



Lumumba & Lumumba Advocates v Uokoaji Sacco Limited (Miscellaneous Civil Application E156 of 2024) [2025] KEHC 11813 (KLR) (Civ) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 11813 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E156 OF 2024
SN MUTUKU, J
JUNE 26, 2025
N THE MATTER OF: THE ADVOCATES ACT
AND
IN THE MATTER OF: TAXATION OF COSTS BETWEEN ADVOCATE & CLIENT
BETWEEN
LUMUMBA & LUMUMBA ADVOCATES ADVOCATE
AND
UOKOAJI SACCO LIMITED CLIENT

RULING

The Application

1. The subject of this ruling is the Chamber Summons Reference dated 28.02.2025 (the Application) brought by Uokoaji Housing Cooperatives Society Limited (the Applicant) under Paragraph 11(2) – (4) of the Advocates (Remuneration) Order.
2. The Application is supported by the grounds set out on its face and in the Supporting Affidavit of the Applicant’s Chairperson, Yusuf Ong’udi Nyakinda.
3. The Applicant seeks the following orders:
 - a) This Honourable Court be pleased to set aside the Learned Taxing Officer’s decision of 4th October 2024 and substitute this finding with a decision that there was an agreement on remuneration thereby divesting the Taxing Officer of jurisdiction to tax the Party and Party Bill of Costs dated 29th February 2024.



- b) This Honourable Court be pleased to strike out the Party and Party Bill of Costs dated 29th February 2024.
 - c) In the alternative to (c) and (d) above, this Honourable Court be and is hereby pleased to set aside the Learned Taxing Officer's decision of 4th October 2024 taxing the Bill of Costs dated 29th February 2024 at Kes. 3,404,830/=.
 - d) The Honourable Court be pleased to remit the bill of costs dated 29th February 2024 for re-taxation before a different Taxing Officer other than Hon. Eric Otieno Wambo.
 - e) Costs of this reference be borne by the Respondent.
4. The grounds in support of the Reference found in the Supporting Affidavit, are that Lumumba & Lumumba Advocates (the Respondent) filed an Advocate-Client Bill of Costs dated 29.02.2024 (the Bill of Costs) arising out of a conveyancing transaction in which the Respondent acted for the Applicant, pertaining to the purchase of the property titled CIS MARA/OLKINYEI/693 (the subject property) and which Bill of Costs was subsequently amended on 6.05.2024 to correct the name of the Applicant; that the Applicant filed written submissions in response to the Bill of Costs, accompanied by a list of documents including a letter dated 22.11.2023 prepared by the Respondent and claiming a sum of Kshs. 500,000/- as purported outstanding legal fees and that in view of the existence of a remuneration agreement between the parties herein, the taxing master had no jurisdiction to tax the Bill of Costs, by dint of Section 45(6) of the *Advocates Act*.
 5. It is further deposed that the Bill of Costs was erroneously drawn under Schedule 6 of the Advocates (Remuneration) Order 2014 when the applicable scale was that provided under Schedule 1 thereof; that in respect of item 1, the learned taxing master erred in assessing the instruction fees at Kshs. 728,500/- despite having found that the said fees amounted to Kshs. 655,000/- pursuant to Schedule 1 of the Remuneration Order and being that the subject matter in question was valued at Kshs. 42,000,000/- and that a sum of Kshs. 426,500/- ought to be taxed off item 1 in the Bill of Costs.
 6. It is the deponent's assertion that the respective sums of Kshs. 212,075/- and Kshs. 1,736,000/- ought to be taxed off from all correspondences (items 3 to 292) and disbursements (items 294 to 300), in the absence of proof thereof.
 7. The deponent has further faulted the learned taxing officer for delivering a taxation ruling in respect of the original Bill of Costs rather than the amended version and that the taxing officer did not address the issue of jurisdiction in rendering his decision, notwithstanding the fact that the issue was raised by the Applicant.
 8. In view of the foregoing, the Applicant has urged this court to exercise its discretion in its favour, by allowing the Reference as prayed.

Grounds of Opposition

9. The Reference is opposed by the Respondent through the Grounds of Opposition dated 28.03.2025 on the following grounds:
 - i. The application is misconceived, incompetent, and legally untenable as it seeks to set aside a validly rendered decision of the Taxing Officer in the absence of any demonstrable error in principle or jurisdictional defect.



