

REPUOF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL MISC. APPLICATION NO. E267 OF 2023

ANNE MUTHONI KARANU.....1ST APPLICANT

SAMWEL KANGETHE KARANU.....2ND
APPLICANT

MICHAEL WAIRERI KARANU.....3RD APPLICANT

VERSUS

KAVRAJ KAURA &

SSOCIATES.....ADVOCATE/RESPONDENT

RULING

1. The Applicants moved this court vide a Chamber Summons (Reference) dated 3rd February, 2025 and expressed under Section 3A of the Civil Procedure Act, Rule 11(1) & (4) of the Advocates (Remuneration) Order and all other enabling provisions of the law, seeking Orders that;-

1) Spent.

2) This Honourable court be pleased to enlarge the time within which the Applicants are required to give a notice in writing to the taxing officer for reasons of taxation on the items of taxation that they object.

3) The decision of the Taxing Officer delivered on the 9th August 2024 be recalled, reviewed and set-aside or quashed with respect to items Nos.1,2,3,4,5,6,7,10,11,12,13,14,15,16,19,21,23,25,27,28,29,31,33,35 ,37,44 and 45.

4) The Honourable Court be pleased to assess and vary items 1,2,3,4,5,6,7,10,11,12,13,14,15,16,19,21,23,25,27,28,29,31,33,35,37, 44 and 45 as claimed in the Advocate-Client Bill of Cost dated 10th

August 2023 or refer the said items for taxation before a different taxing officer.

5) Each party bears their own costs of this application.

2. The application is as framed on the face of the Chamber Summons and the Supporting Affidavit sworn on the same date by Ernest Muriungi, Advocate for the Applicants.
3. The Deponent states that he is an Advocate of the High Court of Kenya with conduct of the matter on behalf of the Applicants, having taken over from Advocate Peter Mururu. He affirms his familiarity with the case and competence to depose.
4. He explains that the Respondent initiated the proceedings by filing an Advocate–Client Bill of Costs dated 10th August 2023 in Nakuru HC Misc. Application No. E267 of 2023.
5. Upon service of the Bill of Costs, the Applicants instructed Musinga Advocates LLP to represent them and oppose the taxation. The firm internally delegated the conduct of the matter to Advocate Peter Mururu. According to the firm’s knowledge, Advocate Mururu prepared a Replying Affidavit sworn by Anne Muthoni Karanu together with Written Submissions dated 28th March 2024 opposing the Bill of Costs (annexed as EM1).
6. He states that on 4th April 2024, the said advocate served the Respondent with the Replying Affidavit and Submissions via email, copying the firm’s official email and partners (annexed as EM2). However, upon delivery of the ruling on 9th August, 2024, by Hon. Christine Menya (Taxing Master), it was discovered that although the documents had been served, they were never uploaded/filed due to an inadvertent mistake by the Advocate.
7. Aggrieved by the taxation awarding Kshs. 916,800, the Applicants instructed the firm to file a Chamber Summons dated 20th August 2024 seeking stay of execution and review of the ruling (annexed as EM3). However, the Taxing Master declined to grant the orders sought and instead

directed that the matter proceed by way of reference for purposes of re-taxation.

8. Consequently, the Applicants have filed the present application (reference) challenging the taxation, particularly on the ground that their Replying Affidavit and Submissions were not considered.
9. In compliance with Rule 11(1) of the Advocates Remuneration Order, the Applicants wrote to the Taxing Officer requesting reasons for taxation of the contested items and seeking enlargement of time to lodge the reference.
10. The deponent contends that the Taxing Master erred in principle by improperly exercising discretion in calculating instruction fees instead of applying the correct scale under the Advocates Remuneration Order, despite the subject matter being ascertainable.
11. It is further deponed that the Taxing Master failed to apply the well-established principles in *Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd (No. 3) [1972] EA 162*, which require that costs be reasonable, not excessive, and that awards should not unjustly enrich advocates but remain fair to both parties.
12. The deponent contends that the Taxing Master failed to apply *Joreth Ltd v Kigano & Associates [2002] EA 92*, which sets out that instruction fees should be based on the value of the subject matter (if ascertainable), or otherwise on judicial discretion guided by the nature, importance, and complexity of the matter.
13. He asserts that the Taxing Master improperly exercised discretion, resulting in an excessive award that prejudiced the Applicants. It is emphasised that the Taxing Master failed to consider the Applicants' Replying Affidavit and Written Submissions, which had been duly served, thereby denying the Applicants the benefit of their legal arguments and authorities.
14. He accuses the Respondent of attempting to unjustly enrich itself by charging exorbitant legal fees and misleading the court.

