

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISC. APPLICATION NO. E164 OF 2025

THE CO-OPERATIVE BANK OF KENYA LIMITED.....
APPLICANT

VERSUS

MOSES OMBOGA OSIEMO.....
RESPONDENT

RULING

1. This is Ruling on a Reference by a Bill of Costs.

Background Facts

2. The Applicant filed the Chamber Summons dated 13th February 2025 and sought the following orders;

- a) *The Ruling of the Taxing Master delivered on 16th January 2025 pertaining to the taxation of the Bill of Costs dated 14th June 2024, be set aside.*
- b) *The Court to refer the matter back for re-taxation of the Bill of Costs and with proper directions thereof.*
- c) *In the alternative to prayer 2, the Court exercises its inherent jurisdiction and be pleased to re-tax the Bill of*

Costs dated 14th June 2024 afresh and/or make directions to a fresh taxation.

3. The Application was supported by the Affidavit of **Ned Chemoiwa** who stated that on 16th January 2025, the Taxing Master delivered a ruling on the Bill of Costs dated 14th June 2024. The Taxing Master taxed the instruction fees at Kshs.100,000 without providing reasons for increasing the basic amount under the Advocates Remuneration Order. The Applicant subsequently filed a Notice of Objection on 29th January 2025 and requested reasons, which have not been furnished. It is contended that the Taxing Master erred in principle by failing to consider relevant factors such as the nature, importance, and conduct of the proceedings. This resulted in an award that is manifestly excessive and indicative of an error in principle.
4. Further, the Applicant argued that the Taxing Master erred in fact and law by miscounting folios in several items, failing to strike out items not provided for under the Advocates Remuneration Order, and allowing claims for unproven expenses such as internet costs. Additionally, items relating

to Court attendance were taxed contrary to prescribed rates. The Applicant maintained that unless the taxed Bill is set aside, it will suffer substantial injustice as the taxation was conducted in contravention of the applicable legal principles and provisions governing costs.

5. In response, the Respondent raised a Preliminary Objection dated 15th July 2025 on the following grounds;

- a) *The application is statutorily time-barred, incompetent, and offends the mandatory provisions of Rule 11 (2) of the Advocates Remuneration Order as it has been filed late on 14th February, 2025, being more than fourteen (14) days after the taxing officer's decision being objected to, delivered on 16th January, 2025.*
- b) *The application is misconceived, fatally defective, a non-starter, and bad in law as it has been filed out of time without a corresponding or prior application for leave to enlarge/extend time within which to file the reference, as required under Rule 11(4) of the Advocates Remuneration Order.*
- c) *The Court lacks the jurisdiction to entertain, hear, determine the Applicant's reference application herein as the application is time barred, stale, incompetent, defective, misconceived, untenable, frivolous, hopeless, vexatious, and constitutes an abuse of Court process.*

- d) Further, the instant application has been filed as a separate miscellaneous application number HCCOMMISC/E164/2025 instead of being filed as a miscellaneous application in HCCOMMISC/E273/2024 from which the Respondent's party to party bill of costs dated 14th June, 2024 emanates and in which the impugned taxation decision of 16th January, 2025 was made by the taxing officer.*
- e) Consequently, the Applicant's reference application dated 13th February, 2025 is a proper candidate for dismissal with costs to the Respondent herein.*
6. The Respondent also filed the Replying Affidavit, sworn on 15th July 2025. The Respondent maintained that his claimed instruction fees of Kshs. 163,715.86/= were properly calculated based on the subject matter value of Kshs. 3,914,390.95/=. That this subject matter value was clearly ascertainable from the pleadings relating to the applications for stay of execution.
7. In addition, instruction fees are generally derived from the value of the subject matter and the Taxing Officer properly exercised her discretion under Schedule 6 of the Advocates Remuneration Order. The provision allows for enhancement of fees above the minimum prescribed, and the Officer is

said to have considered the parties' positions before awarding Kshs. 100,000/=. In the absence of proof of misuse of discretion, the decision cannot be faulted as erroneous in principle.

Issues for determination

8. Having carefully considered the Application, the Preliminary Objection, the response, the written submissions and oral highlights by Counsel, the Court frames the following issues for determination;

a) Whether the Application has been filed out of time and without leave of the Court.

b) Whether the taxation decision dated 14th June 2024 should be set aside.

Analysis

9. What is before the Court the Reference arising out of the Taxation of a Bill of Costs.

a) Whether the Application has been filed out of time and without leave of the Court

10. The Respondent raised a Preliminary Objection to the present Application on the ground that the application is statutorily time-barred, incompetent, and offends the mandatory provisions of **Rule 11 (2) of the Advocates Remuneration Order**. It is said to have been filed late on 14th February, 2025, being more than fourteen (14) days after the taxing officer's decision being objected to, delivered on 16th January, 2025.
11. It is trite law that any party wishing to object to Taxing Master's decision has to do so in writing within **Fourteen (14) days** after delivery of the Taxing Officer's decision. The party is also to request for reasons on Taxation of specified items in the Bill of Costs that are objected to. That upon receipt thereof, the Applicant can make an application by way of a reference vide a Chambers Summons application to a Judge setting out the grounds of objection to the Taxation.
12. **Paragraph 11 of the Advocate's [Remuneration] Order** provides;

“1. Should any party object to the decision of the taxing officer, he may, within 14 days after the decision, give notice in writing to the 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 parties concerned, setting out the grounds for objection.”

