



**Ashiruma & Company Advocates v Marango (Miscellaneous Application  
E206 of 2024) [2026] KEELRC 1166 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1166 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E206 OF 2024  
ON MAKAU, J  
APRIL 30, 2026**

**BETWEEN**

**ASHIRUMA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**MOSES WASWA MARANGO ..... RESPONDENT**

**RULING**

1. This ruling relates to the Amended Chambers Summons dated 27<sup>th</sup> October 2025, brought under Paragraph 11 (2) of the Advocates Remuneration Order (ARO). It seeks the following orders:-
  - a. That this Honourable court be pleased to set aside the decision of the Taxing Master as evidenced in the Ruling delivered on 6<sup>th</sup> March, 2025 in respect to the entire Advocate/Client Bill of Costs.
  - b. That the decision by the Learned Taxing Master dated 6<sup>th</sup> March, 2025 be set aside and the Applicant's Bill of Costs dated 25<sup>th</sup> July, 2024 be taxed afresh.
  - c. That the costs of this reference be awarded to the Applicant.
2. The Summons is supported by the Affidavit sworn on 3<sup>rd</sup> April 2025 by Herbert J. Hashiruma (Advocate) and it is opposed by the Respondent (Client) vide Replying Affidavit sworn on 30<sup>th</sup> September 2025.

**Facts of the case**

3. The Applicant acted for the Respondent in Nairobi ELRC Cause No. 620 of 2017 which yielded a judgment of Kshs. 288,000 plus costs. Subsequently, a party and party bill of costs was filed and taxed at Kshs. 225,135.



4. On 25<sup>th</sup> July 2024 the Applicant filed his Advocate – Client Bill of Costs, under Schedule 6 of the Advocates Remuneration Order 2016, for Kshs. 345,172.50. The Respondent opposed the Bill of Costs contending that he had paid the Advocate his legal fees plus disbursements. The Taxing Officer of the court (Hon. Mbeja) considered the Bill of Costs and awarded the Applicant Kshs. 138,698. The decision was contained in a written Ruling and delivered in the presence of both parties on 6<sup>th</sup> March 2025.
5. The Applicant was dissatisfied with the decision and on 3<sup>rd</sup> April 2025, he filed a Chamber Summons challenging the whole decision and urged for remittance of the Bill of Costs for a fresh taxation. The said summons was subsequently amended by the instant one.
6. The Applicant’s case is that the Taxing Officer erred by applying Schedule 7 of Advocates Remuneration Order 2014 to Bill of Costs instead of Schedule 6 which applies for the High court. He further faulted the Taxing Officer for taxing off many items amounting to Kshs. 206,474.10. He also faulted the Taxing Officer for failing to consider and/or make any reference to the Ruling of Ruling on the party and party bill of costs rendered on 19<sup>th</sup> December 2024 by Hon. Aziza.
7. The Respondent case, is that the decision, by the Taxing Officer in this case was fair and in line with Paragraph 58 of the Advocates Remuneration Order since the sum awarded in the primary suit was within the lower court jurisdiction. He further averred that the primary suit ought to have been filed in the Magistrates Court because of the Gazette Notice of 2016 which conferred jurisdiction to the lower court was in force as at 2017 when the suit was filed.
8. As regards, the failure by the Taxing Officer to refer/consider the party and party costs of Kshs. 225,135, the Respondent averred that the two Bills were taxed by two different officers exercising independent jurisdictions in separate proceedings and the findings of one officer were not binding on the other. It was further submitted that the Taxing Officer in the instant matter was under no obligation to consider the party and party costs earlier determined.
9. Finally, the Respondent averred that the impugned decision promotes proportionality in costs and should be upheld since filing suit in a superior court does not automatically warrant higher scales in low – value matters. Therefore the Respondent urged the court to dismiss the reference since no error of principle has been shown.
10. The Reference was canvassed by written submissions which basically echo the facts and arguments summarized above.

#### **Issues for determination and analysis**

11. Having carefully considered the summons, Affidavits, submissions and the whole court record, the following issues fell for determination:-
  - a) Whether the reference by the Advocate has merits.
  - b) Whether the orders sought should be granted.

#### **Merits of the Reference**

12. The Applicant faulted the Taxing Officer’s for applying Schedule 7 of the Advocates Remuneration Order to his bill of costs instead of Schedule 6 since the suit proceeded before a superior court having equal status with the High Court. However, the Respondent was of a different view and contended that the decision of the Taxing Officer was in line with Paragraph 58 of the Advocates Remuneration Order.



13. Paragraph 58 of the Advocates Remuneration Order provides that:-

“In causes or matters which, having regard to the amount recovered or paid in settlement or the relief awarded, could have been brought in a resident magistrates or other subordinate court, costs on the scale applicable to subordinate courts shall be allowed unless, the Judge otherwise orders.”

14. I have considered the impugned decision and it is clear that the Taxing Officer addressed his mind to paragraph 58 of the Advocates Remuneration Order. He stated that:-

“This matter was lodged in the Employment and Labour Relations Court, Nairobi. However, due to the value of the subject matter awarded in the judgment being the sum of Kshs. 288,000, I find the applicable law to be Schedule 7 of the Advocates (Remuneration) (Amendment) order 2014.”

15. The above decision was properly grounded on the applicable law. In fact the said paragraph 58 did not allow any discretion on the part of the Taxing Officer but only the trial court. The paragraph is couched in mandatory terms that “Costs on the scale applicable to subordinate courts only shall be allowed unless the Judge otherwise orders.”

16. There is no dispute that the value of the suit was Kshs. 288,000 which falls within the jurisdiction of the subordinate court. It follows that the Taxing Officer was right in applying Schedule 7 of the Advocates Remuneration Order to the Applicants Bill of Costs since the trial court never directed that the costs be taxed on other higher scale.

17. The Applicant contended that the taxing officer erred by law failing to refer to the party and party costs that were determined on 19<sup>th</sup> December 2024. However, the record does not show whether the attention of the Taxing Officer was drawn to the said party and party costs. Accordingly the Taxing Officer cannot bear the blame since the said information was concealed from him. Besides if the party and party costs were erroneously based under schedule 6, the Taxing officer herein was not bound to adopt the same blindly.

18. Having considered the material before the court and especially the submissions by the parties, I see no merits in the reference as there is no error in principle demonstrated. The Applicant is introducing new matters, which were not raised during the taxation before the Taxing Officer which amounts to an after thought.

### **Reliefs sought**

19. The Applicant has urged the court to set aside the impugned decision and remit the Bill of Costs for fresh taxation. However, he has not satisfied the court that the grounds raised in the reference were raised before the Taxing Officer. Consequently I decline to award the order sought in the Chamber Summons dated 27<sup>th</sup> October 2025 and dismiss it with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**ONESMUS MAKAU**

**JUDGE**

Appearance:



Ashiruma for Applicant

Respondent in person

