



**Machio t/a Lilian Amere Machio & Company Advocates v
Kinoti (Commercial Miscellaneous Application E843 of 2023)
[2025] KEHC 12260 (KLR) (Commercial and Tax) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12260 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E843 OF 2023**

H NAMISI, J

AUGUST 29, 2025

BETWEEN

**LILIAN AMERE MACHIO T/A LILIAN AMERE MACHIO & COMPANY
ADVOCATES APPLICANT**

AND

RICHARD KINOTI RESPONDENT

RULING

1. This reference arises from an Advocate-Client Bill of Costs dated 22 September 2023, emanating from instructions by the Respondent to the Applicant to lodge an appeal against the decision made in Nairobi Civil Suit No. 122 of 2013. The Applicant sought a total of Kshs 2,563,260/=. On 17 May 2024, the Taxing Officer rendered her Ruling, and taxed the Bill at Kshs 281, 872.50.
2. Aggrieved by the decision, the Applicant filed the present Chamber Summons dated 13 June 2024, seeking the following orders:
 - i. Spent;
 - ii. That the findings and Ruling of the Taxing Officer delivered on 17 May 2024 on the Claimant/Applicant Bill of Costs dated 22 September 2023 be set aside, vacated and/or reviewed by the Honourable Court in their entirety;
 - iii. That the Honourable Court be pleased to assess the costs payable to the Applicant by the Respondent in considering the Applicant's Advocate-Client Bill of Costs dated 22 September 2023;



- iv. That in the alternative and without prejudice to the foregoing, this Honourable Court be pleased to order that the Applicant's Bill of Costs be re-taxed afresh by a different Deputy Registrar with appropriate directions in respect of items 1, 2, 3, 4, 6, 14, 20 and 27 thereof, the Taxing Officer having committed errors of principle, omission and law which affect the taxation of the entire Bill;
 - v. That the Honourable Court be pleased to order the costs of this Application as well as in the contested Bill of Costs be borne by the Respondent;
 - vi. That this honourable Court be and is hereby pleased to make any other order(s) as it may deem fit in the circumstances and interests of justice
3. In her Supporting Affidavit, the Applicant avers that after the Ruling was rendered by the Taxing Officer, she filed a Notice of Objection raising an objection with respect to the manner in which items 1, 2, 3, 4, 6, 14, 20 and 27 were taxed off, an omission with respect to items 3 and 6 which had been left out of the Ruling as well as the general computation of the amount awarded and requesting reasons for the decision, in accordance with the requirements under Rule 11(1) of the Advocates Remuneration Order, 2014. It is the Applicant's case that the Taxing Officer committed various errors in principle, omission and computation as well as erring and misdirecting herself on legal and factual issues before her.
 4. The Applicant avers that the Taxing Officer failed to consider the nature of the pleadings filed in the Court of Appeal matter as well as appreciating the length and complexity of the matter, which consideration would have assisted the Court in making a just determination with respect to the Bill of Costs. According to the Applicant, the Taxing Officer abused her discretion and misdirected herself on the subject matter value for purposes of instruction fees by basing her award on the Respondent's submissions instead of considering the Applicant's written submissions, which would have assisted the Court in understanding that the matter in the Court of Appeal was with respect to the Respondent instructing the Applicant to appeal orders issued by the High Court that had excluded him from participating in a partnership valued at Kshs 109,716,673/=.
 5. The Applicant takes issue with the Ruling because the Taxing Officer did not mention therein that she had considered the Applicant's submissions or authorities in arriving at her decision. The Applicant contends that had the Taxing Officer taken into account the Applicant's submissions and authorities, particularly with regard to item 1, being instruction fees, the Taxing Officer would have arrived at a different conclusion. In failing to take these into account and wholly relying on the Respondent's submissions, the Taxing Officer misdirected herself on the matter, thus arrived at an incorrect conclusion. The Applicant argues that taxing off Kshs 1,449,600/= by the Taxing Officer did not take into account the quality and quantity of the work done by the Applicant, who was instructed to secure and defend the Respondent's interests in the partnership.
 6. Further, the Applicant avers that the Taxing Officer erred in completely omitting items 3 and 6 from her final computation, without any justification thereof. The Taxing Officer also erred in principle by giving a global figure with respect to the copies made of Kshs 119,075, and thereafter taxing off Kshs 35,625/= despite the Bill of Costs clearly itemizing each instance where the Applicant had to make copies.
 7. The Applicant takes issue with the arithmetic calculations in tallying the amounts enumerated in the Bill of Costs, which errors, the Applicant avers, led to incorrect increase by 50% of the Bill as per Part B and ultimately, the incorrect final figure.



