



**Mwangangi & Co Advocates v Mbaabu (Miscellaneous Application E009 of 2023) [2024] KEELC 5366 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5366 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
MISCELLANEOUS APPLICATION E009 OF 2023**

**A NYUKURI, J**

**JULY 10, 2024**

**IN THE MATTER OF A TAXATION DECISION DATED 15/12/2022  
IN MACHAKOS ELC MISC. APPLICATION NO. E022 OF 2021 AND IN  
THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SCHEDULE 5 OF THE ADVOCATES  
(REMUNERATION) (AMENDMENT) ORDER, 2014 AND RULES 7,  
11 (1) & (2) & 13A OF THE ADVOCATES (REMUNERATION) ORDER**

**AND**

**IN THE MATTER OF LAND REFERENCE NUMBER 7885/17**

**BETWEEN**

**MWANGANGI & CO ADVOCATES ..... APPLICANT**

**AND**

**ANGELLINA MUENI MBAABU ..... RESPONDENT**

**RULING**

**Introduction**

1. Before court is an appeal against the decision of the taxing officer made on 15<sup>th</sup> December 2022, in Machakos ELC Misc. Appl. E022 of 2021, presented by way of a chamber summons dated 25<sup>th</sup> January 2023 filed by the advocate/applicant against the client/respondent seeking for the following orders;
  - a. Spent
  - b. Spent
  - c. Spent



- d. That the decision dated 15/12/2022 in the said Machakos Misc. Application No. E022 of 2021 be set aside or vacated for being erroneous on principle, law and the facts of the case regarding the finding of the taxing officer on;
    - i. The nature of the legal services rendered to the respondent by the applicant in relation to LR No. 7885/17 which gave rise to the bill of costs herein and her award on instructions fees therefor under item No. 1 on the bill of costs;
    - ii. The matter of the value of LR No. 7885/5 whose registration gave rise to the matters herein;
    - iii. The awards on item Nos. 1, 4, 18 29, 33, 44, & 48 of the bill of costs;
    - iv. The purported security and disbursements allegedly paid by the respondent on the registration of a title for the said L.R No. 7885/17;
    - v. The interest chargeable on the Applicant's costs;
    - vi. The issue of storage charges for the certificate of title and related documents for the said L.R No. 7885/17.
  - e. That in the interest of justice and on the basis of the overriding objective principle, this honourable court be pleased to assess the costs lawfully payable to the applicant on the bill of costs herein by determining the issues raised under prayer 4 a- g above and in alternative the bill of costs be expeditiously re-taxed by a different taxing officer on the said issues in prayer 4 a – g above upon appropriate directions of this honourable court.
  - f. That this honourable court do issue such other/further orders as it may deem fit to issue for a just and expeditious disposal of the application to serve the ends of justice in the circumstances herein.
  - g. That the costs hereof be borne by the respondent
2. The application is premised on the affidavit sworn by the applicant and grounds on its face. The applicant's case is that in 2016 the respondent instructed her to register title in the respondent's name regarding deed plan 395150 in regard to LR. No. 7885/17 measuring 3.25 hectares (8.03 acres) situate in Athi River in Lukenya area along Nairobi-Mombasa road, being a subdivision of LR. No. 7885.
  3. She faulted the decision of the taxing officer arguing that the same was unreasonable, unjust, and not founded in principle, law and facts citing the following reasons;
    - a. Erred on principle thereby arriving at decisions that are contrary to the applicable law and the facts of the case and also contradictory to and/or are unsupported by her own findings on the race or the said ruling;
    - b. Erred in law and fact by misapprehending or failing to appreciate the nature of the legal services rendered by the applicant to the respondent on account of the said LR No. 7885/17;
    - c. Misapprehended and misapplied the principles and law of taxation on the nature of the legal services rendered by the applicant to the respondent of a first registration of a Title for the said LR No. 7885/17;
    - d. Failed to correctly apply the principles and formula provided for in Schedule V of the [Advocates \(Remuneration\) \(Amendment\) Order, 2014](#) for assessing the instruction fees under Item No. 1;



