



**Kenya Electricity Transmission Company v Nyandoro & Co. Advocates (Environment and Land Miscellaneous Application E003 of 2024) [2025] KEELC 1392 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1392 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2024  
LC KOMINGOI, J  
MARCH 20, 2025**

**BETWEEN  
KENYA ELECTRICITY TRANSMISSION COMPANY ..... APPLICANT  
AND  
NYANDORO & CO. ADVOCATES ..... RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 15<sup>th</sup> January 2024 and Amended on 15<sup>th</sup> July 2024 under Order 11(3) and (4) of the *Advocates Act* (Remuneration) (Amendment) Order; Order 42 Rule 6(1) of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act* seeks orders:
  - i. Spent;
  - ii. Spent;
  - iii. This Honourable Court be pleased to vary and/or set aside the Deputy Registrar's ruling dated 13<sup>th</sup> December 2023 in respect to the Respondent's Bill of Costs dated 7<sup>th</sup> December 2022.
  - iv. This Honourable Court be pleased to refer the matter back for re-taxation of the Respondent's Advocate Client Bill of Costs, before a different taxing master if need be or to exercises its inherent jurisdiction and be pleased to re-tax the Plaintiffs Bill of Costs dated 7<sup>th</sup> December 2022 afresh and/or make proper directions thereof to save on judicial time.
  - v. The Honourable Court grants any other order it deems fit in the interest of justice.
  - vi. The costs of this Reference be provided for.
2. The grounds are on the face of the Notice of Motion and are set out in paragraphs a to e. It is also supported by the Affidavit of Walter Akwabi Chiboli advocate for the Applicant sworn on the 15<sup>th</sup> July 2024.



3. He avers that on 7<sup>th</sup> December 2022, the Respondent filed its Advocate Client Bill of Costs seeking Kshs. 748,042.90 for services rendered in Ngong’ CMELC No. 25 of 2019. Counsel claimed that before the filing of the Advocate Client Bill of Costs, the Respondent had received Kshs. 784,000 from the Applicant which they duly acknowledged and was undeserving of any extra remuneration. The Taxing Master then assessed the Costs and in a Ruling delivered on 18<sup>th</sup> December 2023, the Respondent was awarded Kshs. 717,642.12. Counsel claims that this award was an error in law and fact because:
  - i. The Taxing officer did not correctly apply the principles of taxation under Schedule 7 of the Advocates (Remuneration) Amendment Order by failing to determine fees payable based on the subject matter and then determine whether the Respondent was entitled to additional fees.
  - ii. The taxing Officer erred in principle by failing to give sufficient reasons on how instruction fees of Kshs. 250,000 was arrived at.
  - iii. The taxing officer erred and misdirected herself on the nature of the proceedings before pointing out that the proceedings were in respect to a straight forward claim for compensation for limited loss of use of land against the Applicant.
  - iv. The Taxing officer did not correctly apply the principles of taxation under Schedule 7 of the Advocates (Remuneration) Amendment Order and erred in awarding the Respondent the following items not under Schedule 7:
    - a. Item 2 – getting up fees of Kshs. 83,333.30
    - b. Item 3- Perusing 200 folios Kshs. 10,000
    - c. Items 4, 5, 6 and 75 – perusal and drafting Kshs. 54,180
    - d. Items 7, 12, 15, 20, 27 and 43 – attendance at the Registry Kshs. 500
  - v. The taxing officer erred in principle by awarding the Respondent Kshs. 2,100 for attendance on items 53 through to 57 whereas the law provides that the Respondent was only entitled to Kshs. 1,400 as per paragraph 6 of Schedule 7.
  - vi. The taxing officer erred in principle by awarding the Respondent Kshs. 5,000 for attendance on hearing dates contrary to paragraph 7(i) and (ii) of Schedule 7 of the Advocates Remuneration Order which provides that the Respondent was only entitled to Kshs. 5,000 for the first hearing and Kshs. 2,100 thereafter.
  - vii. The taxing officer erred in principle by tabulating the costs payable to the Respondent by subjecting getting up fees (not provided for under Schedule 7) and disbursements which is a separate item and increase by 50% and adding VAT on the same.
  - viii. for awarding the Respondent costs, getting up fees, perusal costs among other items not provided for in Schedule 7 of the Advocates Remuneration Amendment Order.
4. Counsel therefore prayed that the Ruling dated 13<sup>th</sup> December 2023 be set aside and the Bill of Costs dated 7<sup>th</sup> December 2022 be referred for re-taxation before a different Taxing Officer or the same be taxed by this Court.
5. The Respondent in its Replying Affidavit dated 16<sup>th</sup> February 2024 sworn by Ondeng Raymond opposed this application on the grounds that it lacked merit because the Applicant had not



demonstrated any error in part of the Taxing Officer and the Application should be dismissed with costs to the Respondent.

