



**Obondo Koko & Company Advocates v Chepngetich (Environment and Land Miscellaneous Application E007 of 2024) [2024] KEELC 6841 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6841 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E007 OF 2024  
LA OMOLLO, J  
OCTOBER 17, 2024**

**BETWEEN  
OBONDO KOKO & COMPANY ADVOCATES ..... APPLICANT  
AND  
FLORENCE CHEPNGETICH ..... RESPONDENT**

**RULING**

**Introduction**

1. This ruling is in respect of the Applicant’s Chamber Summons application dated 15<sup>th</sup> March, 2024. The said application is expressed to be brought under Section 89 of the *Civil Procedure Act* and Schedule 6 of the *Advocates Remuneration Order 2014*.
2. The applicant seeks the following orders;
  - a. That the entire decision of the Learned Deputy Registrar dated 12.3.2024 in the Kericho Environment and Land Court Miscellaneous Application No. 1 of 2024 with respect to the Applicant’s Advocate-Client bill of costs dated 24.1.2004 with regard to legal services rendered in the Kericho Environment and Land Court Case No. 19 of 2018 be set aside and taxed afresh by this Honourable Court or in the alternative be remitted for re-taxation by a different taxing officer.
  - b. That the Costs of this application be provided.
3. The application is based on the grounds on its face and the supporting affidavit of one F.O Koko sworn on 15<sup>th</sup> March, 2024.



### **Factual Background.**

4. The application under consideration first came up for hearing on 15<sup>th</sup> March, 2024 when the Court directed that it be served upon the Respondent.
5. On 22<sup>nd</sup> April, 2024 the Applicant was granted leave to file a supplementary affidavit and directions taken that the application be disposed of by way of written submissions.
6. On 14<sup>th</sup> May, 2024 the application was mentioned to confirm filing of submissions and finally reserved for ruling on 2<sup>nd</sup> July, 2024.

### **The Applicant's Contention.**

7. The Applicant contends that he represented the Respondent in Kericho ELC Case No. 19 of 2018 which matter was heard and determined in her favour.
8. The Applicant also contends that the Respondent was awarded Kshs. 4,053,298/= as costs.
9. The Applicant further contends that he was unable to agree with the Respondent on his fees and so he filed the Advocate-Client bill of costs dated 24<sup>th</sup> January, 2024 in Kericho ELC Misc. Appl No. 1 of 2024.
10. It is the Applicant's contention that the said bill of costs was taxed on 12<sup>th</sup> March, 2024 and the Deputy Registrar awarded him Kshs. 4,181,950/= despite acknowledging the complexity of the case and the value of the subject matter which was Kshs. 52,750,000/=.
11. It is also the Applicant's contention that since he is aggrieved with the said taxation he instructed his advocates on record to file the present reference.
12. It is further the Applicant's contention that the Deputy Registrar failed to use Schedule 6(b) of the [Advocates Remuneration Order](#) which is the correct scale of fees that the parties relied on in their pleadings.
13. The Applicant contends that the Deputy Registrar also failed to consider Part B of Schedule 6 of the [Advocates Remuneration Order](#) with regard to Advocate-Client fees and instead used Schedule 6.
14. The Applicant also contends that the Deputy Registrar failed to consider that in addition to defending the Respondent, he was instructed to file a Counter claim for the value of the subject land and issue an indemnity notice for the same.
15. The Applicant further contends that the Deputy Registrar failed to consider the figures he arrived at in assessing the Respondent's Party and Party Bill of Costs on common items even though the two bills of costs vary in content and principles.
16. It is the Applicant's contention that the Deputy Registrar disregarded comparative authorities demonstrating the amount that would be fair and reasonable compensation in view of the circumstances of this case.
17. It is also the Applicant's contention that the instruction fees awarded were grossly understated and were not a reflection of the value of the work he had done.
18. It is further the Applicant's contention that the Learned Deputy Registrar made serious errors in principle in taxing the said Advocate-Client bill of costs thereby arriving at a wrong decision.



19. The Applicant contends that the Deputy Registrar did not take into consideration the provision of the Remuneration Order that the Advocate-Client bill of costs is always higher than the party and party bill of costs by a fraction.
20. The Applicant also contends that the Deputy Registrar did not peruse the judgement delivered in Kericho ELC Case No. 19 of 2019 where the Court stated the value of the said property under paragraphs 107, 108, 110, 155 and 159.
21. The Applicant further contends that the said taxation is irregular, ought to be set aside and the Advocate-Client bill of costs dated 24<sup>th</sup> January, 2024 taxed afresh.
22. The Applicant ends his deposition by stating that the Advocate -Client bill of Costs was drawn to scale and the Deputy Registrar failed to appreciate the same and ignored all their pleadings in the said miscellaneous application.