15. The deponent states that the Applicants had repeatedly requested a fee estimate or quotation from the Respondent, but no response was ever provided. Providing background on the underlying civil matter, Nakuru HC Civil Case No. E008 of 2022, he explains that it involved a dispute over management, not ownership, of Hotel Dayton, with a claim for Kshs: 900,000 and an injunction. The hotel was financially distressed and required court intervention.
16. He explains that the civil case was eventually withdrawn after a settlement was reached through negotiations facilitated by another law firm (Messrs. R.W. Mbanya & Co. Advocates), not the Respondent. It is further deposed that the Respondent had been retained on the understanding that no separate legal fees would be charged for the civil matter, as fees would be consolidated with those in a related succession cause, Nakuru HC Succession Cause No. E002 of 2022.
17. The deponent argues that the matter was neither complex nor heavily contested, did not proceed to full trial, and did not involve voluminous documentation, hence did not justify high instruction fees.
18. On that basis, the Applicants contend that a fair taxation of the Advocate–Client Bill of Costs should be Kshs. 151,150, as outlined in their unfiled but served submissions and affidavit.
19. By a Replying Affidavit, sworn by Kavraj Sagoo on 17th December, 2025, the Respondent has opposed the Reference, arguing that the application is incurably defective because the Supporting Affidavit was sworn by the Applicants' counsel rather than the clients, meaning the Counsel is improperly deposing on contentious facts outside his personal knowledge.
20. The application is termed incompetent for failing to follow mandatory timelines and procedures required by Rule 11 of the Advocates (Remuneration) Order, which mandates that an objecting party must give written notice to the taxing officer within 14 days of a decision, and only

then can they apply to a judge via chamber summons within 14 days of receiving the officer's reasons for taxation.

21. Giving a history of Taxation and Procedural Non-Compliance, the Respondent states that the Advocate-Client Bill of Costs was taxed on 9th August, 2024, at Kshs. 916,800, and notes that the Applicants failed to file any documents opposing the Bill at that time. Following taxation, the Applicants sought to stay execution and requested re-taxation on 20th August, 2024, claiming their (unfiled) submissions were not considered.
22. The Taxing Master dismissed the said application on 24th January, 2025, with the court ruling it could not rely on documents not on the record; however, the court granted the Applicants leave to file a formal reference if they wished.
23. The Respondent asserts that after the 24th January ruling, the law required the Applicants to seek formal reasons for taxation within 14 days before filing a reference. It is noted that the Applicants never provided an objection to the taxing master, and the Respondent argues that the High Court cannot entertain the application because it is not the taxing master.
24. The Respondent concludes that the reference was filed prematurely because the Applicants failed to issue a Notice of Objection or obtain official reasons for taxation as required by law.
25. The Respondent further maintains the Bill was taxed properly and fairly, and the Taxing Master committed no error of principle or discretion. It is reiterated that the Applicants cannot blame the court for their own negligence in failing to file an affidavit or submissions despite attending the proceedings. Adding that simply serving the Respondent with documents does not mean they are on the record for the court, and serving unfiled documents renders them invalid.
26. The Respondent notes the Taxing Master's statement that she would have reached the same decision even with the Applicants' pleadings, making this application a mere attempt to delay payment of earned fees.

