

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA.

MISCELLANEOUS APPLICATION NO. E005 OF 2025

Y. JERUTO & COMPANY ADVOCATES APPLICANT

- V E R S U S -

WEST POKOT COUNTY ASSEMBLY RESPONDENT

RULING

The Chamber Summons dated 1/8/2025 is a reference filed by the applicant Y. Jeruto & Company Advocates from the decision of the Deputy Registrar made under Rule 11(2) of the Advocates Remuneration Order and seeks orders that;

- 1. The decision of the Taxing Officer delivered on 12/6/2025 in respect of the Advocates client Bill of Costs dated 11/2/2025 be set aside and or varied in respect of items I (Instruction fees) and 2 (Getting up fees).**
- 2. That the court be pleased to remit the said Bill of Costs for undertaking before a different Taxing Officer with appropriate directions.**

The application is premised on grounds found in the body of the application and the affidavit of Yvonne Jeruto Advocate, dated 1/8/2025. The applicant

deponed that she represented the Respondent in High Court Constitutional Petitioner E002 of 2023 involving the impeachment of a public official and significant governance implications and legal issues of significant public interest; that Counsel lodged an Advocate client Bill of costs dated 11/2/2025 seeking 13,000,000/= as instructions fees and Kshs.4,333,333/= as getting up fees for legal services rendered in the said petition; that on 12/6/2025, the Taxing Officer taxed the Bill at Kshs.286,591/92 significantly reducing the instructions fees and getting up fees thus substantially reducing the getting up fees; that in prosecuting the petition, Counsel repeatedly undertook extensive research in preparing for the petition.

It was further urged that the Petitioner in the main suit was awarded Kshs.7,000,0000/= as party and party costs; that the consent order reflected the case's weight and value; that the levied amount is manifestly low, disproportionate and inconsistent with the Advocates (Remuneration) Order 2009 given the nature of the case and the effort; that the Taxing officer offended Rule 11(2) of the Advocates (Remunerations) Order for failing to give sufficient reasons for the reduction of the costs and disregarding the Counsel's objections; that in the end, the Taxing Officer failed to consider the complexity, novelty, public interest, high stakes and failed to exercise her discretion judiciously especially in view of the consent order awarding Kshs.7,000,000/= as party and party costs to the petitioner in Constitutional Petition E002/2021.

The Respondent opposed the application and Leonard Limareng, the Clerk of West Pokot County Assembly swore a replying affidavit dated 17/3/2026 in which he deponed that the applicant has failed to demonstrate error of Principle on the part of the Taxing Officer; that the claim of Kshs.13,000,000/= instruction fees and Kshs. 4,333,333/= getting up fees were grossly exaggerated; that the applicant has not demonstrated that the value of the subject matter justified the exaggerated fees claimed; that the Taxing Officer properly considered the nature of the matter and applicable provisions of the Advocates (Remuneration) Order before arriving at the taxed amount. He deponed that the application lacks merit and should be dismissed.

Both parties filed submissions in support of their positions.

Applicants Submissions: -

The applicant filed their submissions dated 26/11/2025 in which Counsel reiterated that the subject Constitutional petition was complex, novel and of public interest which successfully challenged the legality of the decisions of the County Assembly of West Pokot on grounds of devolution and separation of powers; that it also involved extensive research, multiple contested hearings, lengthy pleadings and considerable skill and responsibility on the part of the applicant. Counsel identified one issue for determination being that the Taxing Officer fundamentally erred in principle by reducing instruction fees by over 97% without valid reasons rendering it manifestly inadequate and an abuse of

the Officers discretionary power. Counsel relied on the case of **Kenya Airports Authority -V- Otieno Ragot and Company Advocates (2024) KEHC 44 (KLR)** where the Supreme Court emphasized that the taxing officer must determine the value for the subject matter from the pleadings, Judgment or settlement under paragraph 1 of schedule 6A of Advocates Remuneration Order and exercise discretion to ensure that costs are reasonable, especially where the suit's value is unascertainable, due to its nature or early resolution.

Counsel also relied on Republic -Vs- Ministry of Agriculture & 2 others ex parte **Muchiri. W'Njuguna & 6 others HC 621/20000 (2006) eKLR** where the court held that taxation of costs must be based on rational criteria, which is clearly expressed for both parties to understand with ease, be fair and shield be regular and provide reasonable compensation for work done,

Counsel also relied on **National Bank of Kenya Limited -V-s Rachuonyo Rachuonyo Advocates (2021) KEHC 6882 (KLRR)** where the court observed that the taxing officer must apply principles judiciously and the determination should neither be too low or high fees.

Counsel further submitted that the petition was awarded Kshs.7,000,000/= as party and party costs by consent of the parties and that it represents the weight of the case; that in the **Otieno Ragot's case (Supra)** the Supreme Court clarified that under schedule 6B of the Advocates Remuneration Order, Advocates – Client instruction fees are not a mechanical increase of party fees

by one half but requires discretionary assessment guided by part A while ensuring reasonable compensation for work done.