- e. Erroneously applied the provisions of Schedule V of the *Advocates (Remuneration) (Amendment) Order*, 2014 when assessing the fees under Item Nos 4, 18, 29, 33, 44 & 48 of the Bill of Costs and awarded lesser amounts than is provided for in the Schedule without giving reasons for the diminished awards;
  - f. Erred in law and fact by failing to exercise properly and judiciously or at all, the powers and discretion given to her under Part II paragraph 1 of Schedule 5 of the *Advocates Remuneration Order* and Rule 13A of the *Advocates (Remuneration) Order* and the law on taxation generally for a just determination of the matter thereby making erroneous findings to the great prejudice of the applicant;
  - g. Erred in law and fact by failing to apply her mind properly on the Bill of Costs, the documentary evidence and submissions of the applicant and by allowing herself to be influenced by information from the respondent which is non-factual and misleading even on its face;
  - h. Misapprehended and misapplied the law under Rule 7 of the *Advocates Remuneration Order* on the interest payable to the applicant on the Bill of Costs;
  - i. Misapprehended and grossly misdirected herself on the principles and law as enunciated in the authorities or misapplied the authorities on the matters before her thereby arriving at erroneous decisions;
  - j. Erred in law and fact by failing to consider relevant facts and taking into consideration irrelevant facts which resulted in a decision which is not founded on the law and facts of the case;
  - k. Erred in law, principle and fact by taxing of the Bill of Costs at Kshs. 774,437/40 and in finding that the respondent had paid the applicant in excess of Kshs. 64,239/01, the two being erroneous both on account of the matters under 5 a – k above and on the awards that the Taxing Officer made on various items of the Bill of Costs;
  - l. Erred in law and fact by deviating from principle, law and the facts of the matter before her thus awarding the applicant costs which in all the circumstances of the case were manifestly disproportionate to the legal services rendered to the respondent by the applicant was unreasonable and so inordinately low as to amount to substantial oppression and injustice to the applicant and a mockery of legal practice.
4. She attached her bill of costs; schedule of documents; several affidavits and their respective annexures; submissions; deed plan; certificates of title; preliminary objection and ruling; court order; applicant's letter and court receipt; ruling of taxing officer; and application in several matters touching on the subject matter herein.

**The reference is opposed**

5. The respondent filed grounds of opposition dated 18<sup>th</sup> March 2023. She stated that the applicant was guilty of non disclosure of material facts including that the parties had agreed on how to settle the question of costs and that the applicant had made a professional undertaking to be bound by the taxing officer's decision. Further that the applicant benefitted from the undertaking as she was given security and therefore under the doctrine of equitable estoppel, she was precluded from filing this reference. She stated that she had since filed Machakos Misc. Application No. E003 of 2023 seeking to enforce the professional undertaking issued by the applicant, hence this reference amounts to breach of honesty



and ethical standards and the same is an afterthought. She maintained that the taxing officer considered all the items before her and that she duly exercised her discretion in determining the applicant's bill of costs and therefore the applicant's challenge thereon was unjustified.

6. The reference was disposed by way of written submissions. On record are submissions filed by the applicant dated 24<sup>th</sup> April 2023. As the submissions placed on the file by the respondent were not signed, dated or filed, the same do not form part of the court record and are disregarded accordingly.