### **Respondent's Response.**

23. The Respondent filed a Replying Affidavit sworn on 12<sup>th</sup> April, 2024.
24. She deposes that sometime in the year 2018 she was sued in Kericho ELC case No. 19 of 2018 and instructed the firm of Leina Morintat & Co. Advocates to defend her and that she paid them a sum of Kshs. 150,000/= as instruction fees.
25. She also deposes that she changed representation and instructed the firm of Koech J.K and Co. Advocates based at Bomet and paid them Kshs. 150,000/= as instruction fees.
26. She further deposes that sometime in the year 2019, she instructed the firm of Ms. Obondo Koko & Co. Advocates. They agreed on legal fees of Kshs. 300,000/= which amount she paid in full.
27. It is her deposition that in addition to the agreed legal fees she paid Court attendance fee and other disbursements as they had agreed that she would cater for any expenses related to the case.
28. It is also her deposition that in instances where the Court awarded Court attendance costs for her witnesses, the Applicant did not give her the money and instead she had to cater for the costs of those witnesses.
29. It is further her deposition that after judgement was delivered, the Applicant did not involve her in seeking for costs of the suit and as a result, some costs which she had incurred were left out of the bill of costs presented for taxation.
30. She deposes that she was awarded Kshs. 12,286,798/= as costs and that without her consent, the Applicant recorded a consent with the judgement debtor where he was paid Kshs. 500,000/= as a contingency fee.
31. She also deposes that the award of Kshs. 4, 181, 950/= by the taxing officer is unjust as she had already agreed with the Applicant on the fee payable and even if the bill was taxed, the amount presented by the Applicant was an exaggeration as the figures were inflated.
32. She further deposes that the applicable schedule for taxing the said bill of costs is Schedule 6(1)(d) and (B).
33. It is her deposition that the tabulation of an indemnity notice as an item on its own under instruction fees is not backed by law and it should therefore not be provided for.



34. It is also her deposition that she was not involved in the preparation of the party and party bill of costs and therefore the invitation by the Applicant to replicate the same to the subject bill will greatly inconvenience her.
35. It is further her deposition that she was advised by the Applicant to use registered cabs to have witnesses attend Court and she incurred a cost of Kshs. 1,073,000/=. The said costs were left out of the party and party bill of costs.
36. She deposes that during the course of the case, the Court directed her to file a valuation report of the suit property which she paid for. She also incurred costs of preparing a structural engineer's report as ordered by the Court.
37. She also deposes that the reference was filed after the period of fourteen days had lapsed as the ruling was delivered on 12<sup>th</sup> March, 2024. That the reference was only filed after she filed an application to have the subject money released to her.
38. She further deposes that the Applicant has filed the reference in bad faith and with the intention of delaying the release of money for her use and he should deposit the money as ordered by the Court.
39. She ends her deposition by stating that the Applicant should be condemned to pay interest on the subject money which he has held for a period of seven months after the same was paid by the judgement debtor.

#### **The Applicant's Response to the Respondent's Replying Affidavit.**

40. The Applicant filed a Supplementary Affidavit on 13<sup>th</sup> May, 2024 sworn by Franklin Obondo Koko.
41. He deposes that the law is clear that a party who wishes to engage numerous Advocates shall bear the costs of the said Advocates and that an Advocate on record cannot be burdened by the costs or expenses paid to the previous Advocate.
42. He also deposes that the amount paid by the Respondent was paid as deposit for taking up the matter and upon completion of the case, the Advocate and Client were to agree on the fees depending on the outcome. Failure to which, he was to tax the Advocate-Client bill of costs as provided for under the law.
43. He further deposes that the Respondent did not forward to him or to Court proof of expenses incurred by attendance of witnesses and that is why expenses were never awarded during the hearing except for three occasions which the Plaintiff never paid.
44. It is his deposition that witness expenses can only be awarded upon proof of the same which proof was never provided.
45. It is further his deposition that before recording the consent with the judgement debtor, he consulted with the Respondent and they agreed to discount the said money to ensure faster payment.
46. He deposes that the taxed amount is unfair to the Applicant as it is too low considering the work done and the value of the subject matter.
47. He also deposes that the evidence is explicit and that the Taxing Officer failed to consider the appropriate schedule to be used which if considered would have resulted in a higher figure than that on the Certificate of Costs.
48. He further deposes that the reference was filed within the requisite statutory period as evidenced by the payment of filing fees for the application.



49. He ends his deposition by stating that he has all along acted in good faith and has even made payments to the Respondent of the undisputed figure on his own volition.

