



**Omoke t/a Morara Omoke Advocates v Board of Trustees, Kenya Broadcasting Corporation (KBC) Staff Retirement Benefits Scheme (Miscellaneous Reference Application E002 of 2024) [2025] KEELRC 1224 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1224 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS REFERENCE APPLICATION E002 OF 2024**

**K OCHARO, J**

**APRIL 30, 2025**

**BETWEEN**

**MORARA OMOKE T/A MORARA OMOKE ADVOCATES ..... APPLICANT**

**AND**

**BOARD OF TRUSTEES, KENYA BROADCASTING CORPORATION (KBC)  
STAFF RETIREMENT BENEFITS SCHEME ..... RESPONDENT**

**RULING**

**- Background**

1. By a Chamber Summons application dated 4<sup>th</sup> day of January 2025, expressed to be under section 3 of the Employment and Labour Relations Court Act, sections 1A, 1B, and 3A of the Civil Procedure Act, and Rule 11 of the Advocates [Remuneration] Order, the Applicant seeks that:
  - I. The decision of the Taxing Master in the Employment and Labour Relations Court at Nairobi, Hon. Aziza Ajwang, delivered on December 22, 2023, in Miscellaneous Application No. E 117 of 2023, in respect of the Applicant's Advocate and Client Bill of Costs dated June 07, 2023, be set aside and taxed afresh by this Court with the exception of sections B, C, D, E, H, and I of the Bill of Costs.
  - II. The costs of these proceedings be determined by this Honourable Court and awarded to the Applicant.
2. The Application is anchored on the grounds set out on the face thereof and a supporting affidavit sworn by the Applicant on 4<sup>th</sup> January 2024.
3. The Respondent resists the application on the grounds set out in the replying affidavit sworn by Martin King'azia, the Chairman of the Respondent Pension Scheme.



4. By its Notice of Motion application dated 15<sup>th</sup> May 2024, filed pursuant to the provisions of section 3 of the Employment and Labour Relations Court, Sections 1A, and 3A of the Civil Procedure Act; and Rule 11 of the Advocates [ Remuneration] Order, the Respondent filed a cross-reference, seeking that;
  - I. The application be certified as urgent and heard ex parte in the first instance.
  - II. There be a stay of all proceedings in this cause pending the hearing and determination of the application.
  - III. The decision of the Taxing Master in the Employment and Labour Relations Court at Nairobi, Hon. Aziza Ajwang, delivered on 22<sup>nd</sup> December, 2023 in miscellaneous Application No. E117 of 2023 in respect of the Applicant's Advocate and Client Bill of Costs dated June 07, 2023, be set aside and taxed afresh by this Honourable Court.
  - IV. The Respondent be ordered and be bound by the Legal Fee Agreement vide confirmation letter dated 21<sup>st</sup> May 2018.
  - V. This Honourable Court be pleased to grant any consequential orders as it deems fit and appropriate.
5. The application is supported by an affidavit expressed to be sworn by Florence Migunde, on 15<sup>th</sup> May 2015.
6. In reaction to the Respondent's application, the Applicant filed a preliminary objection dated 28<sup>th</sup> May 2024, raising a couple of grounds and urging the Court to strike out the cross-reference.
7. For an orderly disposal of the instant matter, on 10<sup>th</sup> June 2025, this Court gave the following directions;
  - a. The Applicant to file and serve a response to the cross-reference, contemporaneously with written submissions on the preliminary objection;
  - b. The Respondent to file and serve response submissions to the Applicant's submissions on the Preliminary objection, plus the cross-reference.
  - c. The Applicant shall file and serve response submissions on the cross-reference within 10 days of service.
  - d. The Court shall deliver an all-inclusive ruling addressing the Preliminary objection, the cross-appeal [if the preliminary objection is not upheld] and the reference.
8. The directions were adhered to. The preliminary objection, the cross-reference, and the reference are outstanding for a decision by the Court. This ruling is about them.

