Pioneer Holdings Limited v Rup Pharm Limited & another (Miscellaneous Application 538 of 2019) [2025] KEHC 3885 (KLR) (Civ) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3885 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

MISCELLANEOUS APPLICATION 538 OF 2019

TW OUYA, J

MARCH 27, 2025

BETWEEN

PIONEER HOLDINGS LIMITED ..... PLAINTIFF

AND

RUP PHARM LIMITED ..... 1ST DEFENDANT

RUP BEAUTY WORLD ..... 2ND DEFENDANT

RULING

1. RUP Pharm Limited (hereafter the Applicant) brought the Chamber Summons Reference dated 31.10.2024 (the Reference) under the provisions of Paragraph 11 of the Advocates (Remuneration) Order 2009 and Sections 1A, 1B and 3A of the *Civil Procedure Act* (CPA). The Reference is supported by the grounds laid out on its face and the facts stated in the affidavit sworn by the Applicant's Managing Director, Rajnikant T. Vaghella. The orders being sought therein are:

    i. Spent.

    ii. Spent.

    iii. That this Honourable Court enlarges the time within which to file a Notice of Objection to taxation and Reference against the ruling delivered on 12th September 2024, taxing the 1st Respondent's Party to Party bill of costs dated 4th April 2024 at Kshs. 1,625,133/-.

    iv. That in the alternative, the Notice of Objection and Reference herein be deemed as properly filed within the stipulated time.

v. That this Honourable Court be pleased to set aside and/or vacate the decision of the taxing officer delivered on 12th September 2024 in HC. Misc. Civil Suit No. 538 of 2019 and/or any other consequential orders arising therefrom.

vi. That this Honourable Court be pleased to re-tax the Bill of Costs dated 04.04.24.

vii. That in the alternative to prayer (vi) above, this Honourable Court be pleased to remit the Bill of costs dated 04.04.24 for re-taxation before a different taxing officer with appropriate directions thereof.

viii. That the costs of the application be provided for.

ix. That costs of this application be provided for. sic

2. In his affidavit which by and large echoed the grounds to the Reference, the deponent stated that advocate Phillip Kisaka (the Applicant's erstwhile advocate) had no instructions to accede to the Bill of Costs as drawn, since the Applicant had at the time appointed the firm of Rene & Hans Advocates LLP to come on record and put in a response to the Bill of Costs dated 4.4.2025. The deponent stated that unfortunately, the firm of Rene & Hans Advocates LLP was unable to file the necessary response as they were yet to be mapped to the e-filing system in the matter, at the time of taxation of the said Bill of Costs. That the said advocates were therefore unable to participate in the taxation proceedings.

3. That it is much later therefore, that the Applicant came to learn that the Bill of Costs had already been taxed, with the deponent terming the taxation ruling as excessive in the circumstances and based on an error of principle. That the Applicant being aggrieved by the said ruling, wishes to file a notice of objection and reference to challenge the same. That however, the timelines for filing the same have since lapsed, hence the instant Reference which seeks an enlargement of time to enable the Applicant comply.

4. It is equally the deponent's averment that the aforementioned Bill of Costs arose out of a ruling delivered in the present matter, in respect of an application seeking the transfer of Milimani CMCC No. 8142 of 2018 (the suit) from the subordinate court to the High Court.

5. On the merits of the Reference, the deponent faulted the learned taxing master for taxing instruction fees on the Bill of Costs at a sum of Kshs. 1,543,663/- upon erroneously construing that the aforementioned application for transfer was a suit in itself. In the deponent's view, an application such as the one filed in the present matter, for transfer of a suit, ought not to apply similar principles as those applied in assessing instruction fees for filing an actual suit. That the learned taxing master ought to have instead taxed the relevant instruction fees under Paragraph (c) (viii) of Schedule 6 of the Advocates (Remuneration) Order 2014.

6. The deponent further faulted the learned taxing master for taxing instruction fees under item 1 and yet further instruction fees were sought under item 9 of the Bill of Costs, for opposing the application for transfer of the suit, though this particular item was properly taxed under item 9. That undertaking a taxation on both items constituted double taxation.