**Issues for determination.**

50. The Applicant filed his submissions on 7<sup>th</sup> June, 2023 while the Respondent filed her submissions on 9<sup>th</sup> May, 2024.
51. The Applicant submits that the value of the subject matter is easily ascertainable from the pleadings as it is Kshs. 52,750,000/=.
52. The Applicant then tabulated various figures for instruction fees and arrived at a figure of Kshs. 3,370,961/=.
53. The Applicant submits that the Taxing Officer failed to consider that in addition to defending the Respondent, the Applicant was instructed to file a Counterclaim for the value of the subject land and to issue an indemnity notice for the same.
54. The Applicant also submits that he based his calculations on Schedule 6(b) of the Advocates Remuneration Order in arriving at the figure of kshs. 3,370,961/=.
55. The Applicant further submits that the Taxing Officer did not exercise his discretion properly in determining the instruction fees and neither did he consider the complex nature of the suit and the value of the subject matter in awarding kshs. 2,000,000/= as instruction fees.
56. The Applicant relies on the judicial decisions of *Joreth Ltd v Kigano & Associates* [2002] eKLR and *Peter Muthoka & another v Ochieng and 3 Others* [2019]eKLR in support of his submissions.
57. The Applicant submits that the Taxing Officer failed to award him any getting up fees as sought under item 1(a) of his bill of costs dated 24<sup>th</sup> January, 2014. The Applicant relies on Schedule 6(2) of the *Advocates Remuneration Order* and submits that the Taxing Officer ought to have awarded Kshs. 1, 123, 654/= as getting up fees.
58. The Applicant also submits that the Taxing Officer failed to consider Schedule 6 Part B of the *Advocates Remuneration Order* 2014 which provides that instruction fees for Advocate-client costs shall be one half of the party and party costs.
59. The Applicant relies on the judicial decision of Otieno, *Ragot & Company Advocates v Kenya Airports Authority* [2015] eKLR in support of his submissions. The Applicant also relies on *Kamunyi & Company Advocates v Development Bank of Kenya Ltd* [2006]eKLR and *First American Bank of Kenya and others* [2002]eKLR.
60. The Applicant submits that all the other items in the bill of costs were drawn to scale and ought to have been taxed as drawn.
61. The Applicant relies on *Shreeji Enterprises Limited v John Munga Chai* [2022] eKLR as was cited in *Pyramid Motors Limited v Langata Gardens Limited* [2015] eKLR and submits that the Taxing Officer did not award VAT and therefore he erred in principle.
62. The Applicant therefore seeks that the decision of the Taxing Officer be set aside and he be awarded Kshs. 8,526,075/= as his Advocate- Client costs.
63. In her submissions, the Respondent reiterates the averments in her Replying Affidavit and while relying on *Joreth Limited v Kigano & Associates Civil Appeal No. 66 of 1999* submits that from the



pleadings, the value of the subject matter is kshs. 52,750,000/= and therefore the applicable schedule is Schedule 6 1(b) of the Advocates Remuneration Order 2014.

64. The Respondent also submits that under the said schedule, the instruction fees ought to have been taxed at kshs. 991,125/=. The Respondent admits that a Counterclaim is a separate entity from the suit and therefore the instruction fees that ought to have been awarded is Kshs. 991,125/=.
65. The Respondent further submits that filing an indemnity notice has never been an item for purposes of taxation of any bill. It is the Respondent's submissions that unlike a counterclaim, an indemnity notice is not a suit capable of being sustained on its own.
66. The Respondent reiterates that Item No. 1 ought to have been taxed at kshs. 981,125/= while item No. 2 ought to have been taxed at Kshs. 981,125/= and therefore getting up fee should be taxed at Kshs. 654,140/=.
67. The Respondent submits that even though the Applicant has listed several correspondences, she received no more than three letters as she would regularly have phone conversations with the Applicant. Therefore, the items on the Advocate-Client bill of costs listed as letters to client are false.
68. The Respondent relies on the judicial decision of *National Bank of Kenya v Rachuonyo & Rachuonyo Advocates* [2021] eKLR and submits that the Applicant did not attach evidence of the correspondences tabulated under items No's 12, 13, 14, 23, 24, 25, 29, 35, 37, 56, 59, 60 and 61. Therefore, the said items should be taxed off.
69. The Respondent also submits that all the items under disbursements should be taxed off as she made the said payments upon request by the Applicant. The Respondent relies on the judicial decision of *National Bank of Kenya v Rachuonyo & Rachuonyo Advocates* (supra) in support of her submissions.
70. The Respondent further submits that the Applicant did not provide any evidence as to the several services that he listed. The Respondent relies on Order 21 Rule 9A of the *Civil Procedure Rules* and submits that item No. 5 on the bill of costs is provided twice.
71. It is the Respondent's submissions that a party filing an application for costs should attach supporting documents and in the present case, the Applicant did not attach any documents.
72. It is also the Respondent's submissions that the lack of supporting documents puts the veracity of the many purported services in dispute.
73. It is further the Respondent's submissions that she personally served the structural engineer and the Land Registrar and she was asked to pay for most of the services done by the process server.
74. The Respondent relies on the judicial decision of *Vincent Kibiwott Rono v Abraham Kiprotich Chebet & another* [2022] eKLR where the Court taxed off items where there was no proof from the process server. The Respondent submits that failure to attach receipts issued by the process server is fatal and the items should therefore be taxed off.
75. With regard to item no's 77, 83, 87 and 90, the Respondent submits that the Applicant exaggerated figures to inflate his pay as there were instances where only one witness testified and yet a scale of half a day was used.
76. The Respondent also submits that the Applicant has split the drawing of applications into three. To wit a Certificate of Urgency, Notice of Motion and affidavit whereas the Advocates Remuneration Order provides for it as one.