### **Applicant's submissions**

7. The applicant relied on the case of *Vipul Premchand Haria v Kilonzo & Company Advocates* [2020] eKLR and submitted that in taxation of bills of costs, the taxing officer exercises discretion which ought to be properly, reasonably and judiciously done. She further contended that a higher court has jurisdiction to interfere with exercise of discretion by a lower court whenever it is necessary.
8. On whether the taxing officer appreciated the nature of the work done by the applicant, the applicant argued that the taxing officer failed to appreciate the nature of work done and that the taxing officer was wrong in finding that the applicant was instructed to register by transmission the title in the respondent's name. The applicant took the position that the transfer by transmission to administrators would be what can be referred to as ordinary transfer, however the transfer to an heir to obtain a new title where none previously existed cannot be said to be ordinary. She maintained that that task called for more diligence, responsibility and industry on the part of the applicant than is required in ordinary transfer by transmission, as she needed to coordinate with many offices including the Survey of Kenya, Land Secretary and Chief Land Valuer, Kenya Revenue Authority, Land Control Board, County Government and National Land Commission to obtain among others deed plan, payable stamp duty and rent and relevant consents.
9. She maintained that the brief involved land which is of great importance and interest to the respondent. The applicant argued that by failing to appreciate the subject matter the taxing officer fell into an error of principle hence the instruction fees awarded was not commensurate with the work done. She submitted that the taxing officer's holding that it was not disputed that the work done by the applicant was in respect to transfer by transmission was a misdirection as the applicant ensured first registration and not registration by transfer.
10. It was also contended by the applicant that the taxing officer failed to find that the value of the subject matter was ascertainable and further failed to exercise the powers under Rule 13A of the *Advocates Remuneration Order* 2014. She argued that the taxing officer acted erroneously by failing to mention the agreement produced by the applicant showing the value of the adjacent property. Reference was made to the case of *Joreth Limited v Kigano & Associates* [2002] 1 E.A 92 for the proposition that the value of the subject matter is ascertained from the pleadings, judgment or settlement. She also submitted that she listed the value of the subject matter as Kshs. 152,584,250/= and that the award of Kshs. 500,000/= for instruction fees amounted to an error of principle.
11. The applicant further submitted that she had invited the taxing officer to order a valuation, if the value of the subject matter is contested. She argued that in finding that the value of the subject matter was unascertainable and failing to invoke provisions of Rule 13A of the *Advocates Remuneration Order*, the taxing officer fell into an error of principle. To buttress this position, she referred the court to the case of *Orieno Ragot & Company Advocates v Kenya Airports Authority* [2015] eKLR among others.
12. It was further argued by the applicant that the taxing officer fell into error of principle by failing to consider the value of the subject matter on the premises that under Schedule 5 of the *Advocates Remuneration Order*, there is no scale to calculate instruction fees.



13. The applicant maintained that the taxing officer failed to apply principles under schedule 5, failed to take into account relevant matters and took into account irrelevant matters as she failed to take into consideration the care and labour applied, the number of papers to be perused, nature and importance of the matter, value of subject matter, interest of the parties, complexity of the matter and other circumstances of the matter. She placed reliance on the case of *D.K. Law Advocates v Zhong Gang Building Material Co. Ltd & Another* [2021] eKLR for the proposition that a judge will interfere with the taxing officer's discretion where the latter's decision is premised on an error of principle among such errors being failure to take into account relevant matters or taking into account irrelevant matters.
14. Regarding Paragraph 7 of the *Advocates Remuneration Order*, the applicant submitted that the taxing officer misapprehended and misapplied the same in awarding interest on costs. She contended that she had demonstrated that she had served the respondent with fee notes on 8<sup>th</sup> December 2020 and that the respondent had made an admission in January 2018 of receiving fee notes, when the respondent contested the brief. The applicant argued that rule 7 provides for 14 % per annum from the delivery of the bill of costs. She relied on the case of *Otieno Ragot & Company v Kenya Airports Authority* (*supra*) and submitted that the taxing officer fell into an error when she held that interest runs from one month after service of certificate of taxation.
15. It was also submitted by the applicant that the taxing officer fell into error in making diminished awards in regard to items 4, 18, 29, 33, 44 & 48. She placed reliance on the case of D.K. Law Advocates (*supra*) and submitted that a taxing officer ought to disclose the basis.
16. The applicant also argued that the taxing officer relied on the respondent's unsubstantiated claims to discount the taxed amount with an alleged deposit allegedly made by the respondent.
17. Regarding storage charges, the applicant submitted that she was entitled to storage charges as she held title for LR. No. 7885/17 on account of the respondent's deliberate failure to pay legal fees, and that the respondent been informed in writing of the said charges.
18. In response to the grounds of opposition, the applicant submitted that a certificate of costs is only final if it is not set aside. She argued that the response to the reference was a deliberate misrepresentation of facts and law. She relied on the case of *Vishva Stone Suppliers Company Limited v RSR Stone* [2006] eKLR and argued that the reference was filed in good faith and in the exercise of a constitutional and non derogable right of being heard in appeal. Regarding the professional undertaking, the applicant submitted that the same was premature and meant to circumvent this reference. That courts can set aside a taxation and therefore a taxation cannot be said to be complete where there is a reference.