- ii. No valid remuneration agreement exists between the Applicant and the Respondent within the meaning of Section 45 of the *Advocates Act*, and therefore the Taxing Officer had full jurisdiction to tax the Advocate-Client Bill of Costs dated 29th February 2024.
 - iii. The Applicant has failed to establish the existence of a valid Remuneration Agreement within the meaning of Section 45(1) and (6) of the *Advocates Act*. The letter dated 22nd November 2023, relied on by the Applicant to assert the existence of an agreement for a fixed fee of Kshs. 500,000/=, was not a remuneration agreement as defined by law. It merely referenced a balance due at the time of cessation of service and did not specify the total fees payable or contain mutual consent on legal fees.
 - iv. The assertion that the Taxing Officer lacked jurisdiction under Section 45(6) is legally and factually incorrect, as no binding agreement meeting the statutory threshold was presented before the court.
 - v. The Taxing Officer properly exercised discretion in taxing the instruction fees at Kshs. 728,500/=, a figure explicitly proposed and submitted by the Applicant. The Applicant is bound by its own submissions and cannot now disown its earlier position.
 - vi. The disbursements taxed at Kshs. 1,736,000/= were not challenged with evidence during the taxation proceedings. The Taxing Officer was satisfied with the sufficiency of the Bill as drawn and the submissions presented. No receipts were strictly required in the absence of substantive objection or alternative evidence.
 - vii. The Applicant fully participated in the taxation proceedings in respect of the Bill dated 29th February 2024, and the subsequent amendment on 6th May 2024 was administrative correcting only the client's name and did not affect the substance of the taxation.
 - viii. The Applicant filed submissions, received due notice, and was afforded a fair hearing. There is no procedural irregularity warranting the setting aside of the ruling dated 4th October 2024.
 - ix. The grounds raised in the application were considered and addressed during the taxation proceedings, the decision of the Learned Taxing Officer was grounded in law, supported by the evidence on record, and contains no discernible error in principle or in law.
 - x. The prayer to remit the bill for re-taxation before a different Taxing Officer is baseless. The Applicant has not demonstrated bias, misconduct, or procedural unfairness on the part of the current Taxing Officer to warrant such a referral.
 - xi. The Chamber Summons Application dated 28th February 2025 is misconceived, incompetent, and an abuse of court process intended to delay the conclusion of a lawful fee recovery process.
 - xii. It is in the interests of justice and the proper administration of the court process that the application be dismissed with costs to the Advocate/Respondent.
10. The Respondent seeks dismissal of the Reference with costs to the Respondent.

Oral Submissions

11. The Reference was canvassed by way of oral submissions. Miss Angwenyi, advocate for the Applicant, reiterated the averments that the taxing officer had no jurisdiction to entertain the Bill of costs and that a letter was tendered by the Applicant ascertaining the existence of a remuneration agreement between the parties herein, out of which the Respondent claimed legal fees to the tune of Kshs. 500,000/.



- Counsel relied on the case of *Majanja Luseno & Company Advocates v Leo Investments Limited & another* [2017] KEHC 9857 (KLR) where the court deemed the correspondences tendered therein as constituting proof of the existence of a remuneration agreement between the advocate and client.
12. Ms. Angwenyi faulted the taxing officer for taxing instruction fees on the basis of an erroneous computation and without considering the relevant principles in assessing instruction fees, such as the value of the subject matter, as set out in the case of *Kithi & Co. Advocates v Greenwood Limited* [2024] KEHC 5473 (KLR). She further faulted the learned taxing officer for assessing costs on disbursements in the absence of any supporting evidence by way of receipts and urged that this court ought to disturb the taxation ruling.
 13. Miss Oele, counsel for the Respondent, in her submissions contended that the Reference lacks merit in the absence of any remuneration agreement; that the letter referenced hereinabove does not in any way confirm the existence of any such agreement but is merely a letter seeking payment of legal fees; that Section 45 of the *Advocates Act* stipulates the manner and form of a remuneration agreement and that in the circumstances, the learned taxing officer had jurisdiction to tax the Bill of Costs under Schedule 1 of the Remuneration Order.
 14. Counsel contended that notwithstanding the fact that the Respondent amended the Bill of Costs, the amendments in question did not alter the substance of the Bill of Costs and hence it was of no consequence that the learned taxing officer assessed the original Bill of Costs as opposed to the amended version.
 15. On the instruction fees, it is counsel's argument that the assessment undertaken by the learned taxing officer was guided by the relevant legal principles and hence the Applicant has not shown the manner in which the taxing officer erred in his decision. Counsel relied on *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR where the Court of Appeal laid down the guiding principles for consideration in determining whether to disturb the decision of a taxing officer.
 16. It is similarly counsel's argument that the learned taxing officer correctly assessed the costs under the challenged items of disbursements and correspondences, and there is no reason for interfering with the taxation ruling. That in the circumstances, the Reference ought to be dismissed with costs.

