



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mugwika & another v Housing Finance (K) Ltd (Civil Appeal  
E013 of 2022) [2022] KEHC 15941 (KLR) (28 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15941 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E013 OF 2022  
EM MURIITHI, J  
NOVEMBER 28, 2022**

**BETWEEN**

**AUGUSTINE MPAKA MUGWIKI ..... 1<sup>ST</sup> APPLICANT**

**JULIA KANANU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**HOUSING FINANCE (K) LTD ..... RESPONDENT**

**RULING**

1. By Chamber Summons brought under certificate of urgency by the applicants herein, dated 17/3/2022 pursuant to Rule 11 (2) of the Advocates (Remuneration) Order, the applicant seeks orders that:
  1. The decision of the master delivered on 8<sup>th</sup> February 2022 in Meru CMCC No. 26 of 2018 by Dominica Nyambu be set aside in so far as the same relates to the reasoning and determination pertaining the Taxation of the Party and Party Bill of Costs dated 26<sup>th</sup> May 2020.
  2. The Honourable court be pleased to refer the matter back for re-taxation of the Bill of Costs before a different taxing officer other than Hon. Dominica Nyambu.
  3. In the alternative to prayer 2 above, the Honourable court exercises its inherent jurisdiction and be pleased to re-tax the Bill of Costs dated 26<sup>th</sup> May 2020 afresh and/or make directions for a fresh taxation.
  4. The costs of this application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and echoed in the supporting affidavit of Caroline Karwirwa Rimita, the applicants' advocate, sworn on



even date. She contends that the applicants filed a Bill of Costs in Meru CMCC No. 26/2018 dated 26/5/2020 in the total sum of Ksh. 1,019,016. When the same came up for ruling on 7/2/2022 before the taxing master, it was taxed at Ksh.168,615. She faults the taxing master for failing to consider other supporting documents and the value of the property which exceeded 3Million as required by section 18 of the Amended *Civil Procedure Act*. She thereafter requested for the certified copy of the ruling in order to file this reference, and urges the court to exercise its discretion and re-assess the Bill of Costs dated 26/5/2020.

3. The respondent filed a replying affidavit in opposition to the application sworn by Christine Wahome, its manager, legal services on 11/5/2022. She terms the application as an abuse of the court process, as there is no procedure provided for challenging assessment of Costs in the sub-ordinate Courts and, therefore, it should be dismissed with costs. She avers that the assessment by the taxing master was correct in principle having in mind paragraph 58 of the Advocates (Remuneration) Order. She avers that the taxing master noted in her ruling that the subject matter was not a liquidated claim as the orders the applicants were seeking were injunctive in nature, and therefore the documents annexed in support of the application were irrelevant for assessment of the appropriate sum on instructions. She believes that the amount of Ksh. 168,615 as assessed by the taxing master is fair, reasonable within the range allowable by the court and the applicants are looking for means to unjustly enrich themselves.

### **Analysis and Determination**

4. The circumstances under which a judge can interfere with the taxation of a taxing master are similar to the principles of appellate interference with discretion of the trial court as were set out in *Steel & Petrol (E.A) Ltd v Uganda Sugar Factory* (1970) E.A. 141 as follows:

“An appellate court will not interfere with an assessment of costs by a taxing officer, unless the taxing officer has misdirected himself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference.”

5. In *Nanyuki Esso Service v Touring & Sports Cars Ltd* (1972) E.A 500, it was held that, “An error in principle is only inferred from a manifestly excessive award.”
6. The respondent contended in its replying affidavit that, “there is no procedure provided for challenging assessment of Costs in the sub-ordinate Courts.” With respect, that contention appears misguided and this court respectfully agrees with *Donholm Rabisi Stores (Firm) v EA Portland Cement Ltd* (2005) eKLR where the court (H.P.G. Waweru J.) observed that:

“[T]axation of costs whether those costs be between party and party or between Advocate-client is a special jurisdiction reserved to the taxing officer by the Advocates Remuneration Order. The court will not be drawn into arena of taxation except by way of a reference from a decision on taxation, made under rule 11 of the Advocates Remuneration Order. The present application is not a reference. The application seeks an order that would have the effect of interfering with the special jurisdiction of the taxing officer, a jurisdiction that the court cannot take upon itself.”

7. This application by way of reference is properly before this court.
8. The issue for determination is whether the taxed sum of Ksh. 168.615 was reasonable. Before delving into that issue, this court must first ascertain what the subject matter was for purposes of instruction fees. Was it Ksh.3,275,313.95, being the value of the property or the outstanding loan of Ksh.180,000?



9. The Court of Appeal in *Joreth Limited v Kigano & Associates* (2002) eKLR stated 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).”
10. It appears from the applicants’ application that they completely disagree with the whole amount as taxed by the taxing master. Whereas the applicants contend that the instruction fees ought to have been based upon the value of the subject matter being Ksh.3,275,313.95, the respondent submits that the value of the property the subject matter of the suit was an irrelevant factor in assessment of instruction fees.
11. The applicants, in their amended plaint had sought orders in respect of the outstanding loan of Ksh.180,000 and injunctive reliefs.
12. In her impugned ruling, the taxing master stated that:

“from the judgment and the plaint this was not a suit for a liquidated amount. The plaintiffs in their letter to the court dated 3<sup>rd</sup> May 2021 argued that the property was valued at Ksh. 3,275,312.95 then that amount should be used to calculate instruction fees. The...ksh.180,000 being outstanding loan in the amended plaint should not be used to calculate instruction fees. I have perused... documents and find that the value of the property may well be Ksh.3 million. However, the orders sought were in respect to the outstanding loan and injunctive reliefs. The instruction fee is the one chargeable under schedule 6 of the Advocate Remuneration Order 2006 at paragraph 1(f). Since the plaint was filed in the high court, it provides for a minimum of Ksh.8,400/=. I have considered value of the property and the size of the case file and I find that Ksh.100,000 as instruction fee would be reasonable. I will allow this amount and tax of Ksh. 431,636/= I item 1.”
13. In *Thomas James Arthur v Nyeri Electricity Undertaking* [1961] EA 492 the Court held that:

“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. The fee allowed was higher than seemed appropriate, but in a matter which must remain essentially one of opinion, it was not so manifestly excessive as to justify treating it as indicative of the exercise of a wrong principle.”
14. This Court finds that the taxing master did not err in principle in taxing the bill at Ksh.168,615. Indeed, the taxing master took into account the outstanding loan, the novelty of the questions raised, the complexity of the matter and the time expended by the applicants’ advocate in determining the instructions fees and proceeded to award Ksh.100,000 under that head. She went further to give reasons why no fees were chargeable for documents, perusals, attendances to the registry to file documents, applicants’ transport and subsistence. The amount for getting up fees was also taxed off as it was unjustified.

## Orders

15. Accordingly, for the reasons set out above, this court finds that the application dated 17/3/2022 is without of merit and it is dismissed with costs to the respondent.

Order accordingly.

**DATED AND DELIVERED ON THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2022.**



**EDWARD M. MURIITHI**

**JUDGE**

**Appearances**

Mr. Mwendwa Advocate for the Appellant.

Ms. Murimi Advocate for the Respondent.