27. The Respondent disputes the Applicants' claim that the value of the subject matter was easily ascertainable, specifically denying that a sum of Kshs. 900,000 mentioned in pleadings represents the total value of the case.
28. In respect to the original work done, the Respondent states that he was instructed to defend the Applicants in a suit brought by their mother involving Hotel Dayton Limited, which included claims for injunctions, damages, and Kshs. 900,000 for allegedly stolen items. He thus clarifies that the suit was not about repairs but about control of the hotel, a contested asset in a succession case.
29. He notes that the deceased held 400 of the 500 total shares and also confirmed the matter did not go to full trial but was settled after rigorous negotiations involving six advocates and 14 beneficiaries.
30. The Respondent highlights the sensitivity and complexity of the matter, involving a mother and children, and protecting an asset worth over Kshs. 100 million. He describes the physical asset: 6 acres of land where even a small fraction (1/8 acre) is worth Kshs. 2 million, and a hotel with 39 rooms and conference facilities.
31. The Respondent therefore notes that the case was multi-faceted, touching on company, land, and succession law, plus related criminal matters. It is asserted that significant time and skill were expended to protect the Applicants' interests. On that basis, the Respondent states the instruction fee sought was actually low, given the complexity, and that advocates should be fairly remunerated. He denies that any services were provided *pro bono* or for free, reiterating that the Applicants have provided no cogent reasons to interfere with the taxation ruling of 9th August, 2024.
32. While affirming that the Taxing Master correctly used her discretion to assess fees as there was no fixed ascertainable value for the subject matter, the Respondent prays that the Certificate of Costs be adopted.

Respondent's Submissions

33. These are on three issues. On the Procedural Competence and Statutory Timelines, the Respondent starts by first asserting that the Applicants' reference is fatally and incurably defective because it was filed in total disregard of the mandatory procedures set out in the law. Specifically, the Respondent relies on Rule 11(1) of the Advocates (Remuneration) Order, which dictates that any party objecting to a taxing officer's decision must provide a written notice of objection within fourteen days.
34. It is submitted that since the Applicants failed to issue this notice or obtain formal reasons from the taxing master before moving to the High Court, the reference was filed prematurely and should be struck out for being incompetent.
35. On the second issue, the Respondent argues that the court cannot be faulted for a denial of a fair hearing when the Applicants failed to properly place their documents on the record. The Respondent maintains that a court's decision-making power is strictly limited to the documents found within the official court file or the Judiciary E-Filing system (CTS). They contend that while the Applicants may have served certain documents on the firm, the failure to upload them rendered those documents legally invalid for the court's consideration, meaning the Taxing Master acted correctly based on the record that was actually available.
36. Regarding the merits of the fees awarded, the Respondent submits that the court should not interfere with the taxing master's discretion unless a clear error of principle is proven. Relying on *Kipkorir, Tito & Kiara Advocates v. Deposit Protection Fund Board [2005] eKLR*, the Respondent argues that the threshold for such interference is high and has not been met in this case.
37. Further, using the decision in *Joreth Limited v. Kigano & Associates [2002] eKLR*, the Respondent explains that since the underlying suit involved complex issues like injunctions and the control of Hotel Dayton Limited, an asset worth over Kshs. 100 million, rather than a simple liquidated debt, the value was not ascertainable from the pleadings and

therefore, the taxing master was legally permitted to use her discretion to assess a fair instruction fee.

38. Citing *Peter Muthoka & Another V Ochieng & 3 others [2019] KECA 597(KLR)*, the Respondent concludes that the fee awarded is just and necessary to ensure advocates are commensurately remunerated for professional work done.

Analysis and determination

39. Upon consideration of the Reference, Affidavits, and the submissions on record, it is evident that the issues arising for determination fall into two broad categories:-

- 1. Whether the reference is competent in line with the alleged non-compliance with notice under Rule 11 of the Advocates Remuneration Order.**
- 2. Whether the Reference has merit.**

40. On whether the reference is competent before this Court, it is not in dispute that the Advocate–Client Bill of Costs dated 10th August 2023 was taxed on 9th August 2024 at a sum of Kshs. 916,000. It is equally uncontested that although the Applicants’ counsel prepared a Replying Affidavit and written submissions in opposition to the Bill, the same were never filed in the Court’s CTS system or placed on the physical court file. What was done, as conceded, was mere service upon the Respondent. Consequently, at the time the Taxing Master rendered her Ruling, the said documents did not form part of the official record.

41. Upon discovering this omission after taxation, the Applicants moved the Taxing Master vide a Notice of Motion dated 20th August 2024 seeking, inter alia, review of the taxed costs and an order for re-taxation. That application was dismissed on 24th January 2025, the Taxing Master holding, and correctly so, that a court can only act on material properly on record and that documents merely served but not filed are of no legal consequence in judicial determination.

