



GM Gamma Advocates LLP v Board of Trustees of the National Social Security Fund (Environment and Land Miscellaneous Case E221 of 2024) [2025] KEELC 5965 (KLR) (29 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5965 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E221 OF 2024**

**CG MBOGO, J
AUGUST 29, 2025**

BETWEEN

GM GAMMA ADVOCATES LLP ADVOCATE

AND

BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND CLIENT

RULING

1. Before the court is the chamber summons dated 20th December, 2024 filed by the client/applicant and it is expressed to be brought under Paragraph 11 (1) and (2) of the Advocates Remuneration Order, Section 45(6) of the Advocates Act and Article 159(2)(d) of the Constitution of Kenya seeking the following orders:-
 1. That the ruling of the taxing officer delivered on 11th December, 2024 in so far as the same relates to the reasoning and determination pertaining to the Respondent’s Advocate-Client Bill of costs dated 16th October, 2024 and the applicant’s application amended on 25th November, 2024 be set aside.
 2. That the honourable court be pleased to strike out the respondent’s Advocate-Client Bill of Costs dated 16th October, 2024 for want of jurisdiction.
 3. That in the alternative to prayer 2 above, the honourable court be pleased to refer the matter back for re-taxation of the respondent’s advocate-client Bill of Costs dated 16th October, 2024 before another taxing officer with proper and appropriate directions thereon.
 4. That costs of this application be borne by the respondent.
2. The application is premised on the following grounds: -



- a. The taxing officer erred by failing to refer the applicant's application amended on 25th November, 2024 to the judge for determination, and holding that he had jurisdiction to hear and determine the same.
- b. The taxing officer erred and committed an error of principle by adopting a rigid interpretation of Section 45 of the *Advocates Act* and thereby arriving at a wrong conclusion that there was no valid remuneration agreement between the parties.
- c. The taxing officer committed an error of principle by failing to consider and give due regard to the legal position that a valid remuneration agreement under Section 45 of the *Advocates Act* can be construed from the correspondence between the parties.
- d. The taxing officer erred by failing to hold that a fee agreement could be construed from the correspondence exchanged between the parties and in particular the letters dated 5th October, 2021, 13th October, 2021, 15th October, 2021, 21st October, 2021, 22nd October 2021 and 1st November, 2021.
- e. The taxing officer committed an error of principle by failing to give due regard and appreciation to the fact that the deposit request note dated 1st November, 2021 was based on the fees proposed by the respondent in his letter dated 22nd October, 2021.
- f. The taxing officer failed to consider that by settling the deposit request note which was charging 50% of fees proposed by the respondent in his letter dated 22nd October, 2021 the applicant signified its acceptance of the fees proposed by the respondent in the said letter thereby creating a valid remuneration agreement between the parties.
- g. The taxing officer failed to consider that having made an offer to the applicant by proposing the amount of fees payable and the applicant having accepted the said offer by settling the deposit request note which was based on the said proposal, thereby creating a binding contract between the parties with respect to the legal fees chargeable, the respondent is precluded in law and in equity from turning around and filing a bill of costs seeking amounts which are at variance with the amount agreed by the parties.
- h. The taxing officer misdirected himself and exercised his discretion wrongly by failing to first set out the basic instruction fees of a constitutional petition before deciding whether or not to increase the same.
- i. The taxing officer committed an error of principle by extrapolating the practices emanating from private civil claims in taxing the instruction fees for a constitution petition by ignoring the legal principles that the amount in dispute is not necessarily the determinant factor in deciding the quantum of costs payable in a constitutional petition.
- j. The taxing officer misdirected himself and exercised his discretion wrongly by failing to correctly identify the subject matter of the primary suit.
- k. The taxing officer exercised his discretion wrongly by failing to consider that the reliefs sought by the petitioners were all based on their claim for the suit land, and therefore there could not be another subject matter apart from the suit land.
- l. The taxing officer erred by holding that there was a part of the subject matter whose value was determinable and there another part whose value was not determinable.



