



**Khaemba v Aziz (Judicial Review Miscellaneous Application
E013 of 2023) [2025] KEHC 1313 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E013 OF 2023**

J NGAAH, J

FEBRUARY 28, 2025

BETWEEN

MARTIN TINDI KHAEMBA ADVOCATE

AND

HASSAN ABDULKADIR AZIZ CLIENT

RULING

1. Two applications are before court. The first application dated 26 June 2024 is a reference by the client against the taxation of the advocate/client bill of costs for services rendered by the advocate to the client in the Chief Magistrates' Court Land Case No. 1799 of 2017. This reference is expressed to be brought under Article 159 of *the Constitution*, section 1A, 1B, 3 and 3A of the *Civil Procedure Rules*; and, paragraph 11(2) of the *Advocates Remuneration Order*, 2014. The application seeks orders to the effect that:
 - “ 1. The ruling on taxation dated 13th June 2024 be set aside;
 2. The advocate/ respondent's bill of costs dated 16th November, 2023 be set down for taxation before a different taxing officer.
 3. The costs of this application be in the cause.”
2. The application is based on the client's own affidavit and on the grounds that:
 - (a) The taxing officer of the High Court Constitutional and Judicial Review Division lacks jurisdiction to hear and determine the taxation of a bill of costs arising from work done at the Environment and Land Court.
 - (b) The taxing officer failed to provide reasons for the taxation in her ruling of 16th November, 2024;



- c) The value of the subject matter used by the taxing officer was not provided so as to give a basis in law or fact for determining the scale of fees payable;
 - d) The taxing officer disregarded the submissions of the client/applicant which raised points of law and fact without giving any basis for the same.
 - e) There are arithmetic errors apparent on the face of record on the calculation of the taxing officer.”
3. The second application is a motion by the advocate and it is dated 6 August 2024, it is expressed to be brought under section 51 (2) of the Advocates Act, cap.16; section 1,1A,1B and section 3A of the Civil Procedure Act, cap. 21 and Order 51 rules 1,2, 3 and 4 of the Civil Procedure Rules. It seeks orders:
- “ 1. That judgment be entered in the sum of Kshs. 247,800/= being the certified costs against the client/respondent.
 - 2. That interest on the certified costs at 14% per annum from the 13th June 2024 until payment in full be allowed.
 - 3. That costs of the application and such other relief as the court may deem fit be allowed.”
4. The application is based on the affidavit of Mr. Martin Tindi Khaemba and on the grounds that, the advocate/client bill of costs was taxed at Kshs. 247,800/= against the client and a “certificate of costs” issued on the 17 July 2024. The client is said to have neglected, refused or failed to settle the said sum and, that, in the circumstances, judgment ought to be entered for the said sum plus interests from the 13 June 2024 when the itemized bill was delivered to the client.
5. Directions on the disposal of the two applications were taken on the 7 October 2024 to the effect that the proceedings and orders made in High Court Civil Miscellaneous Application No. E012 of 2023 be adopted as the proceedings and orders of the court in this matter. In High Court Miscellaneous Application No E012 of 2023 parties agreed that the orders in that apply to High Court Miscellaneous Application No. E013 of 2023 parties agreed that the orders.
6. Turning back to the client’s application, there is on record an advocate/client bill of costs dated 16 November 2023. There is also a ruling rendered on 13 June 2024 on the taxation of the bill of costs. The ruling is rather brief and it reads as follows:

“The applicant has filed and advocate/client bill of cost dated 16th November 2023. The applicant’s bill of costs relates to a suit, being Mombasa CMCC No. 117/2017.

The suit having been filed in 2017 accordingly, the applicable scale is the Advocates (Remuneration) (Amendment) Order, 2014 (hereinafter “the ARO”).

This being a lower court matter, schedule 7 applies.

The bill is thus taxed as follows:

Subtotal Kshs. 376,000/=

Add ½ (Item 1) Kshs. 160,000/=

Add VAT @ 16% (Item 1) Kshs. 51,200

Add disbursements Nil



Less amount paid Kshs 108,000/=

Total Kshs 497,500/=

Dated and delivered at Mombasa this 13 day of June 2024

Signed

Deputy Registrar”

7. It is not clear how the taxing officer arrived at the figure of Kshs. 376, 000/= which, apparently, was the instruction fees. In the affidavit in support of the reference, the client has exhibited a letter dated 19 June 2024 addressed to the Deputy Registrar of this Honourable Court seeking for reasons for the taxation. In that letter the client’s counsel on record wrote as follows:

“We refer to the above matter.

Kindly furnish us with a copy of the ruling in this matter delivered by this Honourable Court on 13th June, 2024 setting out the reasons for taxation.

We undertake to pay your charges.

Yours faithfully

Idris Ahmed & Company.”

8. No doubt, in writing this letter the client was exercising his rights under paragraph 11 of the Advocates Remuneration Order according to which any party who objects to the decision of the taxing officer may notify the officer of his objection. The paragraph reads as follows:

11. Objection to decision on taxation and appeal to Court of Appeal

- (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 to which he objects.

9. It would appear from the taxing officer’s ruling, only a single item was taxed. The rest of the items were function of the first item.

10. The taxing officer did not proffer any reason for the taxation of this single item as she ought to have done under subparagraph 11(2) of the *Remuneration Order*. This paragraph reads as follows:

- (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.

11. In my humble view, failure to give reasons for her taxation tainted the taxing officer’s taxation as it is contrary to subparagraph 11(2) of *Remuneration Order*.

12. The taxation is also tainted because, in the absence of any reason as to how the taxing officer arrived at the figure she awarded as costs, the award was arbitrary and the taxing officer abused her discretion.



13. It is, of course, trite that that the question of quantum of fees is strictly within the discretion of the taxing officer. This has been stated by the Court of Appeal in *Kipkorir, Titoo & Kiara Advocates versus Deposit Protection Fund Board* (2005) eKLR where the court said:

“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.”

14. In so saying, the Court followed the decision of the Court of Appeal of *East Africa in Arthur versus Nyeri Electricity Undertaking* (1961) EA 497 where the court had noted:

“where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.

15. It has been held that in assessing instruction fees, the taxing officer will be guided by the value of the subject matter of the suit but, where the value cannot be ascertained, he will then exercise his discretion to assess the instruction fees as he considers just taking into account such factors as the nature and importance of the suit. This was so held in *Joreth Limited v Kigano & Associates* [2002] eKLR where the Court of Appeal held:

“We would at this stage point out that the value of the subject matter of a suit for the purposes 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 so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst 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.”

16. In the taxation, the subject of this reference, it is not clear whether the assessment by the taxing officer was based on the value of the subject matter of the suit or whether it was based on consideration of such factors “as the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings”.

17. For these reasons, I allow the reference and remit the advocate’s bill of costs for fresh taxation by a taxing officer other than the one whose taxation has been overturned.

Having so held, the advocates motion dated 6 August 2024 falls by the wayside. It is hereby dismissed. The client will have the costs of the reference. In view of the directions taken in this matter and High Court Miscellaneous Civil Case No. E012 of 2024 on 7 October 2024, this ruling shall apply in High Court Miscellaneous Civil Case No. E012 of 2024 mutatis mutandis. Orders accordingly.

SIGNED, DATED AND DELIVERED ON 28 FEBRUARY 2025

Ngaah Jairus

JUDGE