### **Analysis and determination**

19. The court has carefully considered the reference, the grounds of opposition and the submissions filed by the applicant. The issue for determination is whether there is sufficient material presented by the applicant to justify interference with the decision of the taxing officer.
20. It is trite that taxation of bills of costs is an exercise of discretionary power by the taxing officer and that discretion must be exercised judiciously. Therefore this court will not ordinarily interfere with the taxing officer's exercise of discretion merely on the basis that the award is too low or too high, unless it is demonstrated clearly that the decision on taxation was clearly wrong due to a misdirection by failure to take into consideration relevant matters or taking into consideration irrelevant matters or that the awarded sum is manifestly excessive or too low to justify a conclusion that it was based on an error of principle.



21. In the case of *First American Bank of Kenya v Shah & Others* [2002] 1 EA 64, the court held as follows; 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. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the *Advocates (Remuneration) Order* itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. ....if the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment...A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved.
22. In the instant case, in disputing instruction fees, the applicant's first grievance is that the taxing officer failed to appreciate the nature of the brief, which was to obtain a first registration into the respondent's name of title LR No. 12648/149 and that the taxing officer was wrong to state that this was an ordinary transfer by transmission, hence failed to find that the matter was a complex one.
23. Paragraph 5 of the *Advocates Remuneration Order* provides for special fee for exceptional importance and complexity as follows;
- Special fee for exceptional importance and complexity
1. In business of exceptional importance or of unusual complexity an advocate shall be entitled to receive and shall be allowed as against his client a special fee in addition to the remuneration provided in this Order.
  2. In assessing such special fee regard may be had to—
    - a. The place at or the circumstances in which the business or part thereof is transacted;
    - b. The nature and extent of the pecuniary or other interest involved;
    - c. The labour and responsibility entailed; and
    - d. The number, complexity and importance of the documents prepared or examined.
24. I take the position that a party alleging complexity bears the burden of proving the same. And in that regard, my view is that where an advocate alleges complexity of a brief, they must, with specificity, demonstrate elements of the brief that constitute complexity and how that complexity has constrained them to apply time-consuming industry in dealing with the matter. I think that the question of complexity is not merely on the volume of documents involved, or the value of the subject matter, or the journeys made in the course of working on the brief, but also includes the labour and industry involved in executing the client's instructions and the difficulty and the novelty of the matter.
25. In the case of *Republic v Minister for agriculture & 2 others Ex Parte Samuel Muchiri W'Njuguna & 6 others* [2006] eKLR the court held that a party claiming complexity must specify the complex elements in the proceedings, including the nature of forensic responsibility placed on counsel and if there is novelty in the proceedings, it must be conscientiously identified and where there was deployment of considerable inordinately time consuming industry, the details of such circumstances must be clearly described.