7. The deponent similarly faulted the learned taxing master for excessively taxing the court attendances listed under items 25, 26, 27, 28, 30, 31, 38, 39, 42, 43, 44, 46, 47, 48, 49, 50 and 52 of the Bill of Costs, in comparison to the scale provided under Paragraph 50A of the Advocates (Renumeration) Order 2014. That furthermore, item 29 of the Bill of Costs relating to a hearing notice was also excessively taxed at a sum of Kshs. 500/- rather than at Kshs. 50/-, contrary to Schedule 6 Rule 8 (b) of the Advocates (Remuneration) Order 2014.

8. For the foregoing reasons, the court was urged to exercise its discretion in favour of the Applicant, by granting the orders sought in the Reference.

The Grounds Of Opposition, The Replying and Supplementary Affidavits

9. To resist the Reference, the Respondent put in the Grounds of Opposition dated 6.11.2024 setting out the following:

> " Take notice that Pioneer Holdings (Africa) Limited, the Respondent to the application dated 31st October 2024 will oppose the Applicant's application dated 31st October 2024 on the following, among other grounds:
>
> 1. That the application has been filed, after judgment, by an advocate not previously on record, and who has not sought leave to come on record, the said is therefore incompetent being in breach of Order 9, Rule 9 of the Civil Procedure Rules and the same is an abuse of the process of the court.
> 2. That without prejudice to ground 3 hereof, there has been an inordinate delay in making the application, the taxation having been done on the 12th September 2024 and which delay has not been explained.
> 3. That the application is premature as the decision on taxation sought to be set aside not having been exhibited and the reasons for the decision having not been given by the Taxing officer as required by Rule 11 of the Advocates (Remuneration) Order.
> 4. That the application is misconceived in the Applicant's contention that P.S. Kisaka Advocate acceded to the bill of costs when the bill was not taxed by consent but argued through written submissions an opportunity given to the parties equally.
> 5. That it is a falsehood to state that Rene Advocate was not mapped and linked to the judiciary e-filing system when the Deputy Registrar called an IT person to his chambers who mapped Mr. Rene Advocate during the occasion.
> 6. That the Applicant's attack on the decision on taxation on various items are without foundation on the said items has not been exhibited to enable the court interrogate whether the Taxing officer committed any error.
> 7. That it is just and reasonable to dismiss or strike out the application." sic

10. The Respondent similarly put in the replying affidavit sworn by its advocate Leo Masore Nyang'au on 6.11.2024 echoing the Grounds of Opposition, save to add that the Bill of Costs herein was served upon the Applicant's erstwhile advocate on 29.05.2024 and that when the matter came up before the taxing master on 4.07.2024 directions were given for the filing of written submissions in respect of the Bill of Costs. That on their part, the Respondent's advocates complied by filing and serving their written submissions upon the Applicant's erstwhile advocate via email. That however, they never received the submissions by the Applicant's erstwhile advocate in response to the Bill of Costs.

11. The advocate further stated that the Applicant did not clarify when it instructed the firm of Rene & Hans Advocates LLP to take over conduct of the matter from the erstwhile advocate, though the said advocates appeared before the Deputy Registrar on several occasions and was eventually mapped to

the online platform. That in the circumstances, the reasons given for the delay in timeously filing the Reference are untenable.

12. Rajnikant T. Vaghella swore a supplementary affidavit in rejoinder, reiterating his earlier averments that Rene & Hans Advocates LLP was never mapped to the e-filing platform and could not therefore file any documents in that respect. That nevertheless, the Respondent's advocates continued to deal with the Applicant's erstwhile advocate. He deposed that contrary to the averments being made by the Respondent, the firm of Muchoki E. N. & Company Advocates (the Applicant's current advocates) prepared and filed a notice of change of advocates upon entering into a consent with the erstwhile advocate, both documents of which were served upon the Respondent through its advocates.