42. The Taxing Master further observed that the taxation had been conducted in accordance with the Advocates Remuneration Order and that the outcome would not have differed even if the Applicants' responses had been on record. Notably, however, the Applicants were granted leave to file a reference.

43. Against that backdrop, the Respondent has now raised an objection grounded on Rule 11 of the Advocates (Remuneration) Order, contending that the Applicants neither issued a Notice of Objection within fourteen days of the taxation ruling nor sought reasons from the Taxing Master, and that no explanation has been tendered for such non-compliance. The Respondent therefore urges the Court to find the reference incompetent and premature before the Court.

44. Paragraph 11 (1) and (2) of the Advocates Remuneration Order provides for the procedure to be followed when a party is dissatisfied with a 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.”

45. Rule 11(1) of the Advocates (Remuneration) Order is couched in mandatory terms. It requires an objector, within fourteen days after the decision of the Taxing Officer, to give notice in writing specifying the items objected to. Thereafter, under Rule 11(2), the objector is to obtain reasons for the taxation and, within fourteen days of receipt of those reasons, file a reference to a Judge.

46. However, the Courts have variously held that when reasons for the decision are indicated in the ruling, it would not be necessary to request reasons on taxation. Indeed, in [Mumias Sugar Company Limited v Tom Ojienda & Associates \[2018\] KEHC 7836 \(KLR\)](#), D. S Majanja J held:-

“The respondent pointed to the fact that the applicant did not seek reasons for the decision under Paragraph 11(1) aforesaid hence the application was incompetent. I do not think that failure to seek reasons is necessarily fatal to this application. A plethora of decisions suggest that the reasons for the decision are contained in the ruling and that the provisions does not in the words of Ringera J., impose on the court ritualistic observance thereof even when reasons for the disputed taxation are already contained in the formal and considered ruling by the Deputy Registrar .”

47. In the present matter, the Ruling of the Taxing Master, Hon. Christine Menya, delivered on 9th August 2024, explicitly contained the underlying reasoning for the Court's decision. Since the primary purpose of a formal objection is to elicit the reasons behind a taxation decision, the Applicant was not required to file such an objection in this instance. Given that those reasons were already fully articulated within the body of the Ruling itself, any further request for justification would have been redundant. Consequently, there was no procedural necessity for the Applicant to seek a separate statement of reasons for the taxation.

48. Turning to the complaint that the Supporting Affidavit was sworn by counsel, this Court is alive to the principle that advocates ought not depone to contentious matters of fact. However, a perusal of the Affidavit reveals that the matters deponed to largely pertain to the conduct of the case, the procedural history, and matters within the Advocate's knowledge. To the extent that any depositions may touch on contested facts, the same do not go to the root of the application to render it fatally defective.

49. On the merits of the taxation, the central question is whether the Taxing Master erred in principle in the assessment of instruction fees and the impugned items.
50. The Applicants' primary contention is that the value of the subject matter was ascertainable at Kshs. 900,000, and that the Taxing Master ought to have applied the relevant scale under the Advocates (Remuneration) Order. The Respondent, on the other hand, maintains that the dispute concerned control over Hotel Dayton Limited, an asset of substantial value, and that the matter involved complex issues spanning company, land, and succession law, thereby justifying the exercise of discretion.
51. Upon perusing the Advocate-Client Bill of Costs dated 10th August 2023, originating from Nakuru High Court Civil Case No. E008 of 2022, it is evident that the prayers sought extended well beyond a simple monetary claim. In addition to the Kshs. 900,000 sought for allegedly stolen items, the suit pursued general damages and a permanent injunction to restrain interference with the operations and management of Hotel Dayton Limited.
52. Given that the core of the dispute concerned the control of a substantial commercial asset, the value of the subject matter cannot be limited to the liquidated sum of Kshs. 900,000. It follows, therefore, that the claim was not strictly ascertainable, and the Taxing Master was correct to exercise discretion in determining an appropriate award under the circumstances.
53. Indeed, the Court of Appeal (R.O Kwach, A.B. Shah & S.E.O. Bosiie JJA) in *Joreth Ltd v Kigano & Associates (Civil Appeal 66 of 1999) [2002] KECA 153 (KLR)* stated thus:-

“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 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 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.”