#### **The Applicant's Reference.**

9. The Applicant states that on 22<sup>nd</sup> December, 2023, Hon. Aziza Ajwang [Taxing Master] delivered a ruling with respect to the Advocate-Client Bill of Costs dated June 07, 2023, between the Applicant and the Respondent herein, in Miscellaneous Application No. E 117 of 2023; Morara Omoke t/ a Morara Omoke Advocates v Board of Trustees, Kenya Broadcasting Corporation [KBC] Staff Retirement Benefits Scheme.
10. The Parties in the main suit, ELRC Cause No. 1352 of 2018 -Board of Trustees, Kenya Broadcasting Corporation [KBC] Staff Retirement Benefits Scheme [Suing on behalf of the Scheme] versus Kenya Broadcasting Corporation [KBC], had been directed by Justice Maureen Onyango on 27<sup>th</sup> April 2022,



to compile and lodge computations in Court for purposes of ascertaining the amount owed to the Claimant in the suit.

11. The Claimant lodged its computations on the e-filing portal on 18 July 2022 and submitted a hard copy on 19 July 200. Per its computation, the Respondent owed it KShs. 18 421,704 159.11.
12. The Respondent in the main suit also filed and served its computation on the e-filing portal on or about 27<sup>th</sup> July 2023. According to its computation, the Claimant was owed Kshs. 18, 045, 740, 788.84.
13. Notwithstanding the foregoing premises, the Taxing Master erred in law and fact when she proceeded on the wrong premise that the parties in the main suit did not file their computations for purposes of ascertaining the amount owed by the Respondent to the Claimant in accordance with the Judgment delivered on 27 April 2022.
14. It is further contended that the Taxing Master erred in fact and law by failing to find that the value of the subject matter was KShs. 19,349,713,5 89.40 comprising KShs. 18, 421, 704, 159.11 [being the computation of the claim plus interest as at the date of the judgment, in line with the judgment of the Court] and KShs. 230,057,009.43 [being the amount that the Applicant had already recovered on behalf of the Respondent through a Notice of Motion Application dated 3<sup>rd</sup> September 2018, following a ruling of 15<sup>th</sup> May 2020 in the main cause, and KShs. 928,009, 430.24 being the cost of the suit forming part of the judgment sum as per the judgment.
15. The Taxing erred in fact and law when she failed to consider the sum of Kshs. 230, 057,009.43 that had already been recovered, as part of the subject matter, yet the amount was verifiable from the computations of the parties in the main suit, which were on record.
16. In determining the subject matter value, the Taxing Master didn't consider the compound interest at 3% per month under Section 53A of the Retirement Benefits Act. Yet, the item had been awarded in the Judgment.
17. The Taxing Master erred in law by resorting to pleadings to ascertain the value of the subject matter, yet it is trite law that where judgment has been entered, the value of the subject matter shall be as comes out of the judgment.
18. For failing to appreciate the actual value of the subject matter of the suit, her calculation of getting up fees, and the 50% adjustment in accordance with schedule 6[B] of the Advocates [Remuneration] Order were all erroneous.
19. In his submissions on the Bill of costs, he explained the elements of the main suit's complexity. However, the Taxing Master ignored the specific aspects of the complexity of the matter, which were verifiable from the record of the main suit.
20. The Applicant contends further that the learned Taxing Master erred in law and fact by not studying the pleadings, the evidence on record and the judgment in the main suit to ascertain the complexity of the matter.
21. The Taxing Master conflated costs awarded explicitly to the Applicant by the Court with other items in the Bill. In particular, the costs that were granted on 26<sup>th</sup> September 2022. Therefore, Section J of the Bill of Costs should have been allowed separately.
22. The Taxing Master erred in law and fact by failing to consider all the items in the Advocate and Client Bill of Costs. She failed to consider;
  - a. Registry attendances under Section F of the Bill of Costs.