- m. The taxing officer committed a gross error of principle by awarding the respondent separate instruction fees for the alleged subject matter whose value is determinable and for the alleged subject matter whose value is not determinable.
 - n. The taxing officer exercised his discretion wrongly by using the value of the subject matter being KShs. 100,000,000/- in determining separate instruction fees for the alleged part of the subject matter whose value is not determinable.
 - o. The taxing officer committed an error of principle and exercised his discretion by finding that the primary suit was complex simply because it involved 7 parties.
 - p. The taxing officer exercised his discretion injudiciously by finding that the primary suit was complex despite the same not raising any novel issues.
 - q. The taxing officer committed an error of principle by failing to find that the responsibility entrusted to the respondent in the proceedings was quite ordinary and called for nothing but normal diligence.
 - r. The taxing officer exercised his discretion wrongly by failing to give due regard and appreciation to the fact that the primary suit was canvassed by way of written submissions without the need to call for oral evidence.
 - s. The taxing officer considered irrelevant factors and thereby exercised his discretion wrongly.
 - t. In the circumstances, the amount of Kshs. 10,800,000/- taxed as instruction fees which is 108 times the basic instruction fees is so manifestly high to constitute an error of principle and the same is exorbitant, oppressive, unjust and not commensurate with the work done.
 - u. In awarding the manifestly excessive and exorbitant fees, the taxing officer erred by failing to take into account the negligent manner in which the respondent executed the applicant's instructions in the primary suit.
 - v. The taxing officer erred in principle and exercised his discretion wrongly by finding that the respondent is entitled to getting up fees even though the primary suit was canvassed by way of written submissions and the fact that the respondent did not prepare and file the applicant's submissions in the primary suit.
 - w. The taxing officer committed an error of principle by allowing the respondent's items on drawings and perusals as drawn despite the same not being drawn to scale.
 - x. The taxing officer erred in increasing the taxed fees by half yet there was no party and party Bill of Costs that had been taxed.
 - y. The taxing officer erred in principle by failing to net off the amounts already paid by the applicant to the respondent despite the same not being disputed.
3. The application was supported by the affidavit of Kellen Njue, the general manager, corporation secretary and legal services of the client/applicant sworn on even date. The client/applicant deposed that upon being instructed to act on its behalf, the parties herein embarked on negotiations with a view on agreeing on the legal fees payable, and that in a letter dated 22nd October, 2021, the advocate/respondent agreed to an all-inclusive sum of Kshs.2,701,789.72. It was deposed that the advocate/respondent raised a deposit request note dated 1st November, 2021 which read 50% of the agreed fees which was settled signifying its acceptance of the fees proposed by the respondent in his letter.



4. Further, the client/applicant deposed that there was a valid remuneration/ fee agreement between the parties ousting the jurisdiction of the taxing officer to tax the advocate/respondent's bill of costs by dint of Section 45 (6) of the *Advocates Act*. Further, it was deposed that in his ruling delivered on 11th December, 2024 the taxing officer held that there was no valid remuneration agreement between the parties, and consequently dismissed its application, and proceeded to tax the bill of costs at Kshs. 16,851,68.00/-. The client/ applicant further reiterated the grounds seeking to set aside the ruling, as contained in the grounds of the application. I do not need to reproduce the same.
5. The application was opposed by the replying affidavit of Gad Ouma, a partner in the firm of the advocate/respondent sworn on 14th January, 2025. The learned counsel deposed that on 21st October, 2020, they received a letter from the client/applicant instructing them to come on record in ELC Petition E008 of 2020. They communicated vide the letter dated 23rd October, 2020 accepting the offer that fees shall be based on the applicable scale of the Advocates Remuneration Order. Further, that upon the exchange of the correspondences, the advocate/respondent provided services on the basis that fees shall be based on the Advocates Remuneration Order. The learned counsel deposed that the last correspondence was issued by the advocate/respondent on 15th October, 2021 which the client/ applicant did not respond. Further, that as at the time of taxation, there was no agreement on fees that had been reached.
6. The advocate/respondent deposed that vide a deposit request note in November, 2021, the client/ applicant settled the same and it did not constitute a settled agreement on fees. Further, that the client/ applicant being a body corporate, could not rely on a purported unwritten agreement on fees to justify its arguments, and that no other payment beyond the fees has been made. The advocate/respondent deposed that there is no fee agreement entered into between the parties, and that its proposal issued towards a fee agreement were not accepted. Further, that settlement of an advocate's deposit request note does not constitute a fee agreement, and that the said settlement is a practice developed by advocates to ensure that they have funds to run a client's matter. It was further deposed that after judgment was delivered, they sought payment of fees as instructed, but the client/ applicant refused to settle the same leading to taxation proceedings. Further, that prior to the taxation, the client/ applicant filed an application dated 15th November, 2024, and that it is mistaken to argue that the taxing officer lacked the jurisdiction to determine the question of whether a fee agreement existed.
7. The advocate/respondent further deposed that there was no error apparent from the decision of the taxing master regarding the assessment of instruction fees, and that even though styled as a constitutional petition, it comprised a pecuniary claim which was assessed at Kshs.100,000,000/- and a non-pecuniary claim. Further, that determination of instruction fees could not be based on one part and leave out the other. Further, that in enhancing basic instruction fees, the taxing officer appropriately took account all relevant factors, and while he did not give credit to the deposit paid, that cannot constitute an error of principle and the same can be taken into account at the enforcement stage.
8. The application was canvassed by way of written submissions. The client/applicant filed its written submissions dated 24th February, 2025 where it raised three issues for determination as follows: -
 - i. Whether the taxing officer erred in arrogating himself jurisdiction to hear and determine the applicant's application seeking to strike out the respondent's advocate-client Bill of Costs.
 - ii. Whether the taxing officer erred in finding that there was no valid remuneration agreement between the parties and therefore he had the jurisdiction to tax the respondent's bill of costs.



