**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**MISC. CIVIL APPLICATION NO. E158 OF 2025**

**BETWEEN**

**MUTHAMI & KAGUTA ADVOCATES...................................... APPLICANT**

**AND**

**GABRIEL NDERI NGURIN'GA ........................................1ST RESPONDENT**

**HOSPITAL HILL SCHOOL............................................2ND RESPONDENT**

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**RULING**

**Introduction and Background**

1. On 9th May 2025, the court's Deputy Registrar taxed the Applicant's ("the Advocates") Advocate/Client Bill of Costs dated 11th February 2025 at Kshs. 269,305.00. The Respondents("the Clients"), through the Chamber Summons dated 5th June 2025 now seek to set aside the Deputy Registrar's findings on items numbers

1,2, 3 & 7 of the Bill of Costs where she concluded that they ought not to have been separated since they are all about the instruction fees ("the Reference").

2. The Advocates oppose the Reference through the replying affidavit of Velda Mokua, an advocate in the firm, sworn on 10th November 2025. This application is supported by the affidavit of Ivy Mouti sworn on 8th February 2023 and opposed by the Client through the Grounds of Opposition dated 26th April 2024. The Advocates have also filed the Notice of Motion dated 3rd July 2025 seeking entry of judgment as per the Certificate of Costs dated 16th June 2025 for the taxed amount. The application is supported by the affidavits of Velda Mokua sworn on 3rd July 2025 and 10th November 2025. It is opposed by the Clients through the replying affidavit of the 1st Respondent sworn on 23rd July 2025. I also note that the parties have supplemented their arguments in respect of the Reference by filing written submissions.

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**Analysis and Determination**

3. From the pleadings and submissions, the main issues for the court's determination are whether the Ruling should be set aside or whether the Certificate of Costs should be converted into a

judgment of the court. I do not think it is in dispute that in a reference to the court from the taxation by the Taxing Officer, the court will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs. That where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases (see **Kipkorir,Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] KECA 325 (KLR)**

4. This was reiterated in **Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W'Njuguna & 6 others [2006] KEHC 3504 (KLR)**where Ojwang' J.,(as he was then) held as follows:

    *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 an officer of great experience, merely because it thinks the award is 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*

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*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 inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.*

5. The Clients state that the Deputy Registrar erred by basing costs on an unexecuted Memorandum of Understanding(MOU) between the 2nd Defendant and *East Africa Satsang Swaminarayan Temple* that never materialized, while ignoring a valid fee note previously issued for actual services rendered. That ignoring the earlier fee note, resulted in duplication of fees already billed and that the Deputy Registrar further erred by completely overlooking their written submissions opposing the Bill of Costs, awarding an excessive taxed sum of Kshs. 269,305.00 which amounts to unjust enrichment and ignoring known taxation principles by awarding huge sums under items 1,2,3 and 7, leading to an outrageous figure. The Clients contend that the errors offend known principles of taxation and the Ruling should therefore be set aside.

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6. In response, the Advocate depone that the claim that the Deputy Registrar relied on a non-executed MOU is misleading as she properly referred to the value of the subject matter as disclosed in documents forming the basis of instructions which is consistent with established taxation principles. On the taxed amount, they state that this sum is not excessive and is fair, reasonable, and proportionate to the professional work done in an intricate transaction involving the 2nd Respondent and *East Africa Satsang Swaminarayan Temple.* That the Clients' invocation of "unjust enrichment" is pure hyperbole and emotional language lacking legal foundation as the Advocates simply seek compensation for services diligently rendered. As such, the Advocates urge that the Clients have not established recognized grounds for interference with the Ruling and they pray that the court dismisses the Reference with costs.
7. I have gone through the pleadings and submissions. The Deputy Registrar rightly relied on **section 45** of the ***Advocates Act*** which permits an advocate and a client to enter into a written agreement on fees, which shall be valid provided it is signed by the client or their duly authorized agent. For such an agreement to be enforceable, its terms must be unequivocal, express mutual assent,

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and be entered into freely and voluntarily. In **Omulele & Tollo Advocates v Mount Holdings Limited [2016] KECA 523 (KLR),** the Court of Appeal restated the proposition of the law that an agreement for fees contemplated under **section 45**, is a contract whose terms and conditions must be clear and unambiguous.

8. As the fee note relied upon by the Clients was not signed, it could not be deemed as a binding fee agreement under **section 45** of the ***Advocates Act***. I also cannot fault the Deputy Registrar for inferring the value of the subject matter from the MOU and she was correctly guided by this court (Warsame J., as he was then) in **Ochieng, Onyango, Kibet & Ohaga Advocates v Adopt A Light Limited [2007] KEHC 3613 (KLR)** where it was held that *"…when the subject matter is unknown, the court is empowered to make what is available as a point of reference"*. Consequently, it cannot be said that the taxed sum of Kshs. 269,305.00 is excessive for a KShs. 20,000,000.00 transaction involving drafting, revision, and amendments.

9. This leads me to conclude that the Deputy Registrar exercised her discretion judicially, applied relevant authorities and reached a



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figure that is not manifestly excessive. I find no valid reason for the court to interfere with the Ruling and I now dismiss the Reference.

10. Turning to the Advocates' application for adoption of the Certificate of Costs as a judgment of the court, **Section 51(2)** of the ***Advocates Act*** provides that:

> *The certificate of the taxing officer by whom a bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a caser where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.*

11. The words employed in the above provision are clear and demonstrate that the intention of the Legislature is that the costs ascertained by the certificate of taxation or costs, are final with respect to costs covered therein (see **Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR)**). As the reference has been dismissed, it follows that there is no valid reason to stop the court from entering judgment.

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**Conclusion and Disposition**

12. In the foregoing, I make the following orders:

1) **The Respondents' application dated 5th June 2025 is dismissed**
2) **The Applicants' application dated 3rd July 2025 is allowed on terms that judgment be and is hereby entered in favour of the Advocates against the Respondents for Kshs. 269,305.00 together with interest at the rate of 14% from 11th February 2025 until payment in full.**
3) **The Respondents shall bear the costs of both applications which are assessed at Kshs. 40,000.00.**

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**DATED SIGNED AND DELIVERED virtually at NAIROBI this 8th DAY of MAY 2026**

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**J.W.W. MONGARE**
**JUDGE**