- b. Meetings under Section K of the Bill of Costs.
- c. Disbursements
- d. Interest on the total costs pursuant to Rule 7 of the Advocates [Remuneration] Order, and
- e. Value Added Tax, which applies to the Advocates and Client Bill of Costs, as services rendered by the Applicant are a taxable supply under Section 6[1] as read with section 2 of the Value Added Tax Act, 2015.

#### The Respondent's Response

- 23. The Respondent stated that it initiated the main suit on 3<sup>rd</sup> September 2018 against the Kenya Broadcasting Corporation, for unremitted pension sums of its members.
- 24. The Court entered judgment in its favour, with a rider that the final figure and applicable interest be computed at a compounded interest rate of 3% per annum.
- 25. Later, in the spirit of give and take, and following the recommendations of the Retirement Board Authority, Office of the Attorney General, and their Pension investment partner, the Respondent agreed to the Kenya Broadcasting Corporation's resolution, and proposal, that interest payable on the sum awarded in the judgment be computed applying the rate of 2% per annum.
- 26. The Respondent instructed the Applicant to handle the matter on its behalf with the agreement in mind. The Applicant held a contrary view and decided to go against the Respondent's instructions. This led to the eventual fallout between the Applicant and his Client, the Respondent.
- 27. Following the fallout, the Applicant initiated Advocate-Client Bill of Costs taxation proceedings against the Respondent. Upon considering the parties' respective submissions, instructions fees, and work undertaken by the Applicant up to and until the date their relationship broke down, the Taxing Master awarded a total sum of KShs. 57, 511,395. 00 as the Applicant's costs.
- 28. In arriving at the above-stated amount, the Taxing Master considered the parties' pleadings, applied the law correctly, and exercised her unfettered discretion.
- 29. The Applicant was instructed to recover KShs. 873, 359,559.70 from KBC. That sum is yet to be remitted because of its inability to pay. Further, the matter is yet to be concluded with the recording of the final judgment.
- 30. The Applicant is attempting to be overcompensated far beyond what is envisaged in law and logic, seeking to be awarded a sum thrice the figure he was instructed to recover for the Respondent.
- 31. The Applicant should appreciate that the Respondent is an entity belonging to pensioners with no active income upon retirement, and subjecting it to the ridiculous claim for such legal fees goes outside the realm of fair compensation. The Applicant is seeking to enrich himself unjustly.
- 32. The Respondent further contends that if this Court interferes with the award by the learned Taxing Master, which was arrived at after she rightfully exercised her discretion, it is likely to be financially crippled and shall be rendered bankrupt.
- 33. The Court should disallow the reference as filed, allow the Respondent to pursue the final Judgment in the original suit and enable the Pension Scheme to pursue its entitlement from the sponsor, Kenya Broadcasting Corporation, for the benefit of its members.



## **The Respondent's Cross-Reference**

34. In support of the cross reference, the Respondent states that the subject Advocate-Client Bill of Costs, for the sum of KShs 1 436 299,975.69 dated 2023, stems from the Judgment of this court, [Maureen Onyango. J.] in ELRC Cause No. 1352 of 2018 dated 27<sup>th</sup> May 2022, wherein the parties were directed to file computation of amounts owed to the Claimant therein as at the date of Judgment, including daily accruals of interest, setting out what had been paid, for final orders of the Court.
35. Noting that the directions of Justice Maureen Onyango were not complied with, the Taxing Master delivered a ruling on 22<sup>nd</sup> December, 2023, with respect to the Bill of Costs. Being dissatisfied with the decision, the Applicant herein preferred an objection to the taxation and filed the Reference Application herein.
36. The Respondent, through its cross-reference, seeks that the Taxing Master's taxation decision be set aside and subsequently the Bill of Costs be taxed afresh with exceptions of sections B, C, D, H, and I of the Bill.
37. When the Respondent's new Board came into office, they deemed it necessary to audit the engagement between the Applicant, Advocate and the Respondent. Consequent to the audit, a crucial agreement that had been entered into between the parties was discovered.
38. By its letter dated 21<sup>st</sup> May 2018, the Respondent instructed the Applicant to demand the sum owed to its staff retirement benefits scheme. According to the instructions letter, the agreed legal fees between the Respondent and the Applicant was stated as KShs. 480,000. The Applicant acknowledged the instructions and subsequently raised an interim fee note. In the interim fee note, the Applicant requested the Respondent to deposit KShs: 144,000, 30% of the total fees.
39. The discovery of the agreement signifies that there was a valid agreement between the parties, and having received his fees under the agreement, the Applicant is estopped from renegeing on it.
40. Further, section 45[6] of the Advocates Act provides that where there is an agreement of fees, an Advocate's costs shall not be subject to taxation. As such, the Taxing Master didn't have jurisdiction to tax the Bill of costs.
41. Resultantly, the Applicant's Advocate-Client Bill of Costs and his Reference Application herein are misconceived, incompetent, fatally defective, and a hindrance to the Respondent's right of access to justice.

