indication that the Deputy Registrar responded. Assuming the DR responded there was still another 14 days to file a reference. Without any response, the applicant filed this application on 17th December 2025.

- 53 In view of the non responsiveness of the DR where time to reply was to end within 14 days from 18/11/2025, the timelines for filing this reference was not yet exhausted and in the circumstances, the averment that the reference is time barred is found without merit and is disregarded.
- 54 Having cleared the objection out of the way, the next issue would be on the main reference. I have considered the application and the issues raised therein.
- 55 I direct that this bill be remitted to a different taxing officer for re- taxation accordingly. The taxing officer would consider the issue raised and render a decision. Costs in the application.

**Dated, Signed and Delivered Virtually at Nairobi
this 20th Day of April, 2026.**

**HELLEN WASILWA
JUDGE**