



Wanyoike v District, Land Registrar, Murang'a & 4 others (Environment & Land Petition 1 of 2020) [2023] KEELC 16702 (KLR) (28 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16702 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND PETITION 1 OF 2020**

**LN GACHERU, J
MARCH 28, 2023**

BETWEEN

JOHN MWANGI WANYOIKE PETITIONER

AND

DISTRICT, LAND REGISTRAR, MURANG'A 1ST RESPONDENT

JAMES KIBE NJOROGE 2ND RESPONDENT

NJIBA NJOROGE 3RD RESPONDENT

PETER NJARAMBA MUGURO 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

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1. By a Chamber Summons Application dated September 22, 2022, the Petitioner/applicant sought for the following orders:
 1. That the decision of the taxing master on the 2nd, 3rd and 4th respondent's Bill of Costs dated May 28, 2022, delivered on August 9, 2022, be set aside and the Bill of Costs herein be referred back to a different taxing master with appropriate directions.
 2. Costs of the reference to the applicant.
2. The application is premised on the grounds stated on the face of it, and the supporting affidavit of John Mwangi Wanyoike, the applicant wherein who averred that the Taxing Master erred and made grave errors in calculating the Bill of Costs in the decision of August 9, 2022. That the Taxing Master failed to consider the value of the subject matter at Kshs.1,600,000/= when awarding instruction fees and getting up fees such that the amount was exorbitant and not supported by law. Further, that the



Taxing Master failed to appreciate the orders and the nature of the claim, hence arriving at a wrong decision. The applicant further averred that the amount awarded is unreasonable and prays that the Taxing Master's decision be set aside and the Bill of Costs herein be referred back to a different Taxing Master for taxation.

3. The 2nd, 3rd, and 4th respondents through their advocate Jeremiah Mbuthia, opposed the application vide a replying affidavit dated September 27, 2022, wherein he averred that the amount allowed by the Taxing Master was reasonable and not excessive. He also averred that item 1 on the Bill of Costs was well explained and that the Taxing Master exercised her discretion judiciously.
4. Further that the 2nd and 3rd defendants shared a Defence while the 4th defence was independent and hence the 2 instruction fees and getting up fees. Further, that the Petition sought Judicial Review by way of prerogative orders of certiorari and mandamus, and the costs of it are subject to distinct provisions of law. Lastly, that the matter proceeded by way of viva voce evidence and became a suit for that purpose, and thus the getting up fee was allowed.
5. It was contended that remitting the matter back to a different Taxing Master would be ineffectual, as the applicant has not placed specific objections to the items on the Bill of Costs. He urged the court to dismiss this Reference with costs.
6. The said Reference was canvassed by way of written submissions.
7. The petitioner/applicant filed his submissions through the Law Firm of R.M Njirani & Co. Advocates on February 17, 2023. It was submitted that the Bill of Costs ought to be set aside and referred back to a different Taxing Master. He relied on Rule 11 of the [Advocates Remuneration Order](#) which provides for objections to decisions over taxation.
8. Further, the petitioner/applicant submitted that the Taxing Master erred in her decision when she considered the Petition as complex, while it was not. In particular, the applicant submitted that the taxing master awarded Kshs 500,000/= to each head totalling Kshs. 1,000,000/=, while the Remuneration Order provides for Kshs 100,000/= all against a claim valued at Kshs. 1,600,000/=. Reliance was placed on the case of [KANU National Elections Board & 2 others v Salah Yakub Farah](#) (2018) eKLR, where the court stated as follows:

The scope of this application requires this court to be satisfied that the Taxing Master was clearly wrong before interfering with her decision. The quantum of such costs is to be what was reasonable to prosecute or defend the proceedings and must be within the remuneration order. The determination of such quantum is determined by the Taxing Master and is an exercise of judicial power, guided by the applicable principles.

