



**Kemboy Law Advocates v Narok County Government (Miscellaneous Application E120 of 2023) [2025] KEELRC 2174 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2174 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E120 OF 2023**

**L NDOLO, J  
JULY 24, 2025**

**BETWEEN**

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

**AND**

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

**RULING**

1. This ruling determines the Advocate’s reference brought by Chamber Summons dated 11<sup>th</sup> December 2024, seeking orders to set aside and/or vacate the ruling on taxation delivered by Hon Electer Akoth Riany, on 29<sup>th</sup> November 2024.
2. The Advocate bases the reference on the following grounds:
  - a. That the learned Taxing Officer misdirected herself on the principles of law applicable in taxation of Party and Party Bill of Costs;
  - b. That the learned Taxing Officer misapprehended and misapplied the law and principles of taxation with respect to the nature of the suit and failed to correctly apply the principles and formula provided for in Schedule 6 of the Advocates (Remuneration) Order, 2014 for assessing fees for each item in the Party and Party Bill of Costs dated 1<sup>st</sup> October 2024;
  - c. That the learned Taxing Officer erred in law and fact in assessing instructions fees as appeals under other matters pursuant to Schedule VI (A) (1) (a) of the Advocates (Remuneration) Order, whereas the same ought to have been taxed as an ordinary claim under Schedule VI (A) (b) of the Advocates (Remuneration) Order;
  - d. That the learned Taxing Officer erred in law and fact by failing to properly and judicially exercise the powers and discretion granted to her under the law pursuant to the Advocates (Remuneration) Order;



- e. That the learned Taxing Officer erred in law and fact by arriving at an improper determination on the value of the subject matter of the suit giving rise to the taxation;
  - f. That the learned Taxing Officer erred in law and fact by basing the instructions fees and getting up fees on a wrong Schedule that relates to other matters under appeals and failed to consider other equally critical taxation principles and factors she was bound to consider being:
    - i. The nature, importance and complexity of the suit giving rise to the taxation;
    - ii. Labour expended, professional skill, expertise and the responsibility undertaken by the Advocate for the period he had conduct of Nairobi ELRC Cause No 31 of 2019, on behalf of the Client;
    - iii. The interest of the parties;
    - iv. Conduct of the proceedings; and
    - v. All other relevant circumstances she ought to have considered.
  - g. That the learned Taxing Officer erred in both in law and fact in awarding costs which in all the circumstances are manifestly disproportionate to the suit giving rise to the taxation, unreasonable and so excessively low as to amount to substantial oppression and injustice to the Advocate;
3. The Client's response is contained in a replying affidavit sworn by its County Secretary, John Mayiani Tuya on 14<sup>th</sup> February 2025.
  4. Tuya defends the taxation by the Taxing Officer as fair and correct; guided by the law, practice and precedent. He states that there was nothing to show complexity or novelty of the matter from which the taxation proceeded.
  5. Tuya depones that the Advocate has not demonstrated sufficient reasons to cause this Court to interfere with the ruling by the Taxing Officer. He points out that being dissatisfied with a taxation does not, by itself, qualify as a ground for review or setting aside of a ruling on taxation.
  6. This reference proceeds from a ruling on taxation by Hon Electer Akoth Riany dated 29<sup>th</sup> November 2024. It is important to point out that the taxation by the Taxing Officer was restricted to costs awarded by this Court in an earlier application dated 7<sup>th</sup> February 2024.
  7. The Advocate lists a litany of grounds upon which the present application is premised. It would appear however that the major complaint is that the Taxing Officer applied the wrong provision of the Advocates (Remuneration) Order. In this regard, the Advocate faults the Taxing Officer for considering the subject Bill of Costs under the category of other matters within the appeals segment.
  8. According to the Advocate, the application dated 7<sup>th</sup> February 2024, which formed the basis of the costs presented for taxation before Hon Riany was an ordinary claim. I disagree; the ruling in which I awarded costs to the Advocate arose from an antecedent reference, pursuant to a ruling by another Taxing Officer, Hon Fredrick M. Nyamora. In my view, that application cannot be said to be an ordinary claim.
  9. In the written submissions filed on behalf of the Client, reference was made to the decision in *Nyaanga & another v Otieno* [2023] KEHC 502 (KLR) where it was held that a reference is not an independent proceeding; it is similar but not the same as an appeal. In light of this, the Taxing Officer cannot be faulted on account of the provision used to tax the subject Bill of Costs.



10. Regarding the other grounds, the Advocate makes general statements alleging misdirection on and misapprehension of taxation principles by the Taxing Officer. These statements are however not backed with concrete instances of violation by the Taxing Officer.
11. There is a general principle in adjudication of references that an assessment of costs by a Taxing Officer should not be disturbed merely because the Judge considering the reference might have made a different award or because a party is dissatisfied with the assessment.
12. Established principles for setting aside a decision by a Taxing Officer were rehashed in the Advocate's submissions dated 28<sup>th</sup> March 2025. Relying on the cases of Premchand Raichand Limited & another v Quarry Services of East Africa Limited & others [1972] E.A 162 (CAN), First American Bank of Kenya v Gulab P. Shah & 2 others [2002] eKLR and Joreth Ltd v Kigano and Associates [2002] eKLR the Advocate submitted that an award by a Taxing Officer will not be set aside unless an error of principle is manifest.
13. No such error was made out in this case. There is therefore no reason to cause me to interfere with the taxation by the Taxing Officer.
14. Consequently, the Advocate's application dated 11<sup>th</sup> December 2024 is disallowed with costs to the Client.
15. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kerre for the Applicant

Mr. Maina for the Client

