



REPUBLIC OF KENYA



Odiya t/a Odiya & Associates Advocates v Ngengi (Miscellaneous Civil Case E1079 of 2023) [2025] KEHC 7448 (KLR) (Civ) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL CASE E1079 OF 2023

TW OUYA, J

MAY 29, 2025

BETWEEN

**JANE NYABIAGE ODIYA T/A ODIYA & ASSOCIATES
ADVOCATES APPLICANT**

AND

JEAN MUMBI NGENGI RESPONDENT

RULING

1. The Chamber Summons before the Court dated 4th October 2024 is premised under Rule 11 the of the *Advocates (Remuneration) Order* and Sections 1A, 1B,3,3A of the *Civil Procedure Act*. The Applicant is seeking the following orders:
 - i. The Applicant be granted leave to file an Objection and a Taxation Reference to this Honorable Court against the Ruling of the Honorable court's Taxing officer delivered on 30th August 2024.
 - ii. That the Objection to the Taxing Officer and the Application for Reference annexed hereto be deemed as duly filed and served upon payment of requisite fees.
 - iii. That Costs of this Application be in the cause.
2. The Application is anchored on the grounds set out on the face thereof and in the Affidavit in sworn by Jane Nyabiega Odiya on 4th October 2024 in her capacity as an Advocate working in the firm of M/S Odiya & Associates Advocates (the Applicant herein). The Applicant stated that she filed a Bill of Costs dated 9th November 2023 in Advocate/Client Bill of Costs resulting in matrimonial property proceedings and to that effect a Ruling date was set in Court for 30th August 2024.



3. The Appellant filed the subject Application seeking this Court's leave to file an Objection and a Reference against the Ruling delivered by the Taxing Master on 30th August 2024. The Applicant averred that on 30th August 2024, the Taxing Master failed to deliver a Ruling on the bill of Costs dated 9th November 2023 as communicated to the parties and re-scheduled the same for delivery on 4th September 2024.
4. Further, on 4th September 2024, the trial Court informed the parties that the Ruling in question would be delivered to them via email. However, no Ruling was supplied until several days had lapsed from 4th September 2024, during which date the High Court was on vacation, thereby, giving the Applicant limited time to file a reference within the stipulated 14 days.
5. The Applicant averred that the Taxing Master erred in principle in the following respects:
 - (1) The Taxing Master applied the wrong principle in taxing item 1 of the Applicant's Bill of Cost with respect to instruction fees.
 - (2) The Taxing Master erred in law by ignoring the value of the subject matter which is the matrimonial property therein while exercising her discretion in taxing the instruction fees.
 - (3) The Taxing Master erred both in law and fact by ignoring the value of the property before court.
 - (4) The costs awarded by the Taxing Officer were manifestly too low as the taxing officer failed to appreciate the value of the property in the suit which is of the value of Ksh.154,500,000.

Issues For Determination

6. Upon considering the Application, the response thereto and the submissions filed by the Appellant, I find that there are two issues for determination; Whether Taxing Officer's Ruling dated 30th August 2024 ought to be set aside and Who shall bear the costs of the suit?
7. It is trite law that the Court will interfere with the decision of a Taxing Master only in circumstances where it is demonstrated that the Taxing Officer committed an error of principle. The procedure for filing a Reference is set out in Paragraph 11 of the *Advocates Remuneration Order*. Rules 1-4, as 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.
 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 this objection.
 3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (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 already expired.”

8. In the case of *Evans Thigu Gaturu Advocate v Kenya Commercial Bank Limited* (2012) eKLR, the Court opined as hereunder;

‘It is therefore clear that the interpretation by the Court especially the High Court on this issue is far and varied. In my view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles. However, where there are reasons on the face of the decisions, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of a reference since that insufficiency may be the very reason for preferring a reference.’

9. In the case of *Republic v Ministry of Agriculture & 20 others Ex-parte Muchiri W' Njuguna* (2006) eKLR, the Court held as follows;

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other. The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.”

10. Similarly, the Court of Appeal in the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Board NRB* (2005) eKLR, reasoned as follows:

“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.”

11. In the subject cause, the Appellant argued that he was not able to file this reference within the stipulated 14 days because the Court was then on vacation. Upon careful consideration of the pleadings and totality of the evidence supplied in the instant suit, the Court is persuaded that the Taxing Master erred in law by failing to deliver the ruling on the set date and subsequently failing to notify the parties when the aforesaid Ruling was set to be delivered.

12. The Court is satisfied that the Taxing Officer committed an error of principle in the Ruling dated 30th August 2024 namely, by failing to consider the value of the subject matter being the matrimonial property in question, which is a key factor in terms of the valuation of Advocate's instruction fees. The Court finds and holds that the failure by the Taxing Officer to consider the value of the subject matter in the cause before her constitutes an error in principle and warrants this Court to interfere with the same.

13. The Court is further persuaded that the impugned Ruling dated 30th August 2024 by the Taxing Officer failed to consider the submissions tendered by the Appellant or to recognize the existence of the same.



14. Having recourse to the foregoing, the Court shall proceed to make the following Final Orders:

1. Judgment is hereby entered in favour of the Applicant as contained in the prayers numbered (1) and (2) in the Applicant's Chamber Summons dated 4th October 2024.
2. Costs shall be in the cause.

It is so Ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON 29TH MAY, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....Ms Odiya

For Respondent.....No Appearance

Court Assistant.....Doreen

