



**Kemboy Law Advocates v Narok County Government (Miscellaneous Application E030 of 2023) [2025] KEELRC 991 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 991 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
MISCELLANEOUS APPLICATION E030 OF 2023**

**J RIKA, J**

**MARCH 28, 2025**

**BETWEEN**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**AND**

**NAROK COUNTY GOVERNMENT ..... CLIENT**

**RULING**

1. The Taxing Officer, Hon. Margaret Kyalo, delivered a ruling on 10<sup>th</sup> March 2023, taxing the Advocate-Client Bill of Costs, at Kshs. 304,213.
2. The Advocate represented the Client, in Nakuru Cause No. 12 of 2019.
3. The Advocate filed this reference dated 6<sup>th</sup> August 2024, asking the Court to set aside the ruling of the Taxing Officer, and direct re-taxation before another Officer.
4. There are several grounds cited by the Advocate including: The Taxing Officer erred in holding that the value of the subject matter was unascertainable, while the Claim was settled in full at Kshs. 1,313,921 on 7<sup>th</sup> February 2020; the amount awarded was manifestly low; getting-up fees was calculated based on erroneous instructions fees; instructions fees alone, was increased by 50%, instead of the whole taxed amount; VAT was charged on instructions fees alone, not the entire taxed sum; and the Taxing Officer failed to take into account other factors, such as importance and complexity of the Cause, labour expended, professional skills applied, interest of the Parties and conduct of the proceedings.
5. The Advocate cites several judicial authorities including Joreth Limited v. Kigano & Associates [2002] e-KLR, in urging the Court to find that there were errors of principle, in the taxation exercise, warranting re-taxation.
6. The Client opposes the Application, through the Affidavit of its Secretary, John Mayiani Tuya, sworn on a month that is not clear. The date is shown as 14<sup>th</sup>, the year 2024. The stamp of the Commissioner



for Oaths and his signature, are affixed right on top of the date the Affidavit was sworn, completely blurring the date. Commissioners for Oaths should be cautious, in commissioning documents, not to do so in a way that obliterates details, from the Affidavit.

7. Tuya concurs with the Taxing Officer, that the value of the subject matter was unascertainable; instructions fees at Kshs. 100,000 was appropriate; fees for getting up, at Kshs. 33,333 was lawful; VAT was rightly charged on the instructions fees alone; there was no error in raising only the instructions fees by 50%; and that the Advocate on the whole, exaggerated his Bill of Costs.
8. Parties agreed that the Application is considered and determined on the strength of their Affidavits and Submissions. They confirmed filing and exchange of Submissions, at the last mention before the Court, on 29<sup>th</sup> January 2025.

**The Court Finds: -**

9. Although the Client generally concurs with the Ruling of the Taxing Officer, as captured in the Affidavit of its Secretary Tuya, paragraph 3.15 of the its Submissions dated 27<sup>th</sup> January 2025, appears to be a counter-reference.
10. It is submitted for the Client that: “It is our humble submission that the Taxing Officer, in purporting to increase the instructions fees which is only applicable where Party-Party costs have already been determined, clearly misdirected herself in law and principle. Thus the same warrants the Court’s intervention.”
11. In conclusion, under paragraph 4.2 of its Submissions, the Client restates that: “The Learned Taxing Officer erred in law by increasing the Bill by half on instructions fees, which warrant a review / setting aside before this Court.”
12. This is the same conclusion made by the Advocate in his Submissions, at paragraph 4.1, that: “From the totality of the above, it is the Advocate’s summation that the Taxing Officer miscalculation and misapplication of the applicable law and principles, resulted to the Advocate-Client Bill of Costs being improperly taxed, and the Ruling delivered on 9<sup>th</sup> July 2024 should be set aside or vacated.”
13. Both Parties therefore agree, that the Ruling of the Taxing Master should be set aside, and this Court cannot, in all fairness, decline orders sought consensually by the Parties.
14. It is a rather unfortunate prolongation of the Advocate-Client dispute on costs. A letter from the Advocate to his Client exhibited in the original Cause, dated 12<sup>th</sup> March 2020, indicates the Cause was settled by consent, with no order on the costs.
15. It is not clear if the exact settlement amount was stated in the consent order, registered with the Court.
16. Communication passing between the Advocate herein and the Advocate representing the Claimant in Cause No. 12 of 2019, indicates that the sum of Kshs. 1,313,921, was paid to the Claimant’s account.
17. Perhaps this communication, on the exact sum paid on settlement, was not included in the consent order. The letter authored by the Advocate herein, addressed to the Client, simply disclosed that: “By consent of the Parties, the Hon. Court marked the matter as settled, with no order as to costs, and proceeded to close the file.”
18. But if the Taxing Officer was not able to ascertain the value of the subject matter from the consent order, she had the benefit of the sum pleaded in the Statement of Claim. The sum was specific. The Claimant in the Cause in which the Advocate was representing the Client, pursued an order for



payment of gratuity. He prayed for: “gratuity amounting to Kshs. 1,223,827.” The value of the subject matter was ascertainable from the pleadings.

19. Although a cursory view of the Court, is that the sum awarded to the Advocate at Kshs. 304,213, considering the value of the subject matter, and that the Cause subject matter never went to full trial, appears not to be inordinately high or low, there were errors of principle which both Parties agree, warrant re-taxation.
20. The Parties are however encouraged to bridge the gap through a constructive Advocate-Advocate engagement, and settle the Bill of Costs consensually. The Court does not perceive that bridge to be so wide, to warrant another wasteful round of judicial consideration.

It Is Ordered: -

- a. The reference is allowed and the Ruling of the Taxing Officer set aside by consent of the Parties, as expressed in their respective Submissions.
- b. The Advocates to consult and agree on settlement of the Bill of Costs out of Court.
- c. Failing that agreement, the Bill of Costs shall be re-taxed by a different Taxing Officer.
- d. No order on the costs.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

**JAMES RIKA**

**JUDGE**