- iii. If the answer to number ii. above is in negative, whether the court should set aside the ruling of the taxing officer in so far as the same pertains to the taxation of the respondent's advocate-client bill of costs dated 16th October, 2024.
9. On the first issue, the client/applicant submitted that the taxing officer erred, and should have referred the said application to a judge for determination, as the jurisdiction of the taxing officer is only limited to taxation of Bill of Costs. The client/applicant relied on the cases of Corporate Insurance Company Ltd v Advocates (Miscellaneous Application 033 of 2020) [2022] KEHC 545 (KLR)(7 June 2022) (Ruling), Hezekiel Oira T/A H. Oira Advocate v Kenya Broadcasting Corporation [2015] eKLR, and AGN Kamau Advocates v Chabrin Agencies Limited [2021] eKLR.
10. On the second issue, the client/ applicant submitted that the taxing officer erred by adopting a rigid interpretation of Section 45 of the Advocates Act thus arriving at a wrong conclusion that there was no valid remuneration agreement between the parties. Reliance was placed in the cases of Shiva Enterprises v Mwangi Njenga & Company Advocates [2020] eKLR and Ondaba & Partners Advocates v Sea Turtle Limited & another [2021] eKLR. The client/ applicant reiterated that by paying 50% of the deposit, it signified its proposal through the letter dated 22nd October, 2021 which created a valid remuneration agreement. To buttress further on this issue, the client/applicant relied on the case of Corporate Insurance Company Limited v Kangethe & Mola Advocates [2021] eKLR.
11. On the third issue, the client/applicant submitted that the taxing officer should have first set out the basic instruction fees before venturing to increase or decrease the same as per Schedule 6 of the Advocates Remuneration Order. While relying on the cases of Violet Ombaka Otieno & 12 Others v Moi University [2021] eKLR, First American Bank of Kenya Ltd v Gulab P.Shah & 2 others [2002] eKLR, Republic v Minister for Agriculture & 2 others Exparte Samuel Muchiri W'Njuguna & 6 others [2006] KEHC 3504 (KLR), and Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd [2014] eKLR, the client/applicant submitted that the taxing officer ignored the legal principles that the amount in dispute is not necessarily the determinant factor in deciding the quantum of costs payable in a constitutional petition. Further, that the failure to ascertain the correct subject matter in a suit for purposes of taxation is an error in principle warranting the setting aside of the decision of the taxing officer. Reliance was placed in the case of Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] KECA 595 (KLR).
12. The client/applicant further submitted that the taxing officer erred in principle by applying loose textures in assessing the instructions fees, and that taxing Kshs.10,800,000/- is manifestly high and does not commensurate with the work done. Further reliance was made on the cases of Danson Mutuku Muema v Julius Muthoka Muema & Others, Machakos HCCA 6/91, Lubulellah & Associates Advocates v Kenyatta National Hospital [2010] eKLR, MITS Electrical Company Limited v National Industrial Credit Bank Limited [2005] KEHC 251 (KLR), and Mumias Sugar Company Limited v Tom Ojienda & Associates [2019] eKLR.
13. In conclusion, the client/applicant submitted that the ruling of the taxing officer is bereft of sound principles of taxation and are punitive, excessive, exorbitant, unreasonable and amounts to unjust enrichment to the respondent.
14. The advocate/respondent filed its written submissions dated 20th January, 2025 where it raised three issues for determination as listed below:-
- a. Whether the taxing officer master had jurisdiction to determine the competence of the court to proceed with taxation, in view of the applicant's application citing existence of a fee agreement.