Written Submissions

13. Directions were given for the parties to file and exchange written submissions on the Reference. The Applicant's counsel anchored his submissions on the decision rendered in First American Bank of Kenya Ltd vs. Gulab P Shah & 2 Others [2002] 1 EA 65 and Paragraph 11(4) of the Advocates Renumeration Order to argue that courts have unfettered discretionary power to extend the time required for filing a Reference on taxation. Counsel argued that the Reference herein was brought without unreasonable delay and that a reasonable explanation has been given for the slight delay, as set out in the respective affidavits supporting the Reference. In submitting so, counsel borrowed from the case of George Kagima Kariuki & 2 Others vs. George M. Gichimu & 2 Others [2014] eKLR in which the court reasoned that a delay of any kind ought to be explained, and that a reasonable explanation would ordinarily move the court to exercise its discretion in a party's favour.

14. On the merits of the Reference, the Applicant's counsel reiterated the aspects of the taxation ruling that are being challenged, citing the case of Sarah Chelagat Samoei v Musa Kipkering Kosgei & Another [2016] eKLR where the court reasoned as follows, on the subject of instruction fees:

> " This court finds that the application to transfer the suit from a subordinate court to Environment and Land Court cannot be defined as a suit but an ordinary application filled under Section 18(1)(b) of the *Civil Procedure Act*, 2010. The section contemplates the transfer of an existing suit and therefore, the application in itself cannot be a suit. The Taxing Officer misdirected herself to find that the proceedings to transfer the suit from Subordinate court to Environment and Land Court were a suit as the same was an application clearly defined in section 18 of the *Civil Procedure Act*, 2010. The upshot of the above is that the reference is allowed and the Bill of Costs is ordered to be taxed under Schedule VI(o) VII. of the Advocates Remuneration Order. I have taken into consideration the nature of the application being an application commenced in the High Court in respect of a matter in the subordinate court and the work-load involved and do grant Kshs.10,000/= as instruction fees."

15. The Applicant's counsel likewise faulted the taxing master for undertaking a double taxation of instruction fees under items 1 and 9 of the Bill of Costs; further faulting him for taxing the items 25, 26, 27, 28, 30, 31, 38, 39, 42, 43, 44, 46, 47, 48, 49, 50 and 52 contrary to the scale set out under Schedule 6 Rule 7(d) of the Advocates Renumeration Order and pursuant to Paragraph 50A of the said Order.

16. Counsel likewise relied on the case of Manyonge Wanyama & Associates v County Government of Kirinyaga (2019) eKLR where the Court rendered itself thus on the same subject:

> " The court is unable to find any order by the trial court certifying costs on the higher scale. The Applicant did not furnish either the taxing officer or this court with such other. The

court, therefore, finds that the only option the taxing officer had was to tax the bill on the ordinary scale in the absence of an order under paragraph 50A of the Order."

17. On the basis of the foregoing arguments, the court was urged to allow the Reference as prayed.

18. In retort, the Respondent's counsel firstly echoed his earlier averments, that the Applicant's current advocates are improperly on record by dint of Order 9, Rule 9 of the Civil Procedure Rules (CPR) which provides thus:

> When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—(a)upon an application with notice to all the parties; or
>
> (b)upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

19. The Respondent's counsel similarly challenged the competency of the Reference on the grounds that the Applicant failed to attach the impugned taxation ruling and reasons thereof, and hence this court has no basis upon which to interrogate the said ruling. Reference was made to the decision in Paul Gicheru T/A Gicheru & Co. Advocates v Kargua (K) Construction Co. Ltd [2008] KEHC 2942 (KLR) where the court determined that:

> " The Applicant acted prematurely and pre-empted the giving of the reasons by the Deputy Registrar as taxing officer/master.
>
> There are no reasons on record after the Notice of Objection. The application/reference herein dated 11th day of September,2007 is null and void ab initio. It is a nullity.
>
> This omission is incurable as the requirement for the recording and forwarding of reasons is a mandatory one. The effect of this is that this Court truly in the said circumstances has no jurisdiction to entertain the application. It was stated by the Late Justice of Appeal, the Honourable Justice Nyarangi in the case of The Owners of the Motor Vessel " Lilian " =vs= Caltex Oil Kenya Ltd (1989) KLR 1 – " Jurisdiction is everything. Without it a Court has no power to make one more step. "

20. That in the circumstances, there is no basis upon which this court can exercise its discretionary power to enlarge the time under Rule 11(2) of the Advocates Remuneration Order, in favour of the Applicant herein. That the Reference is incurably defective and therefore ought to be dismissed or struck out, with costs.