6. This application was canvassed by way of written submissions.

### **The Applicant's Submissions.**

7. On whether the taxing officer failed to correctly apply the principles of taxation under Schedule 7 of the Advocates Remuneration Order by failing to determine fees payable based on the subject matter and determining that the Respondent was entitled to additional fees, counsel submitted that the Applicant had already made payment of Kshs. 784,000 to the Respondent and it was therefore imperative for the Taxing Officer to determine whether the Respondent was entitled to the additional sum of Kshs. 717,642.12. Which counsel contested was an error and should be set aside because this additional amount was equivalent to unjust enrichment.
8. On whether the taxing officer misdirected herself in taxing the instruction fees as Kshs. 250,000 in absence of the subject matter, counsel abandoned this ground.
9. On whether the taxing officer erred and misdirected herself on the nature of the proceedings which was a simple and straightforward claim for compensation for limited loss of use, counsel submitted also withdrew this ground.
10. On whether the taxing officer failed to correctly apply the principles of taxation under Schedule 7 of the Advocates Remuneration Order by awarding getting up fees of Kshs. 83,333.30; perusing 200 folios at Kshs. 10,000; perusal and drafting at Kshs. 54,180 and registry attendance at Kshs. 500, counsel submitted that Schedule 7A and B of the Advocates Remuneration Order does not provide for getting up. And getting up is only chargeable under Schedule 6 which was not applicable to this matter. Therefore Kshs. 83,333.30 was wrongly awarded and should be set aside.
11. Counsel also submitted that costs for drawing of pleadings/ correspondence to clients, service of the correspondence, perusals, making copies and receiving summons were also items not applicable under Schedule 7 and should be set aside for being erroneously granted. Counsel also submitted that Registry attendance was also not a cost chargeable adding that the Respondent ought to have presented actual travel costs to justify the costs which was not done and should also be set aside. Reference was made to *Dacha (suing as the Administratrix of the Estate of James Romanus Dacha- Deceased) vs Opiyo & 3 others [2024] KEELC 6875 (KLR)* where the Court disallowed getting up fees, drawing, perusal and disbursements not proved.
12. On whether the taxing officer erred in awarding the Respondent the sum of Kshs. 2,100 on items 53 to 57 instead of Kshs. 1,400 and in awarding Kshs. 5,000 for hearing instead of Kshs. 2,100, counsel submitted that Kshs. 5,000 should only be awarded for the first hearing and all other attendant hearings should be Kshs. 2,100 and all mentions should be Kshs. 1,400. Counsel also submitted that attendance fees under Schedule 7 are constant and the issue of hourly rate was not only not supported but also exorbitant. Therefore, this error should be remedied.
13. Counsel also submitted that all the unchargeable costs under Schedule 7 were later increased by 50% and VAT added which was an error that should equally be set aside as prayed.

### **The Respondent's Submissions**

14. Counsel submitted the following as the issues for submission.



15. On whether the Chamber Summons application was merited, Counsel submitted that the application unmeritorious and did not grant reasons for the setting aside of the award because the items were taxed off and fairly awarded pursuant to the applicable Remuneration provisions. Counsel submitted that the suit heard and determined at Ngong was dismissed in favour of the Applicant and thereafter a dispute arose on fees payable resulting to the filing of the said Bill. Counsel submitted that the instructions having been issued in 2019, the applicable law was the Advocates Remuneration Order 2014 which was correctly applied by the Deputy Registrar.
16. On the instruction fees award of Kshs. 250,000, counsel submitted this calculation was derived from the subject matter as derived from the pleadings and where the value of the subject matter was undisclosed or unascertainable, then the Court could exercise its discretion in awarding instructions fee citing *Joreth Ltd vs Kigano & Associates*. Counsel submitted that in the suit at hand, the value of the subject matter was neither disclosed at the Lower Court nor was it determined in Judgement, although the Plaintiff sought for general damages of Kshs. 10,581,136.84. It was therefore the taxing officer's discretion to determine the instruction fee which in making the determination she considered the Respondent's interest in the matter, time spent, volume of documents drawn and the conduct of the Respondent. And thus awarded Kshs. 250,000 instead of Kshs. 560,000 requested by the Respondent or Kshs. 334,528.421 submitted by the Applicant. The taxing officer therefore did not err in the award.
17. On whether getting up fees of Kshs. 83,333.30 under item 2 was awarded in error, Counsel submitted that getting up fees are a third of the instruction fees which are always awarded when a suit proceeds to hearing. And this was rightfully awarded by the taxing officer citing *Nguruman Ltd vs Kenya Civil Aviation Authority & 3 others (2014) eKLR*.
18. On whether items 3, 4, 5, 6 and 75 on perusal and drafting was awarded in error, counsel submitted that these services were justified by the Respondent and the said services were chargeable despite not being provided for under Schedule 7 of the Advocates Remuneration Order. It would therefore be unfair to deny the Respondents costs for the work done in perusing and drafting pleadings.
19. Counsel also submitted that the award of Kshs. 21,900 for court attendance in items 53 to 60 was fairly awarded using the lower scale of Schedule 7 since all the Courts attendances were conducted physically and consideration was taken for time and distance between Nairobi and Ngong and thus the cost was duly proven.
20. On the issue of the award of Kshs. 500 for items 7, 12, 15, 20, 27 and 43 for attending the Court's registry, counsel submitted that the award was proper and justifiable because documents were physically filed and fees were incurred for such disbursements. And as every award is subjected to 50% increase, the taxing officer was justified in increasing every amount by 50% including getting up fees. Therefore, the Applicant had not demonstrated any error in the award and this application should be dismissed with costs to the Respondent.

