



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lessan v Solian (Reference E045 of 2024) [2025] KEHC 3984 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3984 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO**

**REFERENCE E045 OF 2024**

**JK SERGON, J**

**MARCH 27, 2025**

**IN THE MATTER OF KERICHO H.C MISC APPLICATION NO E30 OF  
2024 IN THE MATTER OF KERICHO HIGH COURT SUCCESSION CAUSE  
NO 6/2018 IN THE MATTER OF ESTATE OF KIPSOLIAN ARAP SANG**

**AND**

**IN THE MATTER OF THE ADVOCATE REMUNERATION ORDE**

**BETWEEN**

**WK NGENOH LESSAN ..... APPLICANT**

**AND**

**RAEL CHEKEMOI SOLIAN ..... RESPONDENT**

**RULING**

1. The application coming up for determination is a chambers summons dated 4th October, 2024 seeking the following orders;
  - (i) That, this Honorable court be pleased to set aside the taxing officer's decision of allowing Kshs 150,000/= as basic instruction fees in respect of item (1) of the Bill of Cost dated 26/07/2024 in the Ruling delivered on dated 18th September/2024 be varied and or be set aside.
  - (ii) That, the court in the spirit of expeditious and timely disposal of the subject matter be at liberty to re-tax the sad bill of cost with a view of enhancing the fees payable under the said item (1) and /or in the alternative the matter be referred back for re-taxation before another taxing officer on such guidelines that the court may deem just and appropriate to issue.
  - (iii) That costs of this Application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Wycliffe Kipkemoi Ngeno an Advocate of the High Court of Kenya practicing as such in the firm of W.K Ngenoh Lessan & Co Advocates, and the applicant herein hence competent to make this affidavit.



3. He avers that on 18th September/2024, the honourable court Taxing Master rendered her decision on the Taxation of the Advocate-Client Bill of cost dated 26/07/2024 and annexed a copy of the ruling and that he is dissatisfied with the said decision and annexed a letter requesting the taxing master for the reason(s) for the said decision.
4. He avers that the Learned Taxing Master erred in principally and for reasons set hereunder: The taxing officer erred in law and principle by failing to tax the Advocate-Client Bill of Cost under Schedule 10 (B) of the *Advocate Remuneration Order* that provides for fees in Probate and Administration. Causes and applied schedule 10 Paragraph 1 of the said order in her ruling. The taxing officer in her ruling misdirected herself in both law and fact in arriving at a basic instruction fees of Kshs 150,000/-in respect of item 1 of the bill of cost upon applying wrong provision of the law.
5. He avers that costs were manifestly too low as the taxing officer failed to appreciate the value of the suit properties, yet the matter was before high court which has jurisdiction of property above Kshs 20 Million.
6. He avers that the learned Taxing master acted on wrong principles and arrived at a figure on the basic instructions fees manifestly too low and which was a failure on his part to exercise his discretion judiciously.
7. He avers that the award contradicts the spirit and principle of the Advocates Remuneration Order with regard to fair and reasonable remuneration of advocates.
8. He therefore urged this court to allow the reference herein in view of the foregoing special circumstances.
9. The matter came up for inter partes hearing, the applicant stated that he served the instant application and filed an affidavit of service and therefore the reference should be allowed. There was no response to the application and/or representation on the part of the respondent.
10. I have considered the application and response by parties and I find that the issue (s) for determination are whether to set aside/vary the taxing officer's decision of allowing Kshs 150,000/= as basic instruction fees in respect of item (1) of the Bill of Cost dated 26/07/2024 in the Ruling delivered on dated 18th September 2024
11. On the issue as to whether to set aside/vary the taxing officer's decision of allowing Kshs 150,000/= as basic instruction fees in respect of item (1) of the Bill of Cost dated 26/07/2024 in the Ruling delivered on 18th September 2024.
12. This court has considered the reference, a response to the said reference notwithstanding and finds that that the reference application dated 4th October, 2024 and filed on 7th October, 2024 is statutory time barred, incompetent, and offends the Provisions of Rule 11 (2) of the *Advocates Remuneration Order* as it is filed more than 14 days after the Taxing Officer's decision being objected to and moreso inlight of the fact that the Taxing Officer had given reasons for taxation of the advocate client bill of costs dated 26/7/2024 in the ruling dated 18th September 2024. The court in the case of *Abmed Nasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd* [2006] eKLR held as follows: “ Although rule 11(1) of the *Advocates Remuneration Order* stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of subrule (2) of rule 11 of the *Advocates Remuneration Order* demands so. The said rule was not indeed to be ritualistically observed even when



reasons for the disputed taxation are already contained in the formal and considered ruling --- Therefore the reference having been filed way out of the period prescribed should have been dismissed but having been given due consideration in substance the same is dismissed.”

13. The procedure for taxation is well laid out in paragraph 11 of the *Advocates Remuneration Order*. The Applicants herein have not advanced sufficient reasons for the delay in bringing this reference. In any event, they had the opportunity to seek leave of court to enlarge the time for filing of the application. They did not utilize that opportunity. In *Twiga Motor Limited v Hon. Dalmas Otieno Onyango* [2015] eKLR, the Court stated that: “The limits in Rule II of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.”
14. For reasons that the reference herein was filed out of time and without leave of court in accordance with the provisions of paragraph 11 (4) of the *Advocates Remuneration Order*, I find and hold that it is incompetent and amenable for striking out. It is hereby struck out.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Ngeno for the Applicant

No Appearance for the Respondent