21. Going by the record, RUP Beauty World (hereafter the 2nd Defendant) did not participate in these proceedings.

Analysis and Determination

22. The court has considered the grounds present in the Reference; the facts deponed to in the affidavits supporting and opposing the Reference; the Grounds of Opposition; and the rival submissions together with the authorities cited.

23. Before proceeding with the merits thereof, the court observed that the Respondent sought to challenge the competency of the Reference on two (2) preliminary points.

24. The first preliminary point raised is that the Reference is incompetent for having been filed by a firm of advocates who are not properly on record by dint of Order 9, Rule 9 of the CPR which stipulates that:

> When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
>
> (a) upon an application with notice to all the parties; or
>
> (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

25. Upon the court's study of the record, it is apparent that at the onset, the Applicant herein filed an application dated 1.08.2019 in the present Miscellaneous matter, seeking to have the suit (which had been instituted by the Respondent herein) transferred to the Environment and Land Court (ELC) for hearing and determination due to pecuniary matters arising out of the Applicant's decision to file a statement of defence and counterclaim thereto. Upon considering the aforesaid application, Nyagah, J. vide the ruling delivered on noted that the suit had been withdrawn by the Respondent pursuant to a notice of withdrawal dated 29.05.2019 and hence there was no existing and pending suit for transfer. The learned Judge therefore proceeded to dismiss the aforesaid application with costs to the Respondent, thereby prompting the Respondent's Party and Party Bill of Costs dated 4.04.2024 seeking costs in the sum of Kshs. 1,625,133/-. Upon taxation, the learned taxing master, Hon. Eric Wambo (Deputy Registrar) taxed the Bill of Costs as drawn, vide the ruling delivered on 12.09.2024.

26. That said, from the foregoing circumstances, the court is of the view that Order 9, Rule 9 (supra) is inapplicable here, since no judgment was entered in respect of the dispute subsisting between the parties herein; rather, the suit was withdrawn.

27. Be that as it may, upon the court's further study of the record, it is apparent that the Applicant was at all material times represented by the firm of Kisaka & Shalle Advocates LLP to which the erstwhile advocate belongs, in the present proceedings. The Applicant however availed a copy of a notice of change of advocates dated 22.10.2024 and filed in the matter, indicating that the aforementioned firm of advocates had been replaced by the firm of Muchoki E. N. & Company Advocates being the Applicant's current advocates. The said notice is accompanied by a consent shown to have been signed between the respective advocates and it is apparent that the same was served upon the respective advocates as well as the advocates acting for the Respondent.

28. In view of all the foregoing circumstances, the court is satisfied that the Applicant's current advocates are properly on record. Consequently, the first preliminary argument by the Respondent fails.

29. The second preliminary point touches on whether the Reference was brought prematurely, in the absence of a copy of the impugned taxation ruling containing the reasons thereof, being availed before this court.

30. Upon perusal of the record, the court observed that the taxation ruling forms part of the court record and that the same contains the reasons thereof. The court is therefore of the view that it was not a mandatory requirement for the Applicant to annex a copy of the said ruling to its Reference. The court is not convinced that the Reference was prematurely brought before it. Consequently, the second preliminary point likewise fails.

31. Now to the merits of the Reference, it is evident that the orders sought therein are two-fold. The foremost order is for an extension/enlargement of time for filing the Notice of Objection and Reference.

32. The reasons for granting and declining the aforesaid order are set out hereinabove and the court need not reiterate them. That said, the applicable provision here is Paragraph 11 of the Advocates Remuneration Order 2014 which sets out the procedure and timelines for objecting to a decision on taxation and for filing a Reference, as seen hereunder:

> "(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.
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> (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.
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> (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), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
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> (5) 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 already expired."

33. From the foregoing, it is clear that the courts have discretion to enlarge the time for the performance of any action under the above Paragraph.

34. In the present instance, upon a perusal of the impugned taxation ruling on record, it is apparent that the same contained the reasons thereof and hence it was not necessary for the Applicant to file a notice of objection requesting for the same.