77. The Respondent submits that the Applicant provided a figure of Kshs. 1100/= for drawing a bill of costs instead of Kshs. 250/= as provided for under the [Advocates Remuneration Order](#) while drawing of hearing notices was stated as Kshs. 1100/= and yet there are not in the Court file.
78. The Respondent relies on Paragraph 62A of the [Advocates Remuneration Order](#) and submits that despite the change of advocates, there can only be one bill. That being the case, the bill should bind the Applicant to the fees that she had paid her earlier Advocates.
79. The Respondent submits that she is entitled to interest since the decretal sum was already paid to the Applicant. The Respondent also submits that the Applicant's argument that he is holding the decretal sum as lien for his fees is not anchored in law.
80. The Respondent also submits that the further Court fee of Kshs. 71,000/= sought by the Applicant was never paid to Court and it should therefore be taxed off.
81. The Respondent concludes her submissions by seeking that the reference be dismissed with costs.

### **Analysis and determination.**

82. Having considered the application, the response thereto and the rival submissions, my view is that the issues that arise for determination are as follows;
  - a. Whether the Court should set aside the Taxing Officer's decision delivered on 12<sup>th</sup> March, 2024 and the same be taxed afresh.
  - b. Who should bear the costs of the application.

### **A. Whether the Court should set aside the Taxing Officer's decision delivered on 12th March, 2024 and the same be taxed afresh.**

83. The Applicant is challenging the decision of the Taxing Officer delivered on 12<sup>th</sup> March, 2024 on the ground that the amounts awarded are manifestly low.
84. The Applicant submits that his Advocate-Client bill of costs dated 24<sup>th</sup> January, 2024 was drawn to scale and ought to have been taxed as drawn.
85. In response, the Respondent submits that she had been previously represented by various advocates and legal fees paid to them.
86. The Respondent also submits that when she instructed the Applicant, they agreed on a fee of kshs. 300,000/= which she paid in full.
87. The Respondent contends that the Applicant included various items in his bill of costs without attaching proof and the said amounts were exaggerated.
88. The procedure for filing a reference is provided for by Paragraph 11 of the [Advocates Remuneration Order](#) as follows;

“

- “ 1) Should any party 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 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 from the receipt of the reasons 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 subparagraph (2) may, with the 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 the taking of any step; application for such an order 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 expired.”

89. The Respondent contends that the Applicant filed the present reference out of time. A perusal of ELC Misc. Appl No. 1 of 2024 shows that the Learned Taxing Officer delivered his ruling on 12<sup>th</sup> March, 2024.
90. The Applicant filed the reference on 26<sup>th</sup> March, 2024 which is within the fourteen-day period provided for under paragraph 11 of the Advocates Remuneration Order. The respondent's contention, therefore, does not hold.
91. As afore stated, the Applicant is challenging the Taxing Officer's decision on all the items in the bill of costs.
92. Item No. 1 is on instruction fees. The Applicant sought to be awarded Kshs. 1,075,625/= as instruction fees for Defending the suit, Kshs. 1,219,711/= as instruction fees to file a Counterclaim and Kshs. 1,075,625/= as instruction fees to file an indemnity notice on behalf of the Respondent. The total instruction fees sought by the Applicant was Kshs. 3,370,961/=.
93. The Taxing Officer in his ruling delivered on 12<sup>th</sup> March, 2024 taxed instruction fees as follows;
 

“I have noted that the advocate was instructed was instructed (sic) to file a suit herein to obtain restraining orders of injunction to avert a sale of the property land reference number LR No. Kericho/Silbwet/409 and Kericho/Silbwet/4088 valued at ksh 52,750,000 as per the valuation report attached.

