



Njoroge t/a Agnes W Njoroge & Company Advocates v Mwicigi (Environment and Land Miscellaneous Application E251 of 2024) [2025] KEELC 5963 (KLR) (28 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5963 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E251 OF 2024
CG MBOGO, J
AUGUST 28, 2025

BETWEEN

T/A AGNESAGNES WAIRIMU NJOROGE T/A AGNES W NJOROGE & COMPANY ADVOCATES ADVOCATE

AND

CAROLYNE NJERI MWICIGI CLIENT

RULING

1. Before this court is the chamber summons dated 10th March, 2025 filed by the client/applicant and it is expressed to be brought under Sections 1A, 1B, and 3A of the Civil Procedure Act and paragraph 11 of the Advocates (Remuneration) Order seeking the following orders:-
 1. Spent.
 2. Spent.
 3. That this honourable court be pleased to grant an order for stay of execution and enforcement of the rulings and resultant certificate of taxation by the Hon. Vincent Kiplagat (DR) dated and delivered on 26th February, 2025 on the Advocate's/Respondent's Advocate- Client Bill of Costs dated 12th November, 2024 pending inter partes hearing and determination of this application.
 4. That this honourable court be pleased to vacate, vary and or set aside the ruling of the taxing officer delivered on 26th February, 2025 by the Hon. Vincent Kiplagat (DR) on the Advocate's/ Respondent's Advocate-Client Bill of Costs dated 12th November, 2024 together with all consequential orders.
 5. That in the alternative to prayer 4 above, this honourable court be pleased to issue an order that the Advocate's/ Respondent's Advocate-Client Bill of Costs dated 12th November, 2024



be remitted to a different taxing officer with directions for fresh taxation, other than Hon. Vincent Kiplagat (DR).

6. That this honourable court be pleased to issue any other order it may deem just and appropriate to grant.
 7. That the costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of the client/applicant sworn on even date. The client/applicant deposed that the advocate/respondent filed its advocate-client bill of costs dated 12th November, 2024 where a sum of Kshs. 52,239,039/- was claimed. She deposed that the bill of costs was opposed and a ruling was delivered on 26th February, 2025 taxing the same at KShs. 42, 617,285/-.
 3. The client/applicant challenged the ruling on the following grounds:-
 - a. The taxing officer erred in law and fact by misapprehending and erroneously relying on the value of the suit property as being Kshs. 270,000,000/- to compute the instruction fees, as opposed to the sum of Kshs.10,000,000/- which was the value clearly and evidently determined/ascertained from the pleadings and judgment issued by Honourable Lady Justice K. Bor on 25th January, 2018 being the purchase price, thus arriving at a decision that was wrong in law and unjust in effect.
 - b. That in taxing the aforesaid Bill of Costs, the taxing officer erred in law and fact by misconstruing and erroneously applying the Advocates (Remuneration) Order, 2014 despite the fact that the suit in Nairobi ELC Case No. 177 of 2016 (previously Nairobi HCCC No. 872 of 2006) which was the subject of the Bill of Costs was filed back in the year 2006 and that the correct and applicable remuneration order ought to have been the Advocates (Remuneration Order, 2009, thus arriving at a decision that was wrong in law and unjust in effect.
 - c. The taxing officer erred in fact by failing to consider, take into account and or tax off from the final taxed amount costs, the sum of Kshs.680,000/- on account of legal fees which had been paid by the client/applicant to the advocate/respondent, which amount was not contested and had in fact been acknowledged by Advocate/Respondent in her response letter dated 18th October, 2023 thus arriving at a decision that was wrong in law and unjust in effect.
 - d. The taxing officer misdirected himself and arrived at a decision that was not only erroneous and unreasonable in the circumstances but legally untenable.
 - e. The taxing officer wrongly construed the evidence before her and erred in failing to consider the submission filed by the client/applicant to enable him exercise his discretion and arrive at a fair and just conclusion in the spirit of dispensation of justice. The client/ applicant challenged items 4-134 in the Bill of Costs.
 4. The client/applicant deposed that she is apprehensive that the advocate/respondent will commence execution of the impugned ruling to recover the taxed costs which will grossly prejudice her and she will suffer irreparable loss and damage.