35. Be that as it may, upon consideration of the explanation given by the Applicant for the delay in timeously filing the Reference, the court observed that the Applicant was at all material times represented by the firm of Kisaka & Shalle Advocates LLP to which the erstwhile advocate belongs, in the course of the taxation proceedings.

36. From the record, it is apparent that the erstwhile advocate/firm of advocates was informed as and when the Bill of Costs came up in court for taxation, and yet no response was filed in opposition thereto. That notwithstanding, the Applicant annexed as "RVT 1" a copy of the taxing master's cause list showing that the matter herein was scheduled for taxation, accompanied by a text message from the erstwhile advocate and apparently sent on 4.07.2024, seeking instructions on whether to oppose the

Bill of Costs. From a reading of the captured text message, it is apparent that the erstwhile advocate had severally attempted to obtain instructions from the Applicant, to no avail.

37. Suffice it to say that, it is apparent from the foregoing circumstances, that the Applicant was at all material times aware that the matter was pending taxation. It is also apparent that the Applicant unfortunately did not give proper or adequate instructions to the erstwhile advocate, on how to proceed with the matter.

38. The court equally observed from the respective affidavits supporting the Motion, that the Applicant had purportedly issued instructions to the firm of Rene & Hans Advocates LLP to come on record and put in a response to the Bill of Costs on its behalf. However, no credible material was tendered to support these assertions, be it a notice of change of advocates or other relevant documentation. The court is therefore not satisfied by the explanation given for the delay in adhering to the timelines set out under Paragraph *11* (supra).

39. Suffice it to say that, drawing from the foregoing circumstances, it is apparent that the relationship between the Applicant and the erstwhile advocate broke down at one point and hence it is more plausible than not that the Applicant was not aware of the date of delivery of the taxation ruling. It is also apparent that while there was a delay of about one and a half months between the date of delivery of the taxation ruling and the filing of the Reference, the court does not find such delay to be inordinate.

40. In view of the foregoing circumstances, the court is persuaded to exercise its discretion by enlarging the time required for bringing the Reference.

41. This brings me to the second order seeking an order setting aside the taxation ruling rendered by the taxing officer.

42. The courts have previously considered factors that would trigger the interference of a taxing officer's decision on appeal. In the case of Kipkorir,Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR the Court of Appeal held 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."

43. The above legal position was reaffirmed in the case of Moronge & Company Advocates v Kenya Airports Authority [2014] eKLR similarly determined by the Court of Appeal.

44. The first item sought to be set aside is item 1 on instruction fees, which the taxing master taxed at the drawn sum of Kshs. 1,543,663/- and which assessment the Applicant deems excessive in view of the fact that the matter constituted a miscellaneous application as opposed to a main suit.

45. From a perusal of the impugned taxation ruling, it is apparent that in making his assessment on the above item, the learned taxing master took into account the value of the subject matter in dispute, being Kshs. 89,557,521.

46. Upon a further perusal and consideration of the record and as earlier stated, it is apparent that the present Miscellaneous application was instituted by the Applicant by way of an application seeking transfer of the suit to the ELC on pecuniary grounds, which application was eventually dismissed by Nyagah, J. That notwithstanding, it is clear that the application for transfer of the matter, did not and could not in and of itself constitute a suit and hence the principles for assessing instruction fees in respect of a main suit could not apply here. In that sense, the court is satisfied that the learned taxing master erred in assessing the said instruction fees as though the Miscellaneous application constituted

a suit in the ordinary sense. In so finding, the court is persuaded by the relevant authorities cited in the Applicant's submissions on this subject, including the case of Kerio Valley Development Authority v Nathan M. Pala t/a Muhatia Pala Auctioneers & 2 others [2023] KEHC 24850 (KLR) in which the court rendered itself thus:

> "In the present case, I take the position advanced by Ombwayo J above that Section 18 of the *Civil Procedure Act* contemplates the transfer of an existing suit and therefore, the application for transfer in itself cannot also amount to a "suit" for the purposes of assessing instruction fees. Even just logically, it is unreasonable to argue that a simple Application for transfer of a suit should attract the same principles in assessing instruction fee as for a suit commenced by way of a Plaint and in which parties have prepared, filed and exchanged witness statements, bundles of documents, statements of defence, carried out deep legal research, held pre-trial meetings with witnesses, canvassed various interlocutory Applications and conducted other time-consuming steps including numerous Court attendances. To argue in such manner would be to take an absurd position.
>
> For the said reasons, like Ombwayo J, above, I agree with the Applicant that the Application for transfer of suit, being basically an Application arising from an existing suit, the instruction fee should have been taxed under the provision titled "matters arising during proceedings". That section, titled paragraph (c)(viii), provides for instruction fees "to present or oppose any other application not otherwise provided for". Instruction fees for an Application for transfer of a suit from one Court to another not being specifically provided for in the schedule, this in my view, is the provision to be applied. The paragraph prescribes that where the application is opposed, "such sum may be awarded as instruction fees as may be reasonable but not less than Kshs 5,000/=".
>
> I therefore find that in assessing the instruction fee and awarding the sum of Kshs 120,000, the Taxing Master erred in principle and as a result, awarded a fee manifestly excessive and too high."

47. Concerning items 25, 26, 27, 28, 30, 31, 38, 39, 42, 43, 44, 46, 47, 48, 49, 50 and 52 of the Bill of Costs which relate to court attendances and perusals, upon a perusal of the impugned taxation ruling, the court observed that the learned taxing master assessed the above items in line with respective sums drawn. The Applicant averred that the same were assessed and taxed using the higher scale as opposed to the ordinary scale provided under Schedule 6, Rule 7(d) of the Advocates Renumeration Order. Upon a study of the just-referenced Schedule, it is apparent that the same provides for both an ordinary and a higher scale. Paragraph 50A of the Advocates Remuneration Order offers clarity on the applicability of the higher scale under Schedule 6, by prescribing the following:

> "The court may make an order that costs are to be taxed on the higher scale in Schedule 6 on special grounds arising out of the nature and importance or the difficulty or urgency of the case. The higher scale may be allowed either generally in any cause or matter or in respect of any particular application made or business done."

48. From a reading and understanding of the above provision, it is apparent that the use of the higher scale would ordinarily derive from a previous court order or directions to that effect. In the present instance, the learned taxing master did not set out the order or special grounds, if any, which guided the exercise of his discretion by assessing the above items using the higher scale. In view of the foregoing, the court concurs with the Applicant's sentiments, that in the absence of any special circumstances, the taxing master ought to have applied the ordinary scale under Schedule 6, Rule 7(d) (supra).

49. Last but not least is item 29 of the Bill of Costs, through which the Respondent sought a sum of Kshs. 500/- for perusing a hearing notice. According to the Applicant, the learned taxing master erred in assessing the same as drawn, arguing that the same was in excess of what is stipulated under the Advocates Remuneration Order. The relevant proviso is Schedule 6, Rule 8(b), which expresses that perusals of pleadings, affidavits, notices and other related documents shall be taxed at Kshs. 50/-. Upon consideration thereof, the court is persuaded that the learned taxing master arrived at an excessive assessment on the above item.

50. For all the foregoing reasons therefore, it is imperative that the decision of the taxing officer be interfered with.

51. The upshot is that the court finds merit in the Chamber Summons Reference dated 31.10.2024 is hereby allowed giving rise to the following orders:

    a. The time for filing the Reference dated 31.10.2024 be and is hereby enlarged.

    b. Consequent to order a) above, the Reference is deemed to be properly on record.

    c. The taxation ruling of the Deputy Registrar delivered on the 12th September, 2024 together with the Certificate of Taxation resultant thereto be and is hereby set aside.

    d. Consequently, the Respondent's Party and Party Bill of Costs dated 4th April, 2024 be placed before a different taxing officer other than Hon. Eric Wambo (Deputy Registrar) for re-taxation.

    e. Parties shall obtain a date before the Deputy Registrar for further directions on the taxation proceedings.

    f. In the circumstances, each party to bear its own costs of the Reference.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF MARCH, 2025.

HON. T. W. OUYA

JUDGE

FOR APPELLANT.....Ms Muchoki

FOR RESPONDENT...Masore

COURT ASSISTANT.....Jackline