54. The next issue for determination is whether the award of Kshs. 400,000 on instruction fees was excessive. In *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (1972) EA 162*, the Court outlined the principles of taxation as follow:-

“(a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy.

(b) That a successful litigant ought to be fairly reimbursed for the cost he has had to incur. (c) that the general level of remuneration of Advocates must be such as to attract recruits to the profession.

(d) so far as practicable there should be consistency in the award made and;

(e) The Court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”

55. Similarly, in the case of *Joreth Limited v Kigano and Associates (2002) E.A 92*, the Court set out various factors that are to be considered in determining the instruction fee. These factors include the importance of the matter, general conduct of the case, the nature of the case, time taken for its dispatch and the impact of the case on the parties.

56. From the court record, there is no doubt that the dispute was of some significance. It concerned the management of Hotel Dayton, an income-generating asset forming part of a deceased’s estate, thereby introducing elements of sensitivity and importance. These proceedings were not entirely superficial; counsel engaged the court through an interlocutory application, a preliminary objection, written submissions, and a ruling was ultimately delivered.

57. The material before the Court shows that notwithstanding the interlocutory engagement by parties in the suit, the matter was compromised by consent before it could proceed to full trial.
58. In her Ruling dated 9th August 2024, it is a fact that the Taxing Master recognised the above position and was alive to principles of taxation set out in *Premchand Raichand Ltd* (supra) which underscores the need for proportionality so as to avoid unjust enrichment as she stated:- “ ***I had a chance to peruse the file and noted that the matter did not proceed to conclusion and thus, the subject matter was not quantified. This would mean that the taxing master has the discretion to ascertain what is reasonable.***”
59. Further, she relied on the case of *Delmonte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Murang’a Chapter & 2 others* [2021]eKLR where it was held that:- “ ***First , in taxing an Advocate ‘s bill of costs , the value of the subject matter of the subject matter must be ascertained a priori. Where the value of the subject matter of a suit is known or can be determined from the pleadings , judgment or settlement, the Taxing Officer has no discretion in assessing instruction. However, where the value of the subject matter is unknown or cannot be ascertained, then the taxing officer is expressly permitted in exercising his or her discretion to consider any such matters as he or she may need to consider to assess instruction fees.***”
60. In so doing, she held :- ***I shall therefore consider the work involved in the cause and the complexity that may arise tax the same Ksks. 400,000/=.***” Having borne in mind the early termination before proceeding to allow the above figure, it is not fatal that she did not strictly specify the work done, considering her statement that she had perused the court file.
61. This Court further notes that in the Ruling dated 24th January 2025 in regard to Chamber Summons dated 20th August 2024, filed by the Applicants herein seeking stay of the Ruling dated 9th August 2024 and re-

taxation of the Bill of Costs dated 10th August 2023, the Taxing Master held as follows as she ordered the Respondents to proceed to file a Reference to High Court:-

“The main grounds were that they were aggrieved by the said Ruling to the taxation since it was stated that there was a response to the bill which was condemning them unheard...the said annexed Replying affidavit has no received stamp from the Court.

The submissions as AK4 are also not in the CTS that would make me then fault for perhaps not going through the documents as well as the Replying affidavit. I also looked at the key features in the CTS on the documents annexed and there is not red writing in the said documents that usually appears in the right side of the document if uploaded. I feel that perhaps the Respondent indeed served the Applicant but failed to upload their document in the portal for court to look at them.

I would then conclude that the said documents not filed at all in physical file as well as the portal.

I must however observe that I looked at the bill again, which in my opinion is well detailed and I would still tax it the same way.

I would in other words reach at similar figure.”

62. From the above argument, the Taxing Master cannot be faulted. There were no documents filed by the Respondent therein.

63. In the circumstances herein, there is no reason to interfere with the discretion by exercised by the Taxing Master.

64. In conclusion, the Reference dated 3rd February, 2025 is hereby dismissed with costs.

Dated, signed and delivered at Nakuru this 27th day of April, 2026.

PATRICIA GICHOHI

JUDGE

Appearance

N/A by both parties duly notified

Erickson, Court Assistant

ORIGINAL