Applying paragraph [j]”other matters’ ‘a minimum of Kshs. 75,000 (sic) is provided to sue or defend in a case not provided for [in the proceeding paragraphs] and where it is defended. It is north worthy (sic) to note that only minimum is prescribed, thus the taxing master has discretion to award a higher sum, however such discretion must be exercised judicially as per the above cited case.

I note that this was a complex case or a novel case (sic) and has an implication on the time and labour expended. It is therefore my considered opinion that I do assess Kshs. 2,000,000 as instruction fees in all items included in item 1.”
94. There are several authorities that offer guidance on the circumstances under which a Judge determining a reference may interfere with the discretion of a Taxing Officer.



95. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR the Court of Appeal stated thus;

“On a reference to a Judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer, unless the Taxing Officer, erred in principle in assessing the costs.”

96. In *Premchand Raichand Ltd v Quarry Services of East Africa Ltd* (1972) EA 162 the Court outlined the principles of taxation as follows:

“(a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy.

(b) That a successful litigant ought to be fairly reimbursed for the cost he has had to incur.

(c) that the general level of remuneration of Advocates must be such as to attract recruits to the profession.

(d) so far as practicable there should be consistency in the award made and

(e) The Court will only interfere when the award of the Taxing Officer is so high or so low as to amount to an injustice to one party.”

97. The Court of Appeal in *Joreth Ltd v Kigano & Associates* NRB CA Civil Appeal No. 66 of 1999 [2002] eKLR in determining the issue of instructions fees stated as follows;

“We would at this stage point out that the value of the subject matter of a suit for the purpose of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable,

the Taxing Officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances.”

98. Before going any further, it is important to note that the Applicant had filed a Party and Party bill of costs dated 16<sup>th</sup> October, 2023 in Kericho ELC Case No. 19 of 2018. The said party and party bill of costs was filed on behalf of the Respondent.

99. A perusal of the Court record in Kericho ELC Case No. 19 of 2018 shows that the Taxing Officer taxed the party and party bill of costs as follows;

“I have noted that the application was to for (sic) instructions fee for the Plaintiff to file a suit against the Defendant and has been in Court for the last 6 years. There were also instructions to oppose an application by the Defendant in his counter claim...Applying paragraph [j]” other matters’ ‘a minimum (sic) of Kshs. 75,000 is provided to sue or defend in a case not provided for [in the proceeding paragraphs] and where it is defended. It is north worthy (sic) to note that only minimum is prescribed, thus the taxing master has discretion to award a higher sum, however such discretion must be exercised judicially as per the above cited case.



I note that this was a complex case or a novel case and had an implication on the time and labour expended. It is therefore my considered opinion that I do assess 600,000 as instruction fees.” (Emphasis mine)

100. The Court of Appeal in the judicial decision of Otieno, *Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR held as follows;

“Once the instruction fee in the party and party costs are ascertained, they become the basis of the computation of the instruction fees in the Advocates and client bill. The instruction fees in the party and party bill is then increased by one-half to arrive at the instruction fees for the Advocate and client bill. No further exercise of discretion is required at this point.” (Emphasis mine)

By declining to comply with Schedule VI Part B of the Advocates Remuneration Order and increase the already determined fees by one-half to arrive at the Advocate and client instruction fees for the reason that the party and party costs were independent of Advocate and client costs, and to instead exercise her discretion citing public interest to ascertain the instruction fees, which was not a consideration or what the Advocates Remuneration Order called upon her to do in the prevailing circumstances, I find that the taxing officer misdirected herself by failing to take into account matters that should have been taken into account, and in so doing she arrived at an erroneous decision.”

101. Upon reading the decision of *Otieno, Ragot & Company Advocates* ( Supra), it is evident that once instruction fee has been awarded in a Party and Party bill of costs, that becomes the basis for award of instruction fees in an Advocate-Client Bill of cost. What is left for a Taxing Officer to do is to increase the said amount by one-half.
102. In this matter Kshs. 600,000/= was awarded as instruction fees upon taxation of the Party and Party bill of costs, the Taxing Officer while taxing the Advocate-Client bill of costs ought to have increased the said amount by one-half.
103. The Court of Appeal in *Otieno, Ragot & Company Advocates v Kenya Airports Authority* (supra) further held as follows;

“This Court has been of a near unanimity that once a determination has been made under Part A, the minimum fee chargeable is that fee increased by one-half, and that there is no discretion reserved for the taxing officer. I say near unanimity because I cannot claim to have read all the decisions of this Court on the subject or even those of the High Court. See *George Arunga Sino v. Patrick J.O & Geoffrey D.O. Yogo T/A Otieno Yogo & Co. Advocates* [2012] eKLR, *Kipkorir, Tito & Ikiara Advocates v. Deposit Protection Fund Board* (supra), *Central Bank of Kenya v. Makhecha & Co. Advocates* [2019] eKLR, among a host of others enumerated in the judgment of Murgor, JA. The High Court too has followed this course as demonstrated by the following cases. Odunga, J. in *B Mbai & Associates Advocates v. Clerk, Kiambu County Assembly & Another* [2017] eKLR stated:

“It is therefore clear that as between advocate and client, the party and party costs, whether as prescribed, ordered by the Court or agreed by the parties to be increased by 50%. It follows that the Taxing Officer ought to have increased the fees by 50%.”