## **The preliminary Objection**

42. In the Notice of Preliminary Objection dated 28<sup>th</sup> May 2024, the Applicant raises the following preliminary grounds against the Respondent's cross-reference application, thus;
  - I. The Application breaches the mandatory provisions of Order 11[2] and [4] of the Advocates Remuneration Order as
    - a. Prior to the lodgement of the Reference out of time, the Respondent didn't issue a notice of not less than three clear days of an intention to apply for enlargement of time.
    - b. The Respondent didn't seek enlargement of time to file the reference.
    - c. The Respondent has approached this Court through a Notice of Motion instead of a Chamber Summons.



- d. The Respondent's Application, being a reference, is time-barred, having been filed out of the statutory timeline.
  - e. There is no concept of cross-reference under Order 11 of the Advocates [Remuneration] Order.
- II. The Respondent's Application is an attempt to reintroduce its oral Application to introduce new evidence, which was declined on 18<sup>th</sup> March 2024. As such, this Court lacks jurisdiction to entertain the matters raised in the instant Application as they are *res judicata* and the Court is *functus officio*.
- III. The supporting affidavit to the Application is fatally defective. It is sworn by one Florence Migunde but signed by one Martin King'asia.
- IV. The Respondent's Application is frivolous, vexatious, and an abuse of the court process calculated to circumvent well-laid appellate and taxation reference procedure.

### **Analysis and Determination on the Preliminary Objection.**

43. There isn't a doubt that the Respondent's Application is, by nature, a cross-reference. It is filed within proceedings initiated by the Applicant and not independent of them, and challenges the taxation decision by the Taxing Master. The Applicant asserts that the Respondent's Application is improperly initiated as the Advocates [Remuneration] Order doesn't contemplate a cross-reference.
44. Noting that there can be a situation where both the Advocate and the Client are aggrieved by the taxation decision of a Taxing Master in proceedings pitting them against each other, and therefore a possibility of each assailing the taxation by a reference as contemplated under Order 11 of the Advocates [Remuneration] Order, though not explicitly provided by the Order, a practice of cross-reference application should freely be embraced as in my view, it gives effect, the overriding objective of this court, an expeditious and proportionate determination of matters.
45. The fact, therefore, that a party aggrieved by a decision of the Taxing Master decided to file an Application for that purpose within proceedings already initiated by the adversary cannot be used to fail the application.
46. Order 11 of the Advocates [Remuneration] Order exhaustively provides the procedure and timelines for how and within which taxation decisions can be impugned, respectively. It will not matter if the aggrieved party decides to initiate the challenge as a reference or cross-reference; the procedure and timelines must be followed.
47. Order 11 provides for objection to the decision and taxation and appeal to the Court of Appeal, thus:
- “ 1. Should any object to the decision of the taxing officer, he may, within fourteen days after the decision, give notice in writing to the taxing officer of the items of taxation to which he objects.
  - 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items, and the objector may, within fourteen days, apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.