13. The Applicant explained that he complied with the provisions of **paragraph 11(1) of the Advocates Remuneration Order**. The Applicant filed a Notice of Objection and requested reasons on 29th January 2025 within the prescribed 14-day period; however, no reasons were provided. The Ruling itself did not disclose any justification or factors considered in taxing the instruction fees at Kshs. 100,000/= . Consequently, upon the Deputy Registrar’s failure to supply the requested reasons within the stipulated timeframe, the Applicant proceeded to file the Chamber Summons on 14th February 2025, also within the required 14-day period.

14. On this issue, it is the Court's finding that in light of **Article 159 (2)(d) of the Constitution**, the reasons advanced by the Applicant are plausible. In addition, the decision having been delivered on 16th January, 2025, and the Application filed on 14th February 2025, the delay in filing this application is not inordinate.

b) Whether the taxation decision dated 14th June 2024 should be set aside.

15. The principles that guide the Court when considering a reference from the decision of a taxing officer are fairly settled through case law. In the case of **Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR** the Court of Appeal stated: -

“The learned judge like the taxing officer was exercising judicial discretion when he allowed the reference. This Court cannot interfere with the exercise of that discretion unless it is shown that the learned judge acted on the wrong principles of law. The appeal to this Court from the decision of a judge on reference from a taxing officer is akin to a second appeal and should be governed by Section 72 (1) of the Civil Procedure Act. In

our view, such an appeal can only be allowed on any of the three grounds specified in Section 72 (1) of the Civil Procedure Act, that is to say, if the decision is contrary to law or some usage having the force of law; or the decision has failed to determine some issue(s) of law or usage having the force of law or where there is a substantial error or defect in the procedure provided by law which may possibly have produced error or defect in the decision on the case upon merits.”

16. It was the Applicant’s submission that the Taxing Officer erred in principle, fact, and law in the assessment of costs. the Taxing Officer completely disregarded the provision of the Advocates (Remuneration) Order and assessed the Instruction fees at Kshs. 100,000/- without providing the reasons for the assessment and without basing the assessed amount on any of the allowed factors.
17. In contrast, the Respondent submitted that under the Advocates Remuneration Order, the taxing officer has the discretion to increase or enhance instruction fees. That hence this Honourable Court

sitting on a reference may only interfere with the taxing master's exercise of discretion, if it is shown that the officer abused or overstepped their discretion.

18. From the Bill of Costs, the instruction fees were based on *“receiving instructions to act for the 1st Respondent in an application seeking for stay of execution of a judgment and decree involving an amount of Kshs. 3,914,390.95/=”*.

19. What was the subject matter? It is undisputed that there was a judgment upon which the Application for Stay of Execution was filed. In **Joreth Ltd v Kigano & Associates [2002] KECA 153 (KLR)**, the Court of Appeal outlined the principle as follows: -

“...the value of the subject matter of a suit for the purpose 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 ascertainable, the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among 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."

20. **Schedule 6 (1) of the Advocates Remuneration Order, 2014** provides;

To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties.

21. In this case, the value of the subject matter (Kshs. 3,914,390.95/=) is based on the judgment for which the Application for stay of execution was filed. That this amount falls between Kshs. 1,000,000/= and Kshs. 20,000,000/=. That the fees chargeable or awardable for the same is Kshs. 120,000/= plus an additional 2%. Thus, the Court finds that the amount of Kshs. 100,000 is not manifestly excessive as to justify an interference on the basis that it was based on an error of principle.

22. Further to the above, the Applicant contended that the Taxing Master erred both in fact and in law by failing to take into account the number of folios when assessing items Nos. 3, 12, 13, 22, 23, 24, 32, 33, and 34; by declining to strike out items Nos. 7-11, 17-20, 27-31, 36-40, and 48-52, which are not provided for under the Advocates Remuneration Order and were unsupported by proof of actual internet expenses; and by improperly taxing items Nos. 42 and 43 at Kshs. 3,000/= each contrary to the prescribed rates for Court attendances under the Order.
23. The Court will only interfere where there has been an error in principles applied. This is for the reasons that questions solely on quantum are regarded as matters in the Taxing Master's discretion as was held in the case of **James Arthur vs. Nyeri Electricity Undertaking [1961] EA 492,**
24. On these other items, the Court reiterates the holding in **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd [1972] EA 162,** Spry, V-P. stated at p.164 that: -

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat is too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”

25. In light of the above, the Court finds no reason to interfere with the decision of the Taxing Officer and the decision of the Taxing Officer is hereby upheld.
26. As to costs the same follow the event. There is no reason advanced to deny the successful Respondent of the costs of the Reference.

Determination

27. The Applicant’s Chamber Summons dated 13th February, 2025 is dismissed for lack of merits.
28. The costs of the Reference are awarded to the Respondent.
29. It is so ordered.

30. This file is HEREBY marked as closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 23RD
DAY OF APRIL, 2026.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Abdirazack for the Advocate/Respondent.

Mr. Ned Chemoywo for the Client/Applicant.

Mr. John Paul - Court Assistant.