104. My view, therefore, is that the Taxing Officer’s decision of awarding kshs. 2,000,000/= as instruction fees was an error of principle.



105. The Taxing Officer ought to have awarded the Applicant kshs. 900,000/= as instruction fee under Item No. 1 which would have been the instruction fees awarded upon taxing the party and party bill of costs increased by one half.
106. The Taxing Officer awarded getting up fees of Kshs. 670,000/= under Item No. 1A. Schedule 6 Paragraph 2 of the Advocates Remuneration Order provides as follows on the calculation of getting up fee;
- “In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:
- Provided that—
- (i) this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;
  - (ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15% of the instruction fee allowed on taxation may, if the Judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;
  - (iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.”
107. Having found the instruction fees to be Kshs. 900,000/=, the getting up fee is a third of the instruction fees which is kshs. 300,000/=. That being the case, item No. 1A is hereby taxed at Kshs. 300,000/=.
108. The Applicant submits that all the other items in the bill of costs dated 24<sup>th</sup> January, 2024 were drawn to scale and ought to have been taxed as drawn.
109. The Applicant also submits that the Taxing Officer taxed the Advocate-Client bill of costs under Schedule 6 of the Advocates Remuneration Order 2014 instead of Schedule 6 Part B of the [\*Advocates Remuneration Order 2014\*](#).
110. In his ruling delivered on 12<sup>th</sup> March, 2024, the Taxing Officer stated as follows;
- “...I proceed to tax it as per schedule 6 of the [\*Advocates \[Remuneration\] order 2014\*](#).”
111. Schedule 6 of the [\*Advocates Remuneration Order\*](#) provides for costs of proceedings in the High Court. Part A provides for party and party costs while Part B provides for Advocate Client costs.
112. Schedule 6 Part B of the [\*Advocates Remuneration Order\*](#) provides as follows;
- “As between advocate and client the minimum fee shall be—
- (a) the fees prescribed in A above, increased by 50%; or
  - (b) the fees ordered by the court,
- increased by 50%; or



- (c) the fees agreed by the parties under paragraph 57 of this order increased by 50%; as the case may be, such increase to include all proper attendances on the client and all necessary correspondences.”

113. The Court of Appeal in *Otieno Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR held as follows;

“With the instructions fees, that being Part A having been discerned what the taxing officer was then required to do so as to determine the Advocate and client costs was to apply the formula set out in Schedule VI Part B...What comes to the fore from these authorities, and with which I am in agreement is that, once the instruction fee in the party and party costs ascertained, they become the basis of the computation of the instruction fees in the Advocates-Client bill. The instruction fees in the party and party bill is then increased by one-half to arrive at the instruction fees for the Advocate and client bill. No further exercise of discretion is required at this point.”

114. As was held by the Court of Appeal in the above cited judicial decision, once the Taxing Officer has determined instruction fees in a Party and Party Bill of Costs, he will increase the said amount by one half and award it as instruction fees when taxing the Advocate-Client bill of costs.

115. With regard to the taxation of the other items in the Advocate Client bill of Costs, the Court of Appeal in *Otieno Ragot & Company Advocates v Kenya Airports Authority* (*supra*) further held as follows;

“Once the instruction fees were ascertained by increasing instruction fees in the party and party bill by one-half, the taxing officer is thereafter entitled to scrutinize the remaining items of the bill and determine only those costs that are due to the advocate which are then increased by one-half. It is on the remaining items in the bill that the taxing officer is allowed to exercise his or her discretion to arrive at the correct amount due. Whereupon, the total of the instruction fees, and the costs increase by one-half, would result in the taxed Advocate and client costs.” [Emphasis Mine]

116. It is the finding of the Court of Appeal that the Taxing Officer has the discretion in taxing the other items in the Advocate- Client bill of costs. The Taxing Officer scrutinizes the other items before determining the costs due to the Advocate which are then increased by one half.

117. The Respondent submits that the Applicant did not attach evidence of the correspondences tabulated as items 12, 13, 14, 23, 24, 25, 29, 35, 37, 56, 59, 60 and 61.