26. The applicant's argument is that the brief was complex because she was required to start from a point where LR. No. 7885/17 did not exist and had to work to create a new title and that it was laborious and time consuming task requiring the applicant to coordinate with various offices including the survey of Kenya, Land Secretary, Chief Land Registrar, and National Land Commission among others.
27. On the question of complexity, the taxing officer found that the brief was not complex, as the only tedious work was the follow up with government agencies.
28. From the history of this matter, it is clear that the respondent is one of the heirs of her late father Peter Mikya Kakenyi (deceased). A succession cause was filed and concluded and a certificate of confirmation of grant dated 4<sup>th</sup> June 2016 issued in Nairobi HCC Succession Cause No. 1657 of 2011, wherein the respondent/client was awarded 8 acres to be excised from parcel No. 7885. Therefore, the applicant's brief was to obtain registration into the respondent's name her share of her late father's estate from LR No. 7885. As the brief started after confirmation of grant, the applicant was tasked with preparing relevant applications, obtaining relevant consents and subdivision and presenting the relevant transfer instrument and other attendant documents for registration to the relevant government offices. I have considered the particulars of the bill of costs and the documents perused and prepared, and I find nothing therein to demonstrate complexity. While it is true that the applicant made several trips to relevant government offices, the same have been accounted for in her items on travel. In addition, the applicant has not specified which part of her instructions presented complexity, difficulty or novelty. The transfer of LR. 7885/17 to the respondent being property from the estate of her late father is by way of transmission, and the fact that the transfer is preceded by a subdivision of the mother title does not change that fact. For those reasons, I find and hold that the brief was not complex and the taxing officer was right to state as much.
29. On the question of the value of the subject matter, it is not in dispute that the brief to the applicant was in regard to a non-contentious matter. Therefore, the applicable legal provision is Schedule 5 of the *Advocates Remuneration Order*. Under that schedule, an advocate has two options; either to base his or her taxation on an agreed hourly rate or use the alternative method of assessment under Part II. In the instant matter, there was no agreed hourly rate and therefore, the applicable provisions is Part II of schedule 5.
30. On instruction fees, Paragraph 1 of Part II of Schedule 5 provides as follows;
- Instructions
- Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule.
31. While paragraph 1 of Part II of Schedule 5 of the *Advocates Remuneration Order* requires the taxing officer to consider the value of the subject matter in assessment of instruction fees, there is no scale provided in regard to the value of the subject matter. Therefore, the taxing officer is expected to take into account the value of the subject matter in awarding instruction fees notwithstanding the fact that there is no scale.
32. It is not in dispute that the exact value of the subject matter has not been given by the parties. The applicant faulted the taxing officer for not invoking Paragraph 13A of the *Advocates Remuneration Order* by failing to order valuation of the property involved. Paragraph 13 A provides for the power of the taxing officer as follows;



## Powers of taxing officer

For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.

33. I agree with the applicant's submissions that the taxing officer has power to order a valuation of property under the above provision. However, that power can only be invoked where the taxing officer is properly moved. A party who wishes to obtain orders of valuation of property must file an application before the taxing officer for the latter to order such valuation where the application is merited. This ought to be done before the bill of costs is taxed.
34. In the instant case, the applicant stated in her bill of costs that if the value of the subject matter is contested, then the taxing officer ought to order a valuation. My view is that a bill of costs is not an application upon which the taxing officer can invoke his or her powers under paragraph 13A of the [Advocates Remuneration Order](#). A taxing officer cannot be moved for such an order through a bill of costs. Matters stated in the bill of costs are those that the taxing officer ought to consider while taxing the costs, but cannot be the basis for exercising his or her jurisdiction under Paragraph 13A of the [Advocates Remuneration Order](#). Therefore, in the circumstances of this case the applicant cannot fault the taxing officer for failure to order valuation of the property involved, when she did not move the taxing officer accordingly.
35. On the value of the subject matter, Paragraph 21 of the [Advocates Remuneration Order](#) provides how to calculate scale charges as follows;
- Scale fees: how calculated
- In the calculation of scale charges the basis of charge shall unless otherwise provided in the Schedules, and irrespective of the number of titles involved or documents required to be prepared or approved, be the sum set forth in the deed or document as the price or consideration or, if no price or consideration or only a nominal price or consideration is set forth, the value of the subject matter affected by the deed, which shall be deemed to be—
- a. The value fixed for the purpose of stamp duty; which failing;
  - b. The sum at which the property affected has last been passed for estate duty; which failing;
  - c. The last price at which a sale has taken place within ten years from the date of the transaction; which failing;
  - d. The estimated average market value during the preceding three years.
36. Therefore, in non contentious matters where the subject matter value is not expressly stated, like in this case, the taxing officer can apply the above provisions to arrive at the value of the subject matter by considering the stamp duty, failing; the sum passed for the property for estate duty, failing; the last price of the property within ten years, failing; an estimation of the average market value of the property.
37. I have considered the documents produced by the applicant and the applicant does not provide any document that disclose the value of the subject matter. What the applicant presented was a sale agreement for the neighbouring property for Kshs. 19 million per acre, which was countered by the respondent's sale agreement for another nearby property for Kshs. 16.8 million per acre. Therefore, as there was no evidence of the value on stamp duty, estate duty value, the last price of the sale; the taxing master was at liberty to use the available evidence to arrive at an estimated average market value of the



