



**Kithi & Company Advocates v County Government of Kiambu  
(Judicial Review Miscellaneous Application E100 of 2021)  
[2022] KEHC 15638 (KLR) (Judicial Review) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15638 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E100 OF 2021  
AK NDUNG'U, J  
NOVEMBER 24, 2022**

**BETWEEN**

**KITHI & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... RESPONDENT**

**RULING**

1. The applicant herein aggrieved by the taxing master's decision dated February 24, 2022 taxing its bill of costs at the sum of Kshs 2,3288,476.70/= has filed a Chamber summons application dated April 7, 2022 before this court in which its three primary prayers as follows;
  - a. That the decision of the taxing officer made on February 24, 2022 on the applicant's Bill of Costs dated June 23, 2021 be set aside.
  - b. That this court be pleased to assess/tax the costs lawfully payable to the Applicant on the said Bill of Costs.
  - c. That in the alternative, the Bill of Costs dated June 23, 2021 be taxed afresh by a different taxing officer other than Hon C A Muchoki."
2. The application is supported by the supporting affidavit sworn by George Kithi an advocate in the firm of Kithi & Company Advocates on April 7, 2022. The applicant's case is that in reaching her decision the taxing master failed to consider the grounds upon which the applicant had justified the increase of the minimum instruction fees to Kshs 3,000,000.00/=, to appreciate that the issue that was raised in the PO against the judicial review application before the court was novel. Further that she also failed



- to appreciate the nature, urgency, complexity, time, research and skill expended therein, the amount and value of the subject matter.
3. It is also argued that the taxing master erred in failing to consider the nature and complexity of the matter as was discussed in the case of *R v Minister for Agriculture ex parte Njuguna & 2 Others* [2006] eKLR. In addition, she is also faulted for indicating that items No 12, 21, 35, 43, 47, 50, 53, 56 and 60 relate to service of letters and that the *Advocates Remuneration Order* does not provide for service of correspondences.
  4. The taxing master is also faulted for finding that as items no.67 have not been supported by any evidence the same should not be awarded yet it is normal practice that disbursements have to be incurred and the fact that the respondent in its submissions during the taxation had proposed the sum of Kshs 5,000/= to be awarded to cover the costs.
  5. The respondent in its replying affidavit sworn on September 20, 2022 by Daniel Kirathe, the County Solicitor contends that service of the Chamber Summons was never effected on the county and further that the county fully associates itself with the Ruling of the Taxing master.
  6. The work done by the applicant according to the respondent does not reveal anything which is above and beyond the work day chores of legal practitioners. Further that in preparing her ruling the taxing master was alive to the need to be guided by principles of law delineating the parameters for the exercise of her taxation mandate.
  7. The application was canvassed by way of written submissions. The cases of *Premchand Raichand vs Quarry Services EA Limited* No 3 [1972] EA 162 and *Kyalo Mbobu t/a Kyallo & Associates vs Jacob Juma* [2015] eKLR where the courts set out the principles to be applied by a taxing officer in the exercise of his/her discretion to increase the instruction fees have been cited by the applicant in its written submissions.
  8. On the complexity of the matter counsel also refers to the cases of *Republic vs Ministry of Agriculture & 2 Others ex parte Muchiri W' Njuguna & Others* [2006] eKLR, *Republic vs Nyeri County Government ex parte Central Kenya Coffee Mill Ltd* [2017] eKLR and *Evanson Jidraph Kamau & Another vs AG* Misc Application No 40 of 2000.
  9. The respondent in its written submissions contends that the applicant ought to have given notice in writing within fourteen (14) days of the ruling of the items it intended to object to and also request for the reasons for her decision. In failing to do so the applicant is said to have failed to comply with the requirements of Paragraph 11 Rule 1 of the *Advocates Remuneration Order, 2014*.
  10. On the interference of a taxing officer's discretion the respondent refers to the case of *Republic vs. Ministry of Agriculture & 20 Others Ex parte Muchiri W' Njuguna* [2006] eKLR.
  11. I have considered the application, the supporting grounds, affidavit evidence and learned submissions by counsel. Of determination is whether in taxing the subject bill of costs, the Taxing Master applied the correct legal principles and where discretion was applied, whether the same was exercised judiciously. If the answers be in the negative, whether this court should interfere with the findings of the Taxing Master and, what orders, if at all should be made.

#### **Whether the Taxing Officer applied the correct legal principles in her assessment of instruction fee**

12. Before the court was a Judicial Review Misc Application No 238 of 2015 which sought orders in the nature of certiorari and mandamus to be issued against the Respondent herein.