118. The Respondent also submits that in most instances, she would visit the Applicant physically in his office or talk to him on phone and therefore the issue of correspondences does not arise.

119. The Applicant did not submit on this issue.

120. As afore stated in the preceding paragraphs, the Respondent relies on *National Bank of Kenya v Rachuonyo & Rachuonyo Advocates* [2021] eKLR where the Court held as follows;

“ 15. It has to be understood that taxation of a bill is not a hearing in which a party presenting a bill is required to attach copies of documents for which work on them requires remuneration. This is because it is not expected that documents like correspondence exchanged between parties to the Bill will be contested. If however there is such contest, and this should be far in between, then the party



seeking to rely on the documents for remuneration ought to produce copies by way of affidavit evidence. Yet in this matter the Taxing Master accepted the documents attached to the submissions. While the Advocates ought to have done better, the argument by the Client before the Taxing Master should have been whether or not the copies of the letters were truly authentic rather than on the technical point on the manner of production. As the argument was won on a technicality as opposed to whether the letters truly reflected the work done, I decline to uphold the Reference in regard to this.” [Emphasis Mine]

121. As was held in the above cited judicial decision, where documents such as correspondences are disputed, the party seeking to rely on the documents for remuneration ought to produce copies by way of affidavit evidence.
122. Upon perusal of the pleadings in Kericho ELC Misc. Appl No. 1 of 2024 in which proceedings the Applicant’s Advocate-Client Bill of Costs was taxed, I note that the Respondent raised the issue of the correspondences but the Applicant did not respond to it.
123. A perusal of the Taxing Officer’s decision delivered on 12<sup>th</sup> March, 2024 shows that the Taxing Officer did not take into consideration the said issue when taxing the Advocate-Client bill of costs.
124. It is therefore my view that the Taxing Officer erred in taxing the correspondences under items 12, 13, 14, 23, 24, 25, 29, 35, 37, 56, 59, 60 and 61 without any proof. The said items are as a result taxed off.
125. The Respondent is disputing the award of kshs. 71,500/= on further Court fees under item No. 112 of the Applicant’s Advocate-Client bill of costs. The Respondent submits that she perused the pleadings in Kericho ELC Case no. 19 of 2018 and she could not trace a receipt for the payment of the said fees. The Taxing Officer in his ruling taxed item No. 112 as drawn.
126. In *Hezron Odhiambo Abok v Prajapat Pravinbhai Jivabhai t/a Mitra Enterprises (K) Ltd* [2019] eKLR the Court held as follows;
  - “ 16. I will turn to the second issue as to whether the taxing officer erred in law in taxing off Item 47, being disbursements incurred by the applicant during the course of his service to the respondent. The Applicant in his bill of costs presented Item 47 as being in respect of photocopies, postage, letters and phone calls for which he charged Kshs. 5000.00. The respondent disputed the award stating that the applicant was not entitled to the same. The taxing officer then simply taxed it off without assigning any reason.
  17. In dealing with the issue raised with regard to Item 47, I shall seek guidance in the decision in *Ngatia & Associates Advocates v. Interactive Gaming & Lotteries Limited* [2017] eKLR, where the Court held that disbursements must be proved by way of receipts...
  18. In *Maina Murage & Company Advocates v. Mae Properties Limited* [2018] eKLR, the Court declined a claim for disbursements on the basis that that the applicant did not provide receipts to prove the said disbursements and the number of folios in the photocopying had not been specifically stated.
  19. On the basis of the above authorities, it is my finding that it was incumbent upon the applicant to prove the disbursements he claimed. There was no



evidence by way of receipts as to how he came to the same, and I hold that the taxing officer cannot be faulted for taxing off Item 47.”

127. In the above judicial decision, the Court held that disbursements must be proved by production of receipts. In the present case, no receipts were produced for payment of the further Court fees claimed under item No. 112.
128. I have taken the liberty of perusing the pleadings in Kericho ELC Case no. 19 of 2018 and I cannot trace a receipt for the payment of the said sum. It is my view therefore that the Taxing Officer erred in taxing the said item as drawn and yet no receipt was produced in support of it. Item No. 112 is hereby taxed off.
129. The Respondent is also disputing the award on service. As stated in the preceding paragraphs, the Respondent relies on Order 21 Rule 9A of the [Civil Procedure Rules](#) which provides as follows;