subject matter during the preceding three years. From the evidence and for the above reasons, I find that the value of the subject matter was ascertainable by way of estimation as there was evidence of sale of adjacent properties made in 2016.

38. In view of the above, I agree with the applicant that the taxing officer fell into an error of principle in holding that the value of the subject matter could not be ascertained, since paragraph 21 of the *Advocates Remuneration Order* allows the taxing officer to make an estimation and as the parties had provided the acreage and situation of the property as well as values of adjacent properties, there was sufficient material before the taxing officer to enable her estimate the property's average market value in the preceding three years.
39. Considering that the parties presented two proposals for estimation being Kshs. 19 Million and 16.8 Million respectively, and the fact that instructions to the applicant were made in 2016, my estimation of the average market value for three years preceding 2016 for LR No. 7885/17 is Kshs. 14 Million per acre, which totals to Kshs. 112,000,000/= for the 8 acres.
40. The question therefore is whether in view of the estimated value of the subject matter being Kshs. 112,000,000/=: the award of Kshs. 500,000/= would be deemed as reasonable in all the circumstances of the case.
41. In view of the fact that under schedule 5 paragraph 2 of the *Advocates Remuneration Order*, the value of the subject matter is a relevant matter to be considered by the taxing officer, although no scale is provided for the same, it is my considered view that the award of Kshs. 500,000/= for instruction fees in respect of obtaining registration of LR No. 7885/17 measuring 8 acres situated along Mombasa road at Lukenya, was too low and it justifies the conclusion, which I hereby arrive at, that it was based on an error of principle. In my view, as LR No. 7885/17 had an estimated average market value as at 2016 of Kshs. 112,000,000/=: I award a sum of Kshs. 1,700,000/= as instruction fees.
42. On whether the taxing officer failed to properly determine items 1, 4, 18, 29, 33, 44 & 48, I note that the same are for attendance to the respondent and travelling between Mlolongo and Machakos (a distance of about 45 Kilometres). In paragraphs 12 and 13 of the ruling, the taxing officer explained the basis of his taxation stating that on attendance the applicant was entitled to Kshs. 1,000/= for every 20 minutes and Kshs. 2,500/= for every hour of travel. While the applicant gave varying hours, it is my view that an average of 3 hours for every travel is sufficient. In my view, the taxing officer's basis of taxation of those items was based on the provisions of Schedule 5. However, the computation was erroneous as she awarded between Kshs. 3,250/= and Kshs. 10,000/=: instead of an average figure of Kshs. 7,500/= for each travel.
43. On interest, paragraph 7 of the *Advocates Remuneration Order* provides as follows;  
An advocate may charge interest at 14% per annum on his disbursements and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided such a claim for interest is raised before the amount of the bill has been paid or tendered in full.
44. My understanding of paragraph 7 of the *Advocates Remuneration order* is that interest on costs is chargeable 30 days after service of the bill of costs, which bill ought to include a claim on interest.
45. In the instant case, the taxing officer granted interest after one month of service upon the respondent of the certificate of costs. The applicant challenged this position arguing that she should be granted interest from 2020 when the respondent alleged to have been made aware of the bill of costs. I have considered the respondent's further affidavit plus annexures thereto, which is relied upon by the applicant. The document the applicant relied on, is a letter dated 8<sup>th</sup> December 2020 by the applicant which referred to previous correspondence between the parties and mentioned costs due to