- b. Whether there was a fee agreement between the parties; and
 - c. Whether the taxing master erred in principle in the taxation of the advocate-client bill of costs.
15. On the first issue, the advocate/ respondent submitted that there is no duty upon the taxing master to refer the question of jurisdiction to the judge when he could determine the same. To buttress on this issue, the advocate/respondent relied on the case of Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited [2017] KECA 431 (KLR).
 16. On the second issue, the advocate/ respondent submitted that the taxing officer correctly determined that there was no fee agreement between the parties capable of ousting his jurisdiction. They submitted that a fee agreement can only be valid when reduced into writing and signed by the client. Reliance was placed in the cases of Omulele & Tolo v Mount Holding Ltd [2016] eKLR, and Lubulellah & Associates v Gilbi Construction Company Ltd [2023] eKLR. Further, that at no time prior to the application to strike out the bill of costs, had the client/applicant raised the issue of a fee agreement. Further, that the silence to its fee proposal of 22nd October, 2021 cannot be construed as an acceptance of the proposal and cannot replace the requirements of Section 45 of the *Advocates Act*. It was further submitted that parties cannot by conduct or otherwise waive pertinent statutory requirement as to form and substance of the fee agreement. They relied on the case of Corporate Insurance Company Limited v Kang'ethe and Mola Advocates [2021] KEHC 5650 (KLR).
 17. On the third issue, the advocate/respondent submitted that the complaint before this court is on quantum disguised as a grievance on principles of taxation. That contrary to the client/applicant's position, the taxing officer set out in detail the basis upon which the taxation of instruction fees and other items was done, and thus the same is sound and consistent with the principles of taxation. The advocate/respondent urged the court to be guided by the cases of Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] KECA 587 (KLR), Vipul Premchand Haria v Kilonzo & Co. Advocates [2020] eKLR, and B Mbai & Associates Advocates v Clerk Kimabu County Assembly & Another [2017] eKLR.
 18. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case of Premchand Raichand Ltd Another -vs- Quarry services of East Africa Ltd and Another No. 3 (1972) EA 162. The principles laid out are: -
 - i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.
 - ii. The taxing master was expected to tax each bill on its merits;
 - iii. The value of the subject matter had to be taken into account;
 - iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;
 - v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy.
 - vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected



himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference.”

19. With the outlined principles stated above, and in my view, the issue for determination is whether there is need for this court to interfere with the taxing officer’s ruling delivered on 11th December, 2024. As I have understood the parties herein, the first contention lies in whether or not there was a fee agreement. The client/ applicant argued that the taxing officer adopted a narrow interpretation of Section 45 of the Advocates Act by concluding that there was no fee agreement between the parties ultimately conferring himself with jurisdiction to tax the bill of costs. The client/ applicant was also displeased in the manner in which instruction fees was arrived at which they urged the court to set aside. On the other hand, the advocate/respondent contended that there was no fee agreement, that the taxing officer was right in taxing the instruction fees as it did, taking into consideration of the complexity of the matter, and that failure to deduct the deposit paid could be considered at the enforcement stage.
20. In finding that he had jurisdiction, the taxing officer stated that a final fee note and a deposit request note do not refer to one and the same thing. He was not persuaded that what was before him was a final fee that could be considered a fee agreement. He held that there was no fee agreement between the parties capable of being considered as such under Section 45 of the Advocates Act.
21. It is not in dispute that there existed an advocate-client relationship between the parties. In a letter dated 19th October, 2020 the client/applicant issued instructions to the advocate/respondent for legal representation in ELC Petition No. E008 of 2020. The instructions were acknowledged in a letter dated 23rd October, 2020. Negotiations on the fees payable is as seen in the letter dated 5th October, 2021 wherein the advocate/respondent proposed Kshs.4,007,685.16/- as fees which was charged in accordance with the Advocates Remuneration Order. The law firm sought Kshs.30,000/- as disbursements. Upon agreement on fees, 50% deposit was to be paid and the balance on conclusion of the matter.
22. The client/applicant acknowledged the letter and asked for a review of the fees in a letter dated 13th October, 2021. Vide the letter dated 15th October, 2021 the law firm provided a rebate of 10% and itemized the agreed legal fees, 16% VAT and disbursements to a total of Kshs.3,636,916.76. On 21st October, 2021, the client/applicant acknowledged the letter and proposed a further reduction to enable them to settle. In between this period the advocate/respondent would update the client on the progress of the matter including the letters dated 14th March, 2022, and 20th June, 2023 and email communication on 16th and 21st March, 2023.
23. In a letter dated 1st November, 2021 the advocate/respondent enclosed fee note no. 335 which was a deposit request in the sum of Kshs. 1,181,633.50/-. The deposit request note was annexed to the letter and the same contained a description of the professional services conducted in the course of the matter including the tasks. In the end, the advocate/respondent requested for a 50% deposit on the agreed legal fees. A reminder of this deposit followed with the letters dated 31st January, 2022 and 1st April, 2022. The deposit amount was settled on 10th May, 2022. Thereafter, the advocate/respondent continued providing services until the matter was heard and determined (see the letter dated 20th February, 2023). It appears that the advocate/respondent sought for a balance of its legal fees based on the emails sent on 15th July, 2024 and 9th September, 2024. This email is a reminder of their letter dated 2nd July, 2024 informing the client/applicant of the looming taxation proceedings. From the above scenario and looking at the conduct of the parties, I am persuaded that legal fees had been agreed.
24. The exchange of correspondences, the payment of deposit fee note no. 335, and the wording as contained in the deposit request note is an indication of the existence of an agreement arising out of