“A party claiming costs at a Magistrates Court shall file a written request, statement of costs and supporting documents with the Court and serve it on the other parties with a breakdown of the costs sought.”
130. It is important to note that Order 21 Rule 9A of the [Civil Procedure Rules](#) only applies to costs claimed before the Magistrate’s Court.
131. The Respondent is further disputing the award on items 77, 83, 87 and 90 with regard to attendance. The Taxing Officer taxed item No. 77 at Kshs. 3,000/=, Item No. 83 at Kshs. 5,000/=, item No. 87 at Kshs. 3,000/= while item No. 90 was taxed at Kshs. 5,000/=.
132. It is my view that the Respondent has not laid a basis for this Court to interfere with the award of the Taxing Officer with regard to the said items.
133. The Respondent is disputing the award on item No’s 2 and 47. The Taxing Officer taxed item No. 2 at Kshs. 10,000/= while Item No. 47 was taxed at kshs. 2,000/=. My view on this too is that the Respondent has also not laid a basis for this Court to interfere with the award of the Taxing Officer with regard to the said items.
134. The Respondent submits that before instructing the Applicant herein, she had instructed two other advocates whom she paid Ksh. 150,000/= each.
135. The Respondent also submits that when she instructed the Applicant, she paid him kshs. 300,000/= as legal fees. The Respondent further submits that she paid Court attendance fees, service fees and other disbursements.
136. Among the documents annexed by the Respondent to her replying affidavit are copies of receipts issued by the Applicant for payment of various sums.
137. A copy of a receipt dated 15<sup>th</sup> January, 2019 is annexed. It is issued by the Applicant to the Respondent upon payment of kshs. 100,000/=. Another copy of a receipt is annexed. It is dated 22<sup>nd</sup> January, 2019 issued by the Applicant to the Respondent upon payment of Kshs. 20,000/=. There is also another copy of a receipt annexed whose date is not legible and it is for payment of Kshs. 30,000/=.
138. The Respondent has also annexed copies of bank statements which she alleges show payments of various sums of monies to the Applicant.
139. The Respondent submits that she paid to the Applicant various sums of money for Court attendance and disbursements and therefore the same should not have been included in the bill of costs. Although



the Respondent has annexed copies of bank and M-pesa statements as evidence that she paid money to the Applicant, it is not clear what the said sums were for. I cannot tell whether the money was for Court attendance or disbursements.

140. In any event, the Taxing Officer reduced the taxed amount by Kshs. 200,000/= which amount had been paid to the Applicant by the Respondent.
141. Further, the Respondent submits that she incurred expenses in availing witnesses to Court which expenses were not included in the Party and Party bill of Costs.
142. It is my view that this is not the proper forum for the Respondent to air her misgivings as to the taxation of the said party and party bill of costs. This reference is in respect of the Advocate- Client bill of costs dated 24<sup>th</sup> January, 2024 which bill of costs was taxed on 12<sup>th</sup> March, 2024.
143. It is important to point out that item No. 98 in the Applicant's Advocate-Client bill of costs sought for the increase of the tabulated costs by one half. Item No. 98 provides as follows;

“ Sub Total 4,900,050/=

Add

One Half of Sub Total

Of

Kshs. 4,900,000/= 2,450,025/=”

144. The Taxing Officer in his ruling awarded Kshs. 1,435,725/= for item No. 98. Item No. 98 ought to be taxed off. A new computation of the taxed costs should be done taking into consideration the findings of this Court, which should then be increased by one half.
145. The Applicant submits that the Learned Taxing Officer erred in not awarding VAT. The Respondent did not submit on this issue. In the judicial decision of *Pyramid Motors Limited v Langata Gardens Limited* [2015] eKLR, the Court held that VAT is awarded in Advocate-Client bill of costs. I find that the Taxing Officer erred in not awarding VAT to the Applicant.
146. As stated in the preceding paragraphs, the Applicant is seeking that the decision of the Taxing Officer delivered on 12<sup>th</sup> March, 2024 in Kericho ELC Misc. Appl No. 1 of 2024 be set aside on the ground that the amounts awarded were inordinately low. I find that the Taxing Officer's decision on various items was based on an error of principle. Those amounts have been set aside as they were unjustified.

### **Disposition.**

147. The upshot of the foregoing is that the reference herein succeeds and the Taxing Officer's decision on item No's 1, 1A, 12, 13, 14, 23, 24, 25, 29, 35, 37, 56, 59, 60, 61, 98 and 112 are hereby set aside.
148. Item No. 1 is hereby taxed at kshs. 900,000/= while item No. 1A is taxed at kshs. 300,000/=. Item No's 12, 13, 14, 23, 24, 25, 29, 35, 37, 56, 59, 60, 61, 98 and 112 are taxed off.
149. The Applicant is awarded VAT.
150. Each party shall bear own costs of the reference.
151. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 17<sup>TH</sup> DAY OF OCTOBER, 2024.**



**L. A. OMOLLO**

**JUDGE**

In the presence of: -

Mr. Ochieng for the Applicant.

Florence Chepngetich (in person) – Present.

Court Assistant; Mr. Joseph Makori.