It is a well-established principle of review that the exercise of the Taxing Master discretion will not be interfered with, unless it is found that he/she has not exercised his/her discretion properly, as for example, when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.”

9. Lastly, the petitioner/applicant submitted that the Taxing Master failed to exercise her discretion judiciously and awarded an exorbitant amount for no reason. He prayed that the Reference be allowed.
10. The 2nd, 3rd, and 4th respondents filed their written submissions through J.N. Mbuthia & Co. Advocates on February 20, 2023. They submitted that the Petition dated May 27, 2017, was elaborate, and it



sought three declarations and three orders all raising from serious and highly contentious points of facts and law, while the value of the subject matter being land parcel No. Loc 6/Muthithi/1147, was Kshs. 1,600,000/=. The respondents further submitted that the Petition herein composed of prerogative orders, which is a separate action in its own right, a fact the Taxing Master appreciated.

11. The respondents placed reliance on the case of *University of Nairobi v Moses* (Civil Appeal No 119 of 2020) (2022) KECA 45 eKLR, (4th February 2022) [judgement] wherein the Taxing Master's award was reduced from Kshs.4,000,000/= to Kshs.2,000,000/= and hence the instruction fees in the present case are modest and shows that the Taxing Master was mindful in keeping the costs on an even keel.
12. The respondents further relied on the case of *Rose Wangui Mambo & 2 others v Limuru Country Club & 15 others;- Federation of Women Lawyers (FIDA) & another (interested party)* (2020) eKLR, wherein the instruction fees was reduced from Kshs.4,911,791/= to Kshs.4,411,791/= on consideration of the complexity and intensity of work.
13. Lastly, the respondents submitted that the Item 1(b) in the Bill of Costs related to the 4th defendant, who had a separate defence from the 2nd and 3rd defendants and that there were separate instruction fees for the 4th defendant. The respondents also submitted that the applicant's assertion that the Taxing Master erred is false and prayed that this Reference should be dismissed with costs.
14. The court has considered the instant Reference, the pleadings in general, the written submissions, the impugned Ruling, the cited authorities, and the relevant provisions of law and finds the two issues for determination are:-
 1. Whether the taxing master exercised her discretion judiciously in determining the instruction fees and whether she applied the right principles in arriving at her decision.?
 2. Who should bear the costs of this application?
15. It is trite law that the court will only interfere with the decision of a taxing officer in cases where there is demonstration of an error of principle. In the case of *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, when similarly confronted, this Court expressed itself as follows:

On 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."
16. Rule 11 of the *Advocates Remuneration Order* makes provisions for an aggrieved party to file a Reference objecting to the decision of a Taxing Master. It states:
 - (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 his 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.
17. The procedure contemplated above is
- a. The aggrieved party issues a notice within 14 days on the items objected;
 - b. The Taxing Officer shall forthwith give reasons for his decision;
 - c. Upon receipt of the reason, the objector shall within 14 days file an application to the High Court setting out grounds for objection;
 - d. If dissatisfied with the High Court, the objector shall with leave of court appeal to the Court of Appeal.
18. The procedure above as provided carries a mandatory requirement. The court takes note of the fact that the petitioner/applicant has complied with all the requirements outlined in Rule 11 above. The court will then proceed to consider the Reference and determines whether it is merited or not.
19. The applicant is challenging the taxation of item No 1 on instruction fees, which was taxed at Kshs 1,000,000/=. He submitted that the suitable amount ought to be Kshs 100,000/= and argued that the taxation of Kshs 1,000, 000/= is excessive and unreasonable, considering that it was a normal Petition which was not complex.
20. The applicant is seeking for setting aside of the Order and Ruling of May 28, 2022. The principles of setting aside of the decisions of Taxing Master were well established in the cases of *Premchand Raichand Limited & another v Quarry Services of East Africa Limited and another* [1972] EA 162;- *First American Bank of Kenya v Shah and others* (2002) EA 64 and *Joreth Ltd v Kigano and Associates* (2002) 1 EA 92. These principles include;
- a. That there was an error of principle
 - b. The fee awarded was manifestly excessive or is so high as to confine access to the court to the wealthy
 - c. That the successful litigant ought to be fairly reimbursed for the costs he has incurred
 - d. That so far as practicable there should be consistency in the award.
21. There are two limbs herein which the court wishes to emphasize. First, in taxing an Advocate's Bill of Costs, the value of the subject matter must be ascertained a priori. Where the value of the subject matter of a suit is known or can be determined from the pleadings, judgment or settlement, the Taxing Officer has no discretion in assessing instruction fees. Therefore, in the present case, the court finds that the value of the subject matter stands at Kshs. 1,600,000/= and the taxing master had no discretion.
22. Secondly, the applicant has an issue with the instruction fees. It is trite that instruction fees are charged from the value of the subject matter. With this principle in mind, the issue for determination herein is whether, the Taxing Master rightly exercised her discretion in determining and calculating instruction