Analysis and Determination

17. I have considered the Reference and the grounds in support, the Grounds of Opposition and rival oral arguments of the parties and authorities cited therein.
18. The background of this matter is that the Respondent filed the Advocate-Client Bill of Costs dated 29.02.2024 seeking a sum of Kshs. 5,399,350.42 (less fees already paid and amounting to Kshs. 883,400/-) thereby bringing the total costs sought in legal fees to Kshs. 4,515,950.42. Soon thereafter, an amended Bill of Costs dated 6.05.2024 was filed. The amendment did not affect the substance of the Bill of Costs. The Bill of costs was taxed at a sum of Kshs. 3,404,830/- after considering the aforementioned fees already paid by the Applicant, thereby prompting the instant Reference.
19. I have considered the Reference. It seeks to set aside the impugned taxation ruling on two (2) key issues; firstly address whether the taxing officer had jurisdiction to tax the Bill of Costs, in the first instance, by dint of Section 45(6) of the *Advocates Act*, and, secondly, whether taxing officer committed an error of principle in his assessment of the Bill of Costs.



20. On the first issue, I have read Section 45(6) which provides that:

Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48.

21. Section 45(1) which precedes sub-section 6 above, expresses thus:

Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—

- (a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate's remuneration in respect thereof;
- (b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate's instruction fee in respect thereof or his fees for appearing in court or both;
- (c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof, and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

22. The court in the case of *Ataka, Kimori & Okoth Advocates v Surestep Systems And Solutions Ltd* [2020] eKLR prescribed the nature and contents of a valid remuneration agreement, in the manner hereunder:

“

“A solicitor is entitled by statute to make a written agreement (called a Contentious business agreement) with his client, as to his remuneration in respect of any contentious business done or to be done by him, providing that he shall be remunerated by a gross sum, or by reference to an hourly rate, or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise have been entitled to be remunerated.

To bind the client the agreement must be signed by him. It may be contained in a letter or any other document provided that all the terms of the agreement which relate to the remuneration appear in it and are sufficiently specific and the intention of the parties is clearly shown.”

23. Upon perusing the material letter dated 22.11.2023 which was referred to, I have noted that the same by and large constituted a demand for purportedly outstanding legal fees to the tune of Kshs. 500,000/-. From a reading and understanding of the abovementioned letter, it is my considered view that I am not satisfied that the same meets the threshold set out in the case of *Ataka, Kimori & Okoth Advocates v Surestep Systems And Solutions Ltd*, cited above and Section 45(1) on what constitutes a remuneration agreement.

24. In the premises, it is my view that the Applicant has not established by way of any credible evidence, the existence of a remuneration agreement ousting the jurisdiction of a taxing officer. I am therefore satisfied that the Bill of Costs was properly before the learned taxing officer and that he had the requisite jurisdiction to tax it accordingly. Therefore, prayers (a) and (b) of the Reference automatically collapse.