### **Analysis and determination**

21. I have considered the application, the Affidavit in support, the response thereto, the rival submissions and the authorities cited and find that the issues for determination are:
  - i. Whether the application dated 15<sup>th</sup> June 2024 and orders sought should be allowed;
  - ii. Who should bear the costs of this application?



22. On 7<sup>th</sup> December 2022, the Respondent filed an Advocate-Client Bill of Costs at the Lower Court seeking costs of Kshs. 748,042.9. In the Ruling dated 13<sup>th</sup> December 2023, the taxing officer awarded the Respondent Kshs. 717,642.12 as costs.
23. The Applicant objected this award on grounds that the taxing Officer erred by not considering that Kshs. 784,000 had already been paid by the Applicant and the additional costs was akin to unjust enrichment.
24. On whether the getting up fees of Kshs. 83,333.3 was awarded in error, the Taxing Officer awarded this amount as one third of the instruction fees which was awarded at Kshs. 250,000 which the Taxing Officer found was proved on a balance of probability. And this amount was accepted by both parties. Paragraph 16 of the Advocates Remuneration Order provides that:
 

“Notwithstanding anything contained in this Order, on every taxation the taxing officer may allow all such costs, charges and expenses as authorized in this Order as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons, or by other unusual expenses.”
25. It is on record that this matter was heard and determined. The Court of Appeal in *Lucy Waithira & 2 others v Edwin Njagi T/A E. K Njagi & Company Advocates* [2017] KECA 272 (KLR) held: “...Since the matter had been fixed for hearing, the assumption is that the advocate must have prepared for the hearing of the matter and therefore the getting up fees was justified...”
26. Guided by the above, I find that the getting up fees is justified as awarded and there is no justifiable reason to set it aside.
27. On court attendance and other disbursements, I note that the Taxing Officer reduced all attendance costs in items 7, 12, 15, 20, 27 and 43 from Kshs. 3,000 and Kshs. 1,500 as drawn by the Respondent to Kshs. 500. And Court attendance in items 53 to 60 was also taxed off from Kshs. 7,000 and Kshs. 10,000 awarded Kshs. 2,100, 1,400 and Kshs. 5,000.
28. On the issue that the Taxing Officer erred in increasing Costs by 50% together with VAT, Schedule 7B (c) provides: the fees agreed by the parties under paragraph 57 increased by 50%, as the case may be and the increase to include all proper attendances on the client and all necessary correspondence.
29. In the impugned Ruling, the taxing officer increased the costs by half as duly provided for in law together with a 16% Value Added Tax which this Court finds no error in. The Court of Appeal in *Kenya Ports Authority Pension Scheme & 8 others v Kinyua Muyaa & Co. Advocates* [2022] KECA 578 (KLR) held:
 

“... the Court has consistently held that in assessing costs to be paid to an advocate in an advocate client Bill of Costs, a taxing officer exercises judicial discretion which can only be interfered with if it is established that the discretion was exercised capriciously and in abuse of the proper application of the correct principles of law; that the decision of the taxing officer is based on an error of principle, or the fee awarded is manifestly excessive or excessively low as to amount to an injustice to one party or other. Thus, unless the amount awarded by the taxing officer is manifestly high or low as to lead to an injustice or unless there is a clear error of principle, the High Court should not interfere.”...



30. Further in, Lusasi (Suing as the Legal Representative of the Estate of Samuel Lusasi - Deceased) v APA Insurance Limited [2024] KECA 831 (KLR) the Court of Appeal once again held:

In Kipkorir, Titoo & Kiara vs. Deposit Protection Fund Board [2005] eKLR, this Court held: “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. In Arthur vs. Nyeri Electricity Undertaking [1961] EA 497, the predecessor of this Court said at page 492 paragraph I:

where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.

31. I note that in the Advocate Client Bill of Costs dated 7<sup>th</sup> December 2022 the Applicant then admitted they had been paid Kshs.784,000/= which they deducted from the Bill presented for taxation. The Respondent herein therefore acknowledged payment of Kshs.784,000/=.

The same cannot be deducted from the taxed bill unless the Applicant herein can demonstrate that this was the agreed fees for the whole matter.

32. From the foregoing, I find that the Applicant has not presented compelling material to justify my interference with the discretion of the Taxing Officer. I hold that the taxing officer adopted the correct approach and applied the proper principles in reaching her findings.

33. This reference therefore lacks merit and is dismissed with no orders on costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF MARCH 2025.**

**L. KOMINGOI**

**JUDGE.**

In the presence of:

Mr. Chiboli for the Applicant.

Mr. Ondeng for the Respondent.

Court Assistant – Mutisya.