fees in the respondents Bill of costs dated May 28, 2022. In the case of *Joreth Ltd v Kigano & Associates* [2002] 1 E.A. 92, the Court addressed the issue thus;

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 so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

23. The Taxing Master in his ruling allowed instruction fees at Kshs. 1,000,000/= shared between two separate Defences for 3 distinct parties. The applicant submitted that the Remuneration Order provided for Kshs 100,000/= per Defence and the award was therefore excessive. The respondents averred that the fee awarded was sufficient due to the complexity and intensity of the work.

24. The court has considered everything in totality and finds that the Taxing Master ruling took into consideration that the advocate was tasked with preparing two separate Defences between the three parties. This is provided for under Rule 62 of the *Advocates Remuneration Order* which states:

Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other proceedings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate’s bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.”

25. Furthermore, this court finds that the Taxing Master correctly considered that there were two separate Defences, prepared by the advocate on behalf of the 2nd and 3rd respondents and the 4th respondent. That in addition to defending the Petition, the Advocate also responded to the prerogative orders, which fees are charged separately under the 6th Schedule of the *Advocates Remuneration Order*.

26. Therefore this court finds that the Kshs.500,000/= charged to defend the proceedings where a Defence or other denial of liability was filed together with the fees to oppose the application for the Prerogative Orders was within the discretion of the taxing master, who also considered the nature of the Petition, the complexity of the matter and value of the subject matter herein.

27. The Taxing Master must be guided by the principles governing taxation as was held in the leading case of *Premchand Raichand Ltd another v Quarry services of East Africa Ltd and another*. The principles laid out are that the instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal. Therefore, this court finds no reason to interfere with the Taxing Master’s decision as to instruction fees.

28. Lastly, is the issue of getting up fees. The court finds that the fees for getting up or preparing for trial follow from instruction fees. The *Advocates Remuneration Order* under Rule 2, provides that in any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fees for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation. This court will therefore not interfere with the getting up fee as it adheres to the rules.



29. Having considered, re-evaluated and analysed the Ruling and reasons for taxation by the Taxing Master, this court finds no reasons to interfere with Ruling dated May 28, 2022 as there was no evidence that the Taxing Master exercised her discretion capriciously or whimsically. This court finds that it would be unjust to interfere with the said discretion of the Taxing Master as sought by the applicant herein.
30. Consequently, the court finds and holds that the instant Chamber Summons Application, dated September 22, 2022, is not merited and the same is dismissed entirely with costs to the 2nd, 3rd and 4th respondents herein.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 28TH DAY OF MARCH, 2023.

L. GACHERU

JUDGE

In the presence of; -

Njonjo/Mwende - Court Assistants

Mr Njiraini for the Petitioner/applicant

1st respondent

2nd respondent Absent

3rd respondent

4th respondent

5th respondent

L. GACHERU

JUDGE

28/3/2023