25. On the second ground issue, the Applicant seeks to have the impugned taxation ruling set aside, with an alternative order that the said ruling be taxed afresh before a different taxing officer.
26. 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.”
27. The Court went ahead to reason that an error of principle would include an excessive award on costs or an overemphasis on factors such as the nature and complexity of the matter at hand, with the above legal position being reaffirmed in the case of *Moronge & Company Advocates v Kenya Airports Authority* [2014] eKLR.
28. From a consideration of the instant Reference, it is clear that the items being challenged are item 1 (instruction fees); items 3 to 292 (correspondences); and items 294 to 300 (disbursements).
29. Regarding item 1 touching on instruction fees, the Respondent by way of the Bill of Costs, sought to have the same taxed at a sum of Kshs. 1,155,000/- considering the subject property which was purchased at a consideration of Kshs. 42,000,000/-. The Applicant on its part proposed that the same be taxed at a sum of Kshs. 728,500/-. Upon considering the rival positions, the learned taxing officer taxed the above item at a sum of Kshs. 728,500/- under Schedule 1, Scale 1 of the Remuneration Order.
30. In arriving at the above figure, the learned taxing officer took into account the consideration (purchase price) of the subject property thereby arriving at a figure of Kshs. 655,000/-. However, the learned taxing officer reasoned that upon considering proposal by the Applicant that the instruction fees be taxed at Kshs. 728,500/-, he opted to tax the above item at the proposed sum.
31. From the record, it is not in dispute that the taxing officer applied Schedule 1, Scale 1 of the Remuneration Order in assessing the instruction fees, thereby arriving at an initial figure of Kshs. 655,000/-. However, he departed from the established principles by opting to tax the instruction fees on the basis of the above figure proposed by the Applicant, rather than the figure resulting from computation of the subject property.
32. The First Scale to Schedule 1 provides that instruction fees are to be assessed upon consideration or the value of the subject matter. The standing legal position is that it is only when the value of the subject matter cannot be ascertained that a taxing officer is permitted to exercise his or her discretion in taxing the instruction fees. This position was laid down by the Court of Appeal in the case of *Peter Muthoka & another v Ochieng & 3 others* [2019] KECA 597 (KLR), cited in the Applicant's submissions, thus:

“ ...

“It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be



one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.

What we have said is in direct harmony with what this Court stated in *JORETH LIMITED -vs- KIGANO & ASSOCIATES* [2002] IEA 92,

“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 ascertainable the taxing officer is entitled to use his discretion to assess 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, and direction by the trial judge and all other relevant circumstances.”

33. Upon a consideration of the foregoing authorities, it is clear that in making his assessment, the learned taxing officer ought to have ultimately been guided by the relevant Schedule. It was not open for him to exercise his discretion in making a different assessment purely based on either parties' proposals. Drawing from the foregoing, I am satisfied that the learned taxing officer erred in assessing the instruction fees and for this reason, this court must interfere with the exercise of the discretion of the taxing officer.
34. This brings us to items 3 to 292 (correspondences). On its part, the Respondent sought various sums on the basis of perusals, drawings and service. The Applicant on its part opposed the same on the ground that a remuneration agreement subsisted between the parties. The taxing officer taxed off the amounts sought, upon reasoning that the same are not taxable under Schedule 1 of the Remuneration Order.
35. It is apparent that the learned taxing officer did not make any assessments under the aforesaid items which would require a setting aside of his decision. I therefore find no reason to interfere with the finding of the learned taxing officer in this regard.
36. On items 294 to 300 (disbursements), the Respondent sought various sums for valuation and related expenses, as well as typing, photocopying and related actions. By way of its submissions, the Applicant argued that the aforesaid items cannot be awarded under the Remuneration Order and should therefore be taxed off. In the end, the learned taxing officer, upon reasoning that the Respondent had a right to seek compensation for the expenses incurred under disbursements, and upon further taking into account the sum of Kshs. 883,400/- earlier paid by the Applicant in the course of the conveyancing transaction, assessed the disbursement costs at the drawn sum of Kshs. 1,736,000/-.
37. Upon a consideration of this issue, the court concurs with the reasoning by the Applicant, that the Respondent ought to have tendered documentation to support the averment that the latter incurred the costs sought therein and upon which it was entitled to a reimbursement. In the absence of any credible material to that effect, the court finds that the learned taxing officer had no basis for taxing costs under the said items.
38. For all the foregoing reasons therefore, it is imperative that the decision of the learned taxing officer must be interfered with. Consequently, the Chamber Summons Reference dated 28.02.2025 partially succeeds as follows:
 - i. The taxation ruling delivered by the Deputy Registrar on 4.10.2024 together with the resultant Certificate of Taxation be and are hereby set aside.



- ii. The Advocate's/Respondent's Amended Advocate-Client Bill of Costs dated 6.05.2024 shall be placed before a different taxing officer other than Hon. Eric Wambo (Deputy Registrar) for fresh taxation.
- iii. Costs of the Reference are awarded to the Client/Applicant.

39. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 26TH JUNE 2025.

S. N. MUTUKU

JUDGE