Counsel also submitted that in breach of Rule 11(2) of the Advocates Remuneration Order, the taxing officer ignored the written objections dated 23/6/2025 and gave no reasons for the rejection, putting reliance on the **Kenya Ports Authority case (Supra)**.

Counsel said that the Supreme Court observed that Taxation is a judicial function, not procedural technicality and must adhere to Rule 16 of the Advocates Remuneration Order by addressing objections to prevent injustice. Counsel urged that failure to address the objection was procedural impropriety.

On denial of getting up fees; Counsel submitted that in **Kaur alias Kaur -Vs- Suri (2024) KEEL C14083 (KLR)** the court held that where a matter is fixed for hearing then the successful party is entitled to levy and charge getting up fees and the getting up fees is levied at 1/3 of the instruction's fees.

Respondent's Submissions: -

The Respondents Counsel filed written submissions dated 17/3/2026 on whether the taxing officer erred in principle in awarding a manifestly low fee as to warrant the interference by this court. Counsel submitted that the taxing officer has unfettered discretion to increase the instructions fee after considering and reviewing the matter. He relied on two cases.

In **KANU National Elections Board & 2 others -Vs- Salah Yakub Farah (2018) eKLR**, the Court set out the principles to consider in a taxation as being

- (a) The difficulty and complexity of the issues**
- (b) The length of the trial**
- (c) Value of the subject matter**
- (d) Other factors which may affect the fairness of an award of costs.**

In **Peter Muthoka & Another -Vs- Ochieng and 3 others (2019) eKLR** the court observed that where the value of the subject matter is not discernible then the taxing officer uses his discretion to assess the instruction fees guided by the various elements of taxation.

Counsel urged that the applicant claimed Kshs.13,000,000/= as instruction fees under schedule 6(g) of the Advocates Remuneration Order which figures were excessive and unjustifiable given the nature and scope of the petition as it did not involve complex legal questions and the matter was completed within a very short period of time; that the taxing officer at paragraph 3 applied the law and observed that where paragraph schedule 6 paragraph (j) (i) and (11) of the ARO, the fee for an opposed Constitutional Petition is Kshs.100,000/=

Counsel also relied on the Supreme Court of Uganda (Mulenga JSC) in **Bank of Uganda -V- Banco Arabe Espaniol, Civil App. 29/2019** where the court observed later that it is only in every exceptional circumstances that courts will interfere with assessment by the taxing officer because the taxing officer has

more experience in taxation than the Judges and that the Judge should only interfere if satisfied there was an error that substantially affected the decision leading to an injustice.

As to whether the matter was complex, Counsel submitted the fact that it is a public interest or constitutional petition does not automatically render it complex or novel. He relied on the decisions of the **Republic -V- Ministry of Agriculture (Supra)** where the court held inter alia that taxation of Advocates instructions fees should avoid any prospect of unjust enrichment for either party.

It is the Respondent's submissions that the applicant has failed to demonstrate the presence of any novel or complex issues in the petition that would require interference by the High Court.

I have considered the application and the rival submissions both Counsel and the Ruling of the taxing Officer. This court is guided by the principles under the Advocates Remuneration Order and the various decisions that have dealt with taxation matters. In the Supreme Court of Uganda (**Mulenga JSC**) **Supra**, In **Bank of Uganda -V- Banco Arabe Espaniol** stated as follows: - **“Save in exceptional cases, a Judge does not interfere with the assessment of what the Taxing Officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs, are matters which the taxing officer is particularly fitted to deal, and which he**

has more experience than the judge. Consequently, a judge will not alter a fee allowed by a taxing officer, merely because in his opinion, he should have allowed a higher or lower amount..... Even if it is shown that the Taxing Officer erred in principle, the Judge should interfere only if satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties. (emphasis).

Again, in **Republic -V- Ministry of Agriculture & 2 others (Supra)** the court said **“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, particularly where he is of great experience, merely because it thinks the award was somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other.... The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle”.**

Taking cue from the above decisions, the High Court will generally be very slow to interfere with the taxing officer’s decision because the taxing officer is

the person who has experience in taxation being a duty he/she regularly performs on a daily basis unlike the judge.

The second reason for interference is if the officer applied wrong principles. In the instant case the subject matter before the High Court was a Constitutional petition and had no quantifiable monetary claim.

As regards instruction fees for Constitutional petitions and Prerogative orders the same is provided for under schedule 6. Paragraph 1 (b) Paragraph (j) (i) provides for matters that are not complex or opposed where a sum of not less than Kshs.45,000/= may be awarded. Paragraph j (ii) provides for where the matter is opposed and found not to be complex, a reasonable sum may be awarded but not less than Kshs.100,000/=. The taxing officer applied the second criteria in paragraph j (ii). The question is whether the petition raised complex and novel issues.

I have had a look at the petition and the issues raised relate to the impeachment of a party from holding the office of the Speaker of Assembly of West Pokot and the doctrine of separation of powers.

