



SM Onyango & Associates v Port Florence Community Hospital Limited & another (Civil Miscellaneous Application E022 of 2025) [2025] KEHC 11228 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL MISCELLANEOUS APPLICATION E022 OF 2025**

A MABEYA, J

JULY 30, 2025

BETWEEN

SM ONYANGO & ASSOCIATES APPLICANT

AND

PORT FLORENCE COMMUNITY HOSPITAL LIMITED 1ST RESPONDENT

JOSHUA ODONGO ORON 2ND RESPONDENT

RULING

1. By a Motion on Notice dated 15/4/2025, the advocate applied to set aside the decision of the taxing officer made on 1/4/2025 on a bill of costs dated 10/2/2025. The Motion was made under sections 45, 46 & 49 of the *Advocates Act* and Rules 11 and 79 of the Advocates Remuneration Rules.
2. The grounds for the Motion were set out in the body thereof and the supporting affidavit of Joshua Odongo Oron sworn on 15/4/2025. These were that; the advocate-client's bill of costs was taxed at Kshs.3,767,030/-. That the applicant and the 2nd respondent had a retainer agreement on the chargeable fees. That the taxing officer was yet to issue reasons for her ruling on the taxation. That the taxation flouted the both the substantive and procedural law.
3. Although served, the advocate did not respond to the application. The applicant submitted that the bill was taxed on the basis of instructions fees of Kshs.200 million. That the principles governing taxation were not followed. The cases of Pphemchand Raichand Ltd & Another -vs- Quarry Services of East Africa Ltd & Another (citation not provided) and Ocean Commodities Inc & Others -vs- Standard Bank of SA Ltd & Others 1984 (3) SA 15(A) at 18 FCG were relied on in support of those submissions.
4. That the value of the subject matter was not indicated and was therefore unknown. That there were no novel issues that were raised in the suit as this was a banker borrower relationship. That instructions fees should have been Kshs.75,000/- and the entire bill Kshs.137,854/-. The applicant urged that the application be allowed.



5. I have considered the record. I have also considered the submissions on record. This is a reference. It is not clear how the sum of Kshs.200,000,000/- was arrived at as the value of the subject matter. There is evidence that certain amounts had been repaid from the loan advanced. In this regard, the amount advanced cannot be the value of the subject matter. The contestations of the applicant were not denied, controverted nor challenged. They remain to be the truth of the matter.
6. That being the case, the application was unopposed and is therefore allowed as prayed. The bill of costs dated 10/2/2025 is remitted back to be taxed by a different taxing officer.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