the applicant. In my view, that letter does not amount to a bill of costs capable of attracting interest contemplated under paragraph 7 of the [Advocates Remuneration Order](#). My understanding of the said provision is that entitlement to interest is pegged on non compliance by the client in 30 days after receiving service of bill of costs, which bill must include a claim on interest. Therefore, in such case, interest would start running from 30 days after the date of service of the bill of costs. Besides, the same bill served on the client should be the same that is filed before the taxing officer, to entitle the advocate to interest.

46. In this matter, the bill presented by the applicant for taxation is dated 28<sup>th</sup> May 2021. It is not possible that a bill drawn and dated in 2021 could have been served in 2020. In any event, no return of service was presented by the applicant to demonstrate when she served the said bill on the respondent giving her 30 days to settle the costs, before filing the same before the taxing officer. In the premises, I find and hold that there being no evidence of service on the respondent of the bill of costs filed in court, the applicant cannot claim for interest under paragraph 7 of the [Advocates Remuneration Order](#). Therefore, in the absence of evidence that the bill of costs was served before filing, the applicant cannot be entitled to interest before taxation. I therefore find no justification to interfere with the taxing officer's decision on interest.
47. On storage charges, it is not disputed that the title of the respondent was held as lien by the applicant, for non payment of legal fees. The applicant argued that she was entitled to storage charges because the respondent intentionally failed to settle costs and that she had been informed orally and in written that she would be liable to pay storage charges. In declining to award storage charges, the taxing officer found that although the same were charged as disbursements no receipts were produced to support that claim. Having considered the applicant's bill, it is clear that she sought storage charges for certificate of title, deed of assent and deed plan. Those are documents that came into her possession by dint of the brief which she held as lien pending payment of her fees.
48. The applicant has not referred the court to any provision in the [Advocates Remuneration Order](#) that entitles her to storage charges of documents placed in her possession pursuant to instructions given to her by the client and which she holds as lien for payment of her fees. The fact that the applicant informed the respondent that she was to pay storage charges, do not entitle her to charge that which is not provided for in the [Advocates Remuneration Order](#). In my view, I find no justification in law or equity for an advocate to charge storage charges for documents placed in her custody by dint of the instructions given by the client and which she holds as lien. Therefore, that claim is unjustified and is hereby rejected.
49. On the question of deposit/security paid, although the applicant stated that there was no evidence of payment of the same, the respondent demonstrated by way of cheque and RTGS for the payment of the stated amount. The applicant having failed to rebut that evidence, I accept the same as being the deposit paid.
50. In the premises, the reference succeeds, and the court sets aside the taxing officer's award of Kshs. 500,000/= on instruction fees and makes an award of Kshs. 1,700,000/=. In addition, the award in regard to items 4, 18, 29, 33, 44 & 48, is made in the sum of Kshs. 45,000/=. The total of the above figures attracts VAT at 16%. In the end, taking into account the deposit paid by the respondent being the sum of Kshs. 838,676.65/=:, the applicant's bill of costs dated 28<sup>th</sup> May 2021 is hereby taxed in the sum of Kshs. 1,264,669/=. Each party shall bear its own costs.
51. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 10TH DAY OF JULY 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**



**A. NYUKURI**

**JUDGE**

**In the presence of:**

**Mrs. Mwangangi for applicant**

**Ms. Murugi holding brief for Mr. Kakinga for respondent**

**Court Assistant – Josephine**