The taxing Officer went ahead to consider several decisions where such issues were raised and the complexity and novelty of issues raised. One of the cases relied upon was that of **Tom Ojienda & Associates Advocates -V- City Council of Nairobi 2021** where J. Makau considered several cases including

Republic -V- Ministry of Agriculture Supra a case which the applicant also relied upon. At paragraph 29-32 of the said decision, the court said as follows; -

29 “The court dealing with similar issues issued the following guidelines in taxation of instruction fees...

- 1. “The proceedings in question were purely public law proceedings and are to be considered entirely free of any private business arrangements or earnings of the tea production section;**
- 2. The taxation of advocates’ instruction fees is to seek no more and no less than reasonable compensation for professional work done;**
- 3. The taxation of advocates’ instruction fees should avoid any prospect of unjust enrichment, for any particular party or parties;**
- 4. So far, as opposite, comparability should be applied in the assessment of advocate’s instruction fees;**
- 5. Objectivity is to be sought when applying loose-texture criteria in the taxation of costs;**
- 6. Where complexity of proceedings is a relevant factor, firstly, the specific elements of the same are to be judged on the basis of the express or implied recognition and made of treatment by the trial judge;**
- 7. Where responsibility borne by advocates is taken into account, its nature is to be specified;**

8. Where novelty is taken into account, its nature is to be clarified;
9. Where account is taken of time spent, research done, skill deployed by counsel, the pertinent details are to be set out in a summarized form”

30. I have considered the Petitioner’s application and submissions and I have found that the Applicant has not shown any novelty at all in this Constitutional Petition. The Applicant in the application states that the Applicant believed Petition No. 618 of 2014 *Law Society of Kenya -V- Cabinet Secretary of Ministry of Lands Housing & Urban Development, National Construction Authority, Attorney General & Nairobi City County* to be a novel matter as it dealt with the interpretation of Provision 185 (4) (a) & (b) and Part 2 of the Fourth Schedule of the Constitution of Kenya. This was as a result of National Government imposing a 0.5% construction levy within Nairobi County without having consultations with the County Government of Nairobi. I do not see how this can be said to show that this was a novel matter and as such I decline the invite to interfere with the decision of the Taxing Master. The Applicant was required to demonstrate that there was an error in principle on the part of the Taxing Master or that the amount awarded or taxed is

manifestly excessive or too low to the detriment of a party for this court to interfere with the Taxing Master's decision.

31. Reliance in support of the above is placed in the case of **Lubulellah & Associates Advocates -V- Baranyi Brokers Limited & 2 others (2014) e KLR**, which cited with approval the case of **First American Bank of Kenya -V- Shah & Shah & others (2002) E.A.L.R 64**, where it was stated that;-

-First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principles, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principles"

32. As a whole and upon considering the rival submissions and pleadings I find the Applicant has not demonstrated existence or proved any error of principle on the part of the Taxing Master. Further it is noted the Applicant has not proved the Taxing Master awarded a figure that is manifestly low. I find the final award on instruction fees is provided in the applicable law thus the Advocates **(Remuneration) (Amendment) Order, 2014"**

As held in the above cited case, although the applicant claims that the petition was complex, Counsel has not bothered to demonstrate the same, nor was it

demonstrated the research done, time spent in preparation of the petition. Further, the Applicant did not demonstrate that the issues raised were novel. It was not enough to state that the petition was complex and novel.

The applicant complained that the taxing officer failed to take into account the party and party costs of the 7,000,000/= that was agreed upon by consent. In my considered view, that is not one of the factors to be considered in assessing costs and the officer did not err in not taking the said sum into consideration.

The applicant also complained that the taxing officer failed to consider the objections she raised to the taxation and failed to give reasons. I have seen the objection that is dated 23/6/2026. In the instant case, the taxing officer had given a reasoned ruling on the taxation and would not have been expected to give further reasons.

The applicant also complained that the taxing officer erred by not awarding any costs as getting up fees.

Getting up Fees is provided for under paragraph 2. They are awarded where there is a defence filed, issues raised and one prepares for trial and it is not less than 1/3 of the instruction fees allowed on taxation. This matter did not go to full trial but was canvassed by way of submissions. The Taxing officer made an award of Kshs.33,333/= being a 1/3 of the instruction fee. I think that the applicant's proposed fees were grossly exaggerated.

In the end, I find that it has not been demonstrated that the taxing officer considered irrelevant factors or applied wrong principles or that she exercised her discretion unjudiciously or that the award was unreasonable in the circumstances. Consequently, the Chamber Summons is not merited and is hereby dismissed with each party bearing its own costs.

Dated, signed and delivered at Kapenguria this 29nd day of April, 2026.

HON. R. WENDOH

JUDGE.

Ruling read in the presence of

Applicant- Mr. Langat holding brief for Ms. Jeruto

Respondent- No appearance

Juma/Hellen-Court Assistants