8. In his response, the Respondent urges this Court to uphold the Ruling of the Taxing Officer, which he avers was properly taxed and in line with the Advocates Remuneration Order. The Respondent avers that the appeal, the subject of the Bill of Costs, was an interlocutory appeal against the ruling of the High Court, in an interlocutory application for injunctive orders. Parties proceeded with the main suit in the High Court and when the matter was finally determined, the appeal at the Court of Appeal was withdrawn.
9. It is the Respondent's contention that the Taxing Officer has provided reasons in her Ruling and the fact that the Applicant does not agree with them does not erase or invalidate them. Regarding the instruction fees, the Respondent argues that whereas the value of the partnership which was the subject matter of the primary suit was directly in issue in High Court Commercial Suit NO. 650 of 2015, the subject matter of the interlocutory appeal was the High Court's denial of the injunctive orders. As such, the Taxing Officer was right not to calculate the appeal instruction fees on the value of the main suit.
10. The Respondent observed that the Applicant has failed to disclose that the Bill of Costs arising from the main suit has since been taxed against the Respondent vide HC Misc Application NO. E379 of 2023, where the Applicant's instructions fees was calculated against the Respondent's share of the partnership, being Kshs 33 million. It is the Respondent's argument that applying the same value to the instruction fees for the interlocutory appeal is tantamount to double charges and unjust enrichment on the part of the Applicant.
11. The Respondent states that arithmetic errors ought to be grounds for review and not for reference.
12. Parties canvassed the application by way of submissions.

Analysis and Determination

13. I have carefully considered the Application, responses and the submissions herein. It is well established that the High Court's jurisdiction to interfere with a Taxing Officer's decision is limited. The Court will not ordinarily interfere with the exercise of discretion by a Taxing Officer unless it is demonstrably shown that the decision was based on an error of principle, or that the fee awarded was so manifestly excessive or low as to compel interference. One of the key principles guiding the interference is error of principle, which occurs when the Taxing Officer takes into account irrelevant factors, omits to consider relevant factors or misapplies the law. This position was enunciated in the cases of *First American Bank of Kenya vs Shah & Others* [2002] EA 64; *Kipkorir, Tito and Kiara Advocates -vs- Deposit Protection Fund Board* [2005] eKLR and *Kamunyoru & Company Advocates -vs- Development Bank of Kenya* [2015] eKLR. A failure to ascertain the correct subject matter or to ascribe the correct value to it is a classic example of an error of principle.
14. The second principle is manifestly excessive or low awards. While the determination of quantum is primarily within the Taxing Officer's domain, an award that is so disproportionately high or so inordinately low as to occasion an injustice to one party or the other may, by its very nature, lead to an inference that an error of principle occurred. This position finds support in the cases of *Republic -vs- Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'Njuguna & 6 Others* [2006] eKLR; *Premchand Raichand Ltd & Anor -vs- Quarry Services of E. A Ltd & Anor* [1972] EA162 and *Thomas, James Arthur -vs- Nyeri Electricity Undertaking* EA 92.
15. A third principle is judicial discretion, which must be exercised fairly, reasonably and not capriciously or arbitrarily. The reasons underpinning the decision must be cogent, transparent, and specifically detail the factors considered in arising at the assessed sum. (See *Republic -vs- Minister for Agriculture*



