



REPUBLIC OF KENYA



KENYA LAW
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**Shariff & 2 others v Kenya Railway Corporation (Environment & Land
Case 002 of 2021) [2025] KEELC 1444 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1444 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 002 OF 2021**

EC CHERONO, J

MARCH 20, 2025

BETWEEN

NAZMUDIN ABDULALI SHARIFF 1ST PLAINTIFF

ATLAF ABDULALAI SHARIFF 2ND PLAINTIFF

FIROZ ABDULALI SHARIFF 3RD PLAINTIFF

AND

KENYA RAILWAY CORPORATION DEFENDANT

RULING

1. The Applicant herein, filed a Reference *vide* a Chamber Summons application dated 21st February 2024 under Sections 1A, 1B, 3A, 3B of the Civil Procedure Act, Rule 11 and 50 of the Advocates' Remuneration Order and Order 51 Rule 1 of the [Civil Procedure Rules](#) seeking the following orders:
 - a. That this honourable court be pleased to set aside, review and or vary the ruling by the taxing officer delivered on 07/02/2024 particularly on items 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41 & 116 of the respondents bill of costs dated 20/07/2023 or in the alternative, the respondents bill of costs dated 20/07/2023 be remitted back to the taxing master with appropriate directions on taxation.
 - b. That costs of this application be provided for.
2. The Chamber Summons is supported by grounds set out on the face of the application Supported by the Affidavit of David Otieno, sworn on 21/02/2024. The gist of the said application is that the taxing master erred in taxing item 1 on instruction fees at Kshs. 1,744,649/= yet the same could not be substantiated from the value of the subject matter and argued that the same ought to have been taxed off at Kshs. 333,840/=. That the revision of item 1 would revise item 2 on the getting up fees to



Kshs.111,280/=. It was argued that it was erroneous for the taxing master to tax items 3,4 & 5 on costs of interlocutory applications which were within a matter wherein instruction fees had been paid.

3. Lastly. It was argued that items 6,7,8,9,10,11,12,13,14,15,16,17,18,19,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46, & 116 did not conform to the provisions of Rule 69(1) of the Advocates Remuneration Order which he argued, provides for the language to be used when preparing bill of costs.
4. The Respondent filed a replying affidavit to the chamber summons sworn on 18/03/2024 where it was deposed that the bill of costs was taxed off reasonably and in accordance with the provisions of the Sixth Schedule of the Advocates Remuneration order, 2014. That failure to display the year in the bill of costs was not prejudicial and can be excused under the provisions of Article 159(2) of the Constitution.
5. When the matter came for directions, the parties agreed to have the application canvassed by way of written submissions.
6. The applicant filed submissions dated 26/09/2024 where they argued that the decision of the taxing master was not supported by the provisions of the Advocates Remuneration order, 2014. He cited the case of Kyalo Mbobu t/a Kyalo Mbobu & Associate Advocates v Jacob Juma (2015) eKLR, First American Bank of Kenya v Shah & Others (2002)1 EA, Nyangito & Co Advocates v Doinyo Lessos Creameries and Preinchand Raichand LTD & Another v Quarry Services of EA LTD & Another (1972) EA 162 and TJRC v Chief Justice of the Republic of Kenya & Another (2014)eKLR.
7. On item 1 it was submitted that the provisions of Schedule 6 which provides that where the value of the subject matter ranges between Kshs. 1,000,000/= and Kshs. 20,000,000/= the instruction fees is to be calculated at Kshs. 120,000/= plus 2% of the value exceeding 1,000,000/= He therefore submitted that this formula would lead to costs of Kshs. 299,533.98 which would correct item 2 on the getting up fees to Kshs. 99,844.66. Reliance was placed in the case of Kenya Airports Authority v Otieno Ragot & Company Advocates.
8. It was further submitted that items 3,4 & 5 were erroneous as they are costs of interlocutory applications within a suit and ought not to have been awarded. They cited the case of CFC Stanbic Bank Ltd v Mathenge & 2 Others (2015) eKLR, Rashid M. Mohammed v Total Kenya LTD (2006)eKLR and Wambugu & Associates Advocates v Kenya Commercial Bank LTD (2015)eKLR. Lastly it was submitted that Rule 69(1) of the Advocates Remuneration Order prescribes a specific format and language for the preparation of Bill of Costs which require the Respondent to state the year, date and month of the claimed services. It was argued that any deviation renders the taxing process irregular and unjustifiable. Reliance was placed in the case of J.K & Associate Advocates v National Social Security Fund (2018) eKLR.
9. The Respondent on the other hand filed submissions dated 09/08/2024 and submitted that the Applicants have failed to demonstrate that the taxing master erred in principal in taxing their bill of costs. They cited the Supreme Court case of; in the matter of Interim Independent Electoral Commission (2011) eKLR, Mohamed Abdi Mahamud vs Ahmed Abdullahi Mohamed & 3Others (2018) eKLR, Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others (2012) eKLR. Further, the Respondents submitted that the issue raised with regards to Rule 69 of the Advocates Remuneration Order was not raised during the taxation process and the Applicants can therefore not raise it at this stage as they are bound by their pleadings. Reliance was placed in the case of Raila Amolo Odinga & Another v. Independent Electoral and Boundaries Commission & 2 Others SCK Presidential Petition No. 1 of 2017 (2017) eKLR, Abdrahman Abdi aka Abdirahman Muhamed Abdi v Safi Petroleum Products Ltd & 6 Others (2011) eKLR and Hunker Trading Company Limited v. Elf Oil Kenya Limited (2010)eKLR. It was further submitted that omitting the said details did not



in any way prejudice the Applicants during taxation of the bill before the taxing master. He argued that thought the rule was couched in mandatory terms, the same was merely directive.