13. The applicant firm entered appearance on behalf of the respondent herein and it is evident from the copy of the Bill of Costs that a preliminary objection was prepared in response to the judicial review application filed therein.
14. Judgement was subsequently entered on April 5, 2016 and a bill of costs in respect of Judicial Review Misc Application No 238 of 2015 later on drawn at Kshs 7,297,190.70 in advocate and client costs. The bill was allowed vide a ruling dated February 24, 2022 at Kshs 2,328,476.70/=. It is this finding that is challenged.
15. In her assessment of the instruction fees, the Taxing Officer awarded Kshs 900,000.00/=. The Instruction fees in judicial review suits is found under Schedule 6 (j) of the [Advocates Remuneration Order, 2014](#) and is set at Kshs 100,000/=. The Taxing Officer thus increased the instruction fee nine-fold which in my opinion was more than enough to cover item 1.
16. In [Kyalo Mbobu T/A Kyalo & Associates Advocates v Jacob Juma](#) [2015] eKLR, the court ruled that in order to increase or decrease instruction fees, a Taxing Officer must use the established principles and provide specific justification, not a broad one.
17. Also, the Court of Appeal in the case of [Joreth Ltd v Kigano & Associates](#) [2012] 1EA 92 stated that the taxing Officer must give reasons for increase of instruction fee such as care and labour required by the Advocate, the volume of papers to be perused, the nature and the importance of the matter, the value of the subject matter and novelty of the matter.
18. From her ruling, the Taxing Officer has demonstrated with the justification for the increase of the instruction fee nine-fold. The discretion was thus exercised judiciously and therefore this court has no power to interfere with the exercise of the discretion.
19. It is now widely recognized under what conditions a High Court judge may interfere with the taxing officer's exercise of discretion. The court in the case of [First American Bank of Kenya vs Shah and Others](#) 120021 1 EA 64 sets the applicable principles. These principles are:
  1. that 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;
  2. it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause 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;
  3. if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practise 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 and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;
  4. it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;



5. the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
6. the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;
7. the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. The position was reiterated in *Karen & Associates Advocates vs Caroline Wangari Njoroge* [2019] eKLR, in which the Court cited the decision of the Court in *Onyango, Kibet and Ohaga Advocates vs Adopt Light Ltd* HC Misc 729 of 2006 where the court stated that;

“..... The taxing master must consider the case and the labour required in the matter, the nature or importance of the matter more so the amount or value of the subject matter involved, the interest of the client in sustaining or losing a brief and the complexity of the dispute. In assessing an amount commensurate to the work undertaken, it is of fundamental importance to consider the value of the subject...”

In the same case, it was held that:

“The law gives the taxing master some leeway but like all discretions, it must be exercised judicially and in line to the material presented before court. ”

**Whether the Taxing Master in taxing off items 12,21,35,43,47,50,53,56 60 and 67 erred in principle.**

20. Items 12,21,35,43,47,50,53,56 and 60 were in relation to service of letters/correspondence while item 67 was on disbursements.
21. The *Advocates Remuneration Order, 2014* under schedule 6(6) provides as follows;
  - “6. Correspondence  
Letters before action or other necessary letters Kshs 1,000”
22. I am in agreement with the taxing master’s decision that the advocates remuneration order only provides for correspondence and not service of the said correspondence and that the applicant ought to have included any expenses incurred in delivery of the said correspondence under disbursements and produced evidence to support the same.



23. The court in the case of *Ngatia & Associates Advocates v Interactive Gaming & Lotteries Limited* [2017] eKLR while citing the case of *Makumbi & Another v Sale Electric (U) Ltd* [190-1994] EA 306 (SC)110 stated as follows;

“It is for that reason that the Rules of taxation demand that disbursements be shown separately at the bottom of the bill of costs and there must be presentation of receipts or proof at the time of taxation before the award is made by the taxing officer.

111. In this case, the taxing officer at pages 7 and 8 of the ruling and reasons for taxation clearly stated that items 120-133 were disbursements and correctly held that disbursements must be proved by way of receipts. She confirmed items 122, 124,126,129,131 and 133 as receipts were in the file which she allowed and disallowed the rest of the disbursements for want of proof.”

24. I am also in agreement with the Taxing Master’s decision to tax off item 67 on grounds that the same has not been supported by any documents. In light of the above the application dated April 7, 2022 is hereby dismissed with no orders as to costs. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**A. K. NDUNG’U**

**JUDGE**