5. The advocate/respondent filed its replying affidavit in opposition to the application which was sworn on 21st March, 2025. The advocate/ respondent deposed that the application is based on a misconception of what constitutes the subject matter in ELC Case No. 177 of 2016, and that if the claim was a liquidated claim of Kshs. 10,000,000/-, the same would have been filed at the Magistrates courts. The advocate/respondent deposed that the bulk of the client's instruction was carried out in 2015, and that it would be unfair to base the instruction fees on the 2014 remuneration order when the fees were not settled then. That it is over ten years since the suit was filed and the advocates fees remain unpaid.
6. Further, it was deposed that getting up fees ought to be billed as per the 2014 Remuneration order and being a third of instruction fees, it would be unfair not to apply the 2009 remuneration order as it would amount to depriving the advocate of fees due to them. The advocate/respondent deposed that it would not be in the interest of justice to disregard the fact that this matter was in court for over ten years and any remuneration ought to be in tandem with the changing economic times. Further, that the client/ applicant cannot be seen to contest the value of the subject matter where no contrary value was submitted to the court. That besides, no contest was made during taxation and the taxing officer only relied on the supporting affidavit filed on 9th September, 2024 with the valuation report annexed.
7. The client/applicant filed a further affidavit in response thereto which was sworn on 2nd April, 2025. The client/applicant deposed that the value of the subject matter can be determined from the pleadings and judgment of the court made on 25th January, 2018 which was a sum of Kshs. 10,000,000/-. Further, that the taxing officer erroneously relied on the value of the suit property derived from a valuation report which was not procured with her participation. Further, that the remuneration order came in 8 years after the suit was filed.
8. The client/applicant deposed that services rendered in items 1 to 71 transpired before the Advocates (Remuneration) Order of 2014 came into force and the same should have been subject to taxation under the 2009 Remuneration Order. Further, that the deposit of the legal fees of Kshs. 680,000 on the basis of the subject value of Kshs. 10,000,000/- was a substantial amount at that time when the advocate was handling the matter. That if the taxing officer was inclined to rely on a valuation report as a basis to ascertain the value of the property, he also ought to have give her an opportunity to prepare a valuation report.
9. The chamber summons was canvassed by way of written submissions. The client/applicant filed her written submissions dated 2nd April, 2025 where she raised the following issues for determination:-
 - a. Whether the value of the subject matter of the suit for purposes of taxation of the Bill of Costs can be determined from the pleadings or judgment.
 - b. Whether the Advocates (Remuneration)(Amendment) Order, 2009 should have been applied to items 1 to 71 of the Bill of Costs.
 - c. Whether the taxing officer should have taken into account the sum of Kshs.680,000/- on account of legal fees paid to the Advocate/Respondent.
 - d. Whether the taxing officer should have given reasons for taxation of items 3 to 134 of the Bill of Costs.
 - e. Whether the advocate/respondent lacked locus standi to bill costs under items 4 to 54; and



- f. Who should bear the costs of the reference application.
10. On the first issue, the client/applicant submitted that although the prayers in the suit was for an unliquidated claim, the value could be determined from the judgment pursuant to Schedule 6A (1) of the Advocates Remuneration Order 2009, on instruction fees. She relied on the cases of Johnson Kibunja Njoka & another v Joseph Njuguna & 2 others [2017] eKLR, Mohansons Food Distributors Ltd & another v Kenya Commercial Bank Limited & another [2021] eKLR, Del Monte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Murang'a Chapter & 2 others [2021] eKLR, Export Processing Zones Authority v Nzei & Company Advocates [2021] eKLR, and Kenya Forest Service v Wanyama SC Company Advocate [2021] eKLR.
 11. On the second issue, the client/applicant submitted that the subject of taxation was filed back in the year 2006, and the applicable order would be the Advocates Remuneration Order 2009 since the services rendered in items 1 to 71 took place before the Advocates (Remuneration) Order 2014. Reliance was placed in the cases of Giriama Central Associates & Property Management Ltd v Baluchi & 2 others (Environment & Land Case 216 of 2012) [2024] KEELC 3662 (KLR) (8 May 2024) (Ruling), and Kibet v S.N Nyachae & Co. (Miscellaneous Civil Application 7 of 2018) [2023] KEHC 20961 (KLR) (27 July 2023) (Ruling).
 12. On the third issue, and while relying on the case of Export Processing Zone Authority v Nzei & Company Advocates [2021] eKLR, the client/ applicant submitted that the advocate/respondent has not denied having received the legal fees of Kshs. 680,000/- as per the letter dated 18th October, 2023.
 13. On the fourth and fifth issues, the client/applicant submitted that the taxing officer vaguely allowed items 4 to 134 of the Bill of Costs without giving reasons for the same. Further, that the advocate/ respondent did not receive instructions to institute the notice of motion dated 18th April, 2011 under item 3 of the Bill of Costs, and that without prejudice, item 3 is a duplicate of the instruction fees under item 1 of the Bill of Costs. Further, that the advocate/ respondent did not have the locus standi to bill costs under items 3 to 54 since it came on record on 7th February, 2013.
 14. In conclusion and on the sixth issue, the client/applicant submitted that it is evident that there were numerous errors of principle conducted by the taxing officer, and the reference ought to be allowed with costs.
 15. The advocate/respondent filed its written submissions dated 17th April, 2025. The advocate/ respondent submitted that the objector's letter dated 27th February, 2025 does not specify the items objected to which the taxing officer could have given his reasons and as such, it does conform in substance to the provisions of Rule 11 of the Advocates Remuneration Order. While relying on the case of Machira & Co. Advocates v Arthur K. Magugu & Another [2012] eKLR, the advocate/ respondent submitted that the client/applicant is pointing out the contested items in their submissions which ought to have been raised in their notice of objection. It was submitted that it was the client/ applicant's obligation to point out the issues and seek reasons for the taxation.
 16. The advocate/respondent further submitted that despite the notice of objection being fatally defective and premature, the same lacks merit. Further, that it has not been demonstrated that the taxing officer has operated on erroneous principles or took to account irrelevant, extraneous factors in arriving at the taxed amounts. The advocate/respondent submitted that it does not suffice to diminish the work done by the advocate so as to justify minimal fees, and that she is simply trivializing the work done and without justification. To buttress on this issue, reliance was placed in the cases of Arthur v Nyeri Electricity Undertaking [1961] EA 497, and Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR.