3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection [2] may, with leave of the judge but not otherwise, appeal to the Court of Appeal.
4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph [1] or subparagraph [2] for taking of any step; application may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired."

48. I have no doubt that the Respondent neither filed the notice contemplated under Order 11[1] nor filed its application [cross-reference] within the time contemplated in 11[2]. For clarity of record, the Respondent's application was filed on 17<sup>th</sup> May 2024, approximately five months after the Taxing Master's decision. It was incompetently filed.
49. On 18<sup>th</sup> March 2024, as correctly pointed out by the Applicant's Counsel, the Respondent's Counsel moved this Court for leave to file what he termed as a legal fees agreement between the Applicant and the Respondent. Considering that the alleged agreement was not placed before the Taxing Master during the Advocate-Client Bill of Costs taxation proceedings, the Court declined the application.
50. Surprisingly, the Respondent makes the alleged agreement the substratum of his application, notwithstanding the Court's stated decision, and the doctrine of finality of court decisions. In my view, the filing of the application cannot be described in any better way than as an abuse of the court process.
51. Having been filed out of the statutory time without leave of the court, and it being an abuse of the court process, the Respondent's application deserves one fate, dismissal with costs. It is hereby dismissed with costs.

#### **Analysis and Determination on the Applicant's Application.**

52. There is no contest that at all material times, the Applicant Advocate, under the instructions of the Respondent, represented it, in the main suit hereinabove mentioned up until judgment was delivered therein.
53. I have carefully considered the Applicant's application, the grounds upon which it is premised, the supporting affidavit thereof, the replying affidavit filed by the Respondent, and the respective submissions by both Counsel for the parties, and the following issues emerge for determination, thus:
  - a. Can this Court interfere with the taxation of the Taxing Master arrived at after exercising her discretion?
  - b. Whether the Taxing Master erroneously picked on an inapplicable taxation regime in the circumstances of the matter.
  - c. Whether the Taxing Master erred in not considering certain aspects of the Advocate-Client Bill of Costs or in considering them appropriately.
54. The Respondent argues that the decision by the Taxing Master on the Advocate-Client Bill of Costs was in exercise of a discretion, and as such, this Court shouldn't interfere with the decision. Undeniably, the decision of a Taxing Officer is a product of an exercise of discretion. However, it is not an exercise at large. It must be exercised not capriciously or whimsically but judiciously. The Taxing Master must pay keen attention to the pleadings, every event in the proceedings, terms of a settlement



[where applicable], and judgment in the matter from which the Advocate-Client or Client-Advocate proceedings are flowing.

55. The Court of Appeal in the case of *Peter Muthoka & Another v Ochieng and 3 others* [2019] eKLR, cited by Counsel for the Applicant, eloquently put it thus;

“It is not lost to us, as we address that single issue, that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion, and so the High Court, upon reference, will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is, at its core and by definition, a judicial discretion exercised, not capriciously at whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the decision was improperly exercised, resulting in mis-justice, to borrow the holding in *Mbogo vs- Shah* [Supra], then the decision though discretionary, may properly be interfered with.”

56. Dealing with the Taxing Officer’s discretion in taxation of Bills of Costs, and when a decision arrived at after exercise of the discretion can be interfered with by a superior court, the Court in *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] eKLR aptly set forth the considerable principles, when it stated;

“I have considered the above submissions. First, I find that on the authorities, the court cannot interfere with the taxing officer’s on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an interference that it is based on an error of principle. [See *Steel & Petroleum [E.A] Ltd vs Uganda Sugar Factory*] [supra]. Of course. It would be an error of principle to take into account irrelevant factors or omit to consider relevant factors. And according to the Advocates Remuneration Order itself, some of the relevant factors to take into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any directions by the trial Judge. Needless to state, not that the above factors may exist in a given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the Taxing Officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment. [See *Nanyuki Esso Service V Touring Cars Ltd.....* However, the judge does have jurisdiction, and it is within his discretion to reassess the bill himself.