the conduct of the parties. Even in the absence of a letter acknowledging the agreed legal fees, how else would the client/applicant pay the deposit if it had not agreed to the letter dated 21st October, 2021.

25. In the case of *Adopt A Light Limited v Ochieng', Onyango, Kibet & Ohaga Advocates* [2016] KECA 387 (KLR) 15, the Court of Appeal stated as follows:-

“The interpretation of Section 45(1) and in particular what constitutes an agreement on fees under the section is imperative in the determination of this appeal. We consequently, remind ourselves of the cardinal rule for construction of a statute; that is, a statute should be construed according to the intention expressed in the statute itself. Halsbury’s Laws of England, 4th Edition (Reissue), Butterworths, 1995, Vol. 44(1), para 1372 provides:-

“The object of all interpretation of a written instrument is to discover the intention of its author as expressed in the instrument. Therefore the object in construing an Act is to ascertain the intention of Parliament as expressed in the Act, considering it as a whole in its context...”

16. The intention of a statute can be identified through a number of factors. In *CUSACK V HARROW LONDON BOROUGH COUNCIL*, (2013) 4 ALL ER 97, the Supreme Court observed:-

“Interpretation of any document ultimately involves identifying the intention of Parliament, the drafter, or the parties. That intention must be determined by reference to the precise words used, their particular documentary and factual context, and, where identifiable, their aim and purpose. To that extent, almost every issue of interpretation is unique in terms of the nature of the various factors involved. However, that does not mean that the court has a completely free hand when it comes to interpreting documents; that would be inconsistent with the rule of law, and with the need for as much certainty and predictability as can be attained, bearing in mind that each case must be resolved by reference to its particular factors.”

17. In determining this matter, we cannot consider the provisions of Section 45 of the *Advocates Act* in solitude. We must take into account the letter in question, its intent and purport, and the conduct of the parties. Was there a legally enforceable contract between the parties herein in respect of the fees?

Did the parties intend to be bound by the terms of the agreement which was in the form of the letter in question?”

26. While I place reliance on the above cited authority, and having had a proper scrutiny of the correspondences especially on the legal fees, I am of the view that the client/applicant’s conduct of paying the deposit on the agreed’ legal fees signified their agreement to the proposal as contained in the letter dated 21st October, 2021 because this was the final exchange on negotiations of the legal fees. In my view, and bearing in mind the email which forwarded the letter dated 2nd July, 2024, the advocate/respondent is estopped from charging further fees. With that said, it is my finding that the taxing officer did not have the jurisdiction to tax the bill of costs. It therefore follows the taxed bill of costs is null. I do not see the need to delve into the other issues.

27. From the above, this court finds merit in the chamber summons dated 20th December, 2024 and it is hereby allowed as follows: -

- i. The ruling of the taxing officer delivered on 11th December, 2024 is hereby set aside.



- ii. The Advocate-Client Bill of Costs dated 16th October 2024 is struck out for want of jurisdiction.
- iii. The advocate/respondent is granted leave to appeal this decision if dissatisfied.
- iv. Each party to bear its own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 29TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

29/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Peter Muuo for the Client/Applicant