& 2 Others ex parte Samuel Muchiri W’Njuguna & 6 Others eKLR and DK Law Advocates -vs- Zhong Gang Building Material Co Ltd & Anor [2021] eKLR)

16. If an error of principle is identified, the normal practice is to remit the Bill back to the Taxing Officer or another Taxing Officer for reassessment, accompanied with appropriate directions. (see *Joreth Ltd vs Kigano & Associates* [2002] 1 EA 92)
17. The core of the present dispute centres on instructions fees. The Applicant contends that the subject matter of the appeal was an application against injunctive orders that precluded the Respondent from participating in a partnership that was valued at Kshs 109,716,673/=. The Applicant submits that the judgement of the High Court (Commercial Suit No 650 of 2015), which ultimately led to the withdrawal of the appeal, provided sufficient context for the ascertainable value of the partnership.
18. Conversely, the Respondent maintains that the Taxing Officer correctly applied Schedule 6(a) of the Advocates Remuneration Order, which provides for a minimum fee of Ksh 25,200/= for appeals where the subject matter is not otherwise provided for. The Respondent argues that the subject matter of the Appeal was distinct from the main suit. Furthermore, the appeal was withdrawn and not settled on its merits.
19. In *Peter Muthoka & Anor -vs- Ochieng and 3 Others* [2019] eKLR, the Court of Appeal held that the basis for determining subject matter value for instruction fees, whether from pleadings, judgement or settlement, is disjunctive and depends entirely on the stage of the case. The Court emphasised that it is only where the value is neither discernible or determinable from these specified sources that the Taxing Officer is permitted to exercise discretion.
20. In the present matter, the appeal was an interlocutory appeal specifically directed against injunctive orders. It was subsequently withdrawn because the main suit, HCCCOMM No. 650 of 2015, was settled and judgement rendered therein. Although the judgment in the main suit determined the value of partnership and the Respondent’s share therein, the appeal itself did not result in a judgement or settlement that ascertained a monetary value for the injunctive orders it sought to challenge. The subject matter of the appeal was the High Court’s denial of injunctive orders, not the intrinsic value of the partnership itself.
21. The case of *Eastland Hotel Ltd -vs- Wafula Simiyi & Company Advocates* eKLR reinforces the necessity of identifying the subject matter in dispute in order to determine the instruction fees. In this instance, the subject of the appeal was an injunction, which is a procedural relief, not the underlying partnership’s value. In the case of *Daniel Toroitich arap Moi -vs- Mwangi Stephen Murithi & Anor* eKLR held that submissions do not constitute pleadings or evidence for the purpose of determining subject matter value.
22. The case of *DK Law Advocates -vs- Zhong Gang Building Material Co Ltd & Anor* [2021] eKLR cited by the Applicant involved a settlement that determined a specific monetary value, which was then directly used to calculate instruction fees. This case is distinguishable from the current one, where the interlocutory appeal was withdrawn due to a separate main suit settlement.
23. The nature of interlocutory appeals, particularly those concerning injunctive orders, is distinct for taxation purposes. The Applicant seeks to connect the instruction fees for the interlocutory appeal to the substantial financial value of the main suit’s subject matter. However, the appeal was lodged specifically against injunctive orders. An injunction, by its very nature, aims to preserve status quo or prevent a particular action, and its direct monetary value is often not ascertainable from the pleadings or the outcome of the interlocutory application itself. The appeal’s conclusion was withdrawn due to the resolution of the main suit. Since the appeal did not conclude with a judgement or settlement that



quantified its specific subject matter, and its pleadings did not state a value, then the Taxing Officer's decision to treat it as a case where the value is not ascertainable and apply the minimum scale under Schedule 6(a) is legally sound.

24. It is, therefore, the finding by this Court that there was an agreement between the Applicant and the Respondent. I find no merit in the Application dated 13 June 2024 and the same is dismissed with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicant: Ms. Ndege h/b Ms. Machio

Respondent: Ms. Karwitha

Court Assistant: Lucy Mwangi