57. It is trite law, and the decisions mentioned above are a testament to it, that this Court has jurisdiction to disturb the Taxing Master’s decision, where it is clear that their decision was a result of an error of principle. And as shall come out shortly hereinafter, the Taxing Officer erred in principle and thus an interference by this Court is necessary.

58. It was a common cause that Justice Maureen Onyango rendered a judgment in the principal suit for the Respondent. However, she postponed the notation of the final judgment amount, awaiting the calculation by the parties of the sums owed to the Claimant by the Respondent in the matter, inclusive of daily accruals of interest, and outlining what had been remitted. In my opinion, for the purposes of either the Advocate-Client Bill of Costs or the Client-Advocate Bill of Costs, the final amount would represent the value of the subject matter.



59. The Applicant contended that the Respondent and KBC, in conformity with the direction of the Judge, filed the computations. The Respondent does not deny this fact or disown the amounts set out by the Applicant's affidavits as presented. I note that the computations are on record.

60. The foregoing notwithstanding, the learned Taxing Officer held in her ruling, thus;

“In the judgment dated 27<sup>th</sup> April 2022, by Hon. Lady Justice Maureen Onyango, the judgment was entered in favour of the Claimant by the Respondent. Parties, however, did not comply with the direction above, and no order was recorded as to compilation. It therefore becomes clear that the subject matter cannot be ascertained from the Judgment of 27<sup>th</sup> April 2022. From the pleadings the total value of the reliefs sought by the Claimant is KShs. 820, 242,211.57. This will form the basis for calculating the instructions.”

61. Clearly, this was an error of principle. In my view, the computed amounts would be pivotal and relevant in determining a fair and just remuneration for the Applicant for the services he rendered to the Respondent.

62. I note from the record that on 16<sup>th</sup> November 2022, Lady Justice Maureen Onyango did direct;

“Outgoing Counsel's bill of costs to be taxed and payment made, following which incoming counsel will be allowed to come on record.”

63. In making this direction, I hold the Court was conscious that a final figure out of the computations that the parties had filed was yet to be recorded, and expressive of confidence that none of the Parties was to be prejudiced.

64. I have carefully considered the Claimant's pleadings in the main suit. Undoubtedly, the amount of KShs. 820, 242, 211.57, was sought as an alternative prayer. A keen look at the disposal orders of the Judge, she didn't grant this alternative relief. She granted the principal prayer, hence the direction for the computation of what the Claimant was owed using the formula suggested in the pleadings. This Court cannot fathom how the alternative prayer, which the Court didn't grant, could be termed the subject matter of the pleadings.

65. Prayers I and II of the Claimant's Statement of Claim constituted the principal prayers. Since they were allowed by the Court, they formed the cumulative value of the Judgment. The value could be easily calculated. Therefore, it was determinable from the judgment.

66. Schedule 6, Part A of the Advocates Remuneration Order expressly provides the formula that a Taxing Officer shall employ when determining instruction fees where there is a controversy over it in an Advocate-Client Bill of Costs. It provides;

“Instruction fees

The fees for instructions in suits shall be as follows, unless the taxing officer, in his discretion, shall increase or [unless otherwise provided] reduce it-

.....

(b) To sue in any proceedings described in paragraph [a] where a defence or other denial of liability is filed; or to have an issue determined arising out of interpleader or proceedings before or after suit; or to present or oppose an appeal



where the value of the subject matter can be determined from pleadings, judgment or settlement between the parties.....”