17. On the subject matter, the advocate/respondent deposed that a contest on the value of a subject matter cannot be raised in a reference whereas the same was not raised in the taxation proceedings, as this would be tantamount to introducing new evidence on appeal. It was further submitted that it cannot be said to be an error of principle where the taxing officer considered evidence of the value of the subject matter and proceeded to assess the instruction fee based on the said value. She submitted that the taxing officer correctly considered the subject matter from these proceedings, and no error can be deduced from such conduct. Reliance was placed on the case of *Peter Muthoka v Ochieng & 3 Others* [2018] eKLR.
18. I have considered the application, the responses as well as the written submissions filed by both parties. The parties seem to contend on a number of issues mainly, the value of the subject matter vis a vis the valuation report, the applicable remuneration order, the legal fees, and the reasons for the objection. In my view, the issue for determination is whether there is merit in the application.
19. 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."
20. In applying the above principles to the circumstances of this case, this court will analyse the decision of the taxing officer to see whether there was error(s) that would call for the court's intervention. I have carefully analyzed the impugned ruling and it is clear that legal fees amounting to Kshs.680,000/- was not taxed off as rightly stated by the client/applicant. This is a fact which was admitted in writing by the advocate/respondent in the letter dated 18th October, 2023. Secondly, it is not disputed that the suit was initially filed in the year 2006 i.e. Nairobi HCCC 872 of 2006 which was later Nairobi ELC Case No. 177 of 2016. Item 1 to 71 of the Bill of Costs dated 12th November, 2024 should have been taxed under the Advocates (Remuneration) Order, 2009. The advocate/respondent appears to have received instructions on 22nd February, 2011, and in view of that she is not entitled to any costs prior to this date in regards to items 139 to 143 of the Bill of Costs.



21. In the case of *N. O. Sumba & Co Advocates v Piero Cannobio* [2017] KEHC 544 (KLR), it was held:-

“The applicable Advocates (Remuneration) Order for the purpose of ascertaining instruction fees would be that which was operational at the time of filing suit. In the bundle of documents annexed to the supporting affidavit there is the amended plaint dated 9th April, 2014 indicating the date of the original plaint as 3rd December, 2009 clearing the air on the particular year of filing of the initial suit. The taxation officer indicated that, “The remuneration order I will tax with is the Advocates (Remuneration) Order 2009 as at when the suit was first filed in the lower Court”

22. Also, in *Kiambu Murutani Co. Limited v Kamindi Selfridges Supermarket* [2021] eKLR, the court held as follows:-

“10. The suit was filed in the year 2011 and determined in the year 2019. The applicable Remuneration Order is the 2006 for the instruction fees and 2014 Advocates Remuneration Order for the services rendered after 2014.”

23. As I place reliance on the above authorities, it is my finding that the taxing officer fell into error in taxing costs based on the 2014 order for services which were rendered prior to this period when the 2009 order was in place. With regard to the value of the subject matter, I disagree that the same could be determined from the judgment. In the judgment, the court noted the value of the purchase price, but the same was not a fundamental issue for the court’s consideration. If that was the case and as rightly stated by the advocate/respondent, the same would have been within the magistrates’ court jurisdiction. On this issue, I do agree with the taxing officer that the claim was unliquidated. However, basing the instruction fees on a valuation report was an error to the extent that the same was prejudicial to the client/ applicant. At which stage of the taxation proceedings was the valuation report introduced, and was the client/respondent given a chance to produce a valuation report as well. It would only be fair if a joint valuation report was produced in the circumstance of this court so as to enable fairness to all parties.

24. For the reasons stated above, this court finds it necessary to interfere with the taxing officer’s ruling delivered on 26th February, 2025. The chamber summons dated 10th March, 2025 is merited and the same is allowed as follows:-

- i. The ruling of the taxing officer delivered on 26th February, 2025 is hereby set aside.
- ii. The advocate-client bill of costs dated 12th November, 2024 is remitted for fresh taxation before a different taxing officer.
- iii. Each party to bear its own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 28TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

28/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant



Mr. Ogye holding brief for Mr. Kimani for the Client/Applicant