67. Undeniably, what could constitute the subject matter value for the purposes of instructions fees depends on the stage at which the bill is being taxed.
68. The Court of Appeal stated in the Peter Muthoka case[supra], thus;

“It seems to us quite plain that the basis for determining subject matter value for purposes of instructions fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before Judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets the true value as adjudged by the Court.”
69. Looking at the Computations filed by the parties as directed by the Court in the main suit, the Respondent [the Claimant in the main suit] arrived at a figure of Kshs.18 421 704, 159.11. In contrast, Kenya Broadcasting Corporation arrived at the figure KShs. 18,045 740, 788.84. The figures were not significantly different. The Learned Taxing Officer could fairly recalculate the amount using the formula given by the Court in the Judgment to ascertain which of the two figures was correct. The Taxing Master erred in principle when she failed to use the judgment to determine the value of the subject matter, leading to a gross underassessment of the Applicant’s Instructions fees.
70. The Respondent gave its Counsel instructions to pursue the sum mentioned above as the sum owed to them, for recording by the court as the final figure in the Judgment. It is estopped from attempting to run away from this figure.
71. The underassessment affected the amounts under the waking-up fees, and the enhancement by one-half of the instructions fees under Schedule 6[B] of the Advocates [ Remuneration] Order.
72. Certainly, the order provides for the Advocate’s fees for court and registry attendances. The Applicant asked for fees for registry attendances on multiple days under section F of his Bill of Costs. However, the Taxing Officer overlooked this section in her ruling, consequently denying the Applicant any potential costs he could have received.
73. In instances where an application is submitted before the court, deliberated upon, and resolved in a particular manner, resulting in the court awarding costs to one of the parties, such costs shall be considered distinct from the costs associated with the main suit. To a certain degree, they ought to be treated as separate in an Advocate-Client Bill of Costs. Consequently, the Advocate may secure compensation for expenses related to tasks such as prosecuting or defending the application, preparing the application, and attending court for the application, among others. Nevertheless, the taxing officer must ensure that certain items, such as court attendance fees, are not double awarded.
74. Once an Advocate submits an invoice to a client, and such invoice remains unsettled, the amount specified in the invoice becomes classified as a debt. The Advocate shall be entitled to interest on the invoice sum as compensation for the duration the funds are withheld from his or her possession. This captures the fundamental principle that interest applies to debts.
75. Advocacy-Client costs are considered as compensation for the services rendered. Subsequently, these costs are subject to state taxation. As such, I am persuaded by the Applicant that the Taxing Master ought to have concluded that the taxed costs were liable for Value Added Tax (VAT).



76. The complexity of a matter serves as a factor that influences how the Taxing Officer evaluates particular items within the Bill of Costs submitted for taxation. It cannot be presented as an independent item with the expectation of being assessed for an award. Consequently, the Taxing Master did not err in disallowing item G of the Bill.

77. In the upshot, I am convinced that the Applicant's reference is meritorious. It is hereby allowed on the following terms:

I. The Advocate-Client Bill of Costs is remitted back for taxation by a Taxing Officer other than Aziza Ajwang, on the following items:

a. Instruction fees.

Based on the sum of KShs 18,421,704,159 which the Respondent presented to the court in the main suit as the amount owed to it as of the date of judgment.

b. Waking up fees.

Based on the reassessed instruction fees, arrived at using the directions in [a].

c. One-half enhancement.

The reassessed instruction fees shall be enhanced by one-half as contemplated under the Advocates [Remuneration] Order.

d. The items listed in Section F.

Should be considered, and a decision should be rendered on them.

e. Section H.

Of the Bill of Costs should be assessed and awarded, specifically the instruction fees for each application mentioned under this section.

f. Interest.

The total sum awarded to the Applicant shall accrue interest at court rates from the date of taxation until the payment is rendered in full.

g. Value Added Tax.

Will be computed based on the taxed amount. The cumulative amount payable to the Applicant shall include the taxed amount, interest accrued, and the VAT sum.

III. Costs of the application

IV. III. Given the history of this matter, the Taxing Officer should expedite the reassessment.

**READ, SIGNED AND DELIVERED VIRTUALLY IN MALINDI THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

**OCHARO KEBIRA**

**JUDGE**