10. The Reference arises from the decision of the taxing master delivered on 07/02/2024 which resulted from the judgment of this court delivered on 06/07/2023 in favour of the Respondents herein who was also awarded costs.

Analysis and Determination.

11. I have considered the pleadings herein, the rival written submissions and the relevant provisions of law, together with the cited authorities and find that the only issue for determination is whether or not the Applicants are entitled to the orders sought.

12. It is now trite law that this court will only interfere with the decision of a taxing officer in cases where there is demonstration of an error of principle. In *Republic v Ministry Of Agriculture & 20 others Ex-parte Muchiri W' Njuguna* [2006] eKLR, Ojwang J (Retired) stated as follows:-

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other...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.”

13. The applicants have argued that the taxing master erred in awarding the instruction fees and referred the court to the provisions of Schedule 6 of the Advocates Remuneration Order. The Court of Appeal in the case of *Joreth Limited v Kigano & Associates* [2002] eKLR, set out the principles that guide the assessment of instruction fees which include: the general conduct of the proceedings, the care and labour required on the part of counsel, the length of the trial, the number and length of papers to be perused, the nature and importance of the matter to the parties, the amount and value of the subject-matter and all other circumstances as may be fair and reasonable. In the foregoing case, the Court underlined the following;

“What the learned Judge did not appreciate was that sitting on a reference against the assessment of instruction fees by the taxing officer he ought not to have interfered with the assessment of costs unless the taxing officer had misdirected himself on a matter of principle”.

14. This Court is alive to the fact that the matter in question was filed in Court in year 2021. The aforesaid matter was resolved with finality vide a Judgment delivered by this Court on 06/07/2023. The Court has perused the Ruling of the Taxing Master dated 5th October, 2023, issued in respect of the Respondent’s Bill of Costs dated 20/07/2023, wherein, the Court held as follows:

“The applicable remuneration order is the Advocates Remuneration Order, 2014 and specifically schedule 6 thereof. Bearing in mind the complexity of the matter and the nature and volume of research required as well as the prayers sought by the plaintiff I am satisfied that the proposed sum of Kshs. 1,744,649 is drawn to scale and is reasonable and item 1 is therefore taxed in the said sum.”



15. Considering the duration of the case, the amount the Applicants would have been awarded if they were successful as prayed in the amended plaint, it is my considered view that the amount was not whimsical and did not amount to misdirection on principles. The same in my view was well reasoned and reasonable. Therefore, it is my opinion that the taxing off of the instruction fees and the fees for getting up was proper and I shall not interfere with the same.
16. As for items 3, 4 & 5 on applications, the Applicant argued that having been awarded instruction fees, the Respondents were not entitled to separate fees for interlocutory applications. On this issue, I am guided by the provisions under paragraph C(Viii) of Schedule 6 of the Remuneration Orders. The said paragraph C (viii) provides for a minimum fee of Kshs 5000 for presenting or opposing any interlocutory application not otherwise provided in the Order. I will not also interfere with the taxing master's findings on this.
17. Lastly, the applicant argued that the Respondents in their bill of costs failed to adhere to the provisions of Rule 69(1) on the language of bill of costs with regards to stating the day, month and year in various items and therefore the taxation was unjustifiable. The Respondent argued that the Applicant had not raised this concern before the taxing master and that the omission was not prejudicial. The issue for determination is whether the omission was detrimental.
18. The operative word under this provision is "shall" which when used in a statutory provision imports a form of command or mandate. It is not permissive, it is mandatory. The word shall in its ordinary meaning is a word of command which is normally given a compulsory meaning as it is intended to denote obligation.^[44] The Longman Dictionary of the English Language states that "shall" is used to express a command or exhortation or what is legally mandatory. Ordinarily the words 'shall' and 'must' are mandatory and the word 'may' is directory.
19. I have looked at the items missing the said information and I note that the particulars are such that the Applicant could not have been aware of the dates as they include visits by the Respondents to the registry. In my considered view, since these are services without a receipt, it was imperative upon the Respondent to at the very least disclose all the required entries. Therefore, whether or not the same was raised during the taxation process, I find that this is a procedural issue which goes to the substance of the Bill of Costs and cannot be saved by Article 159 of the Constitution.
20. Therefore, I find that items no.21,22,23,25,28,29,30,31,32,34,35,36,38,39,40,41,42,43,44,63,65,67,68,69,70,71,74,75,78,79,80,82,83,84,85,86,8 and 116 were prejudicial to the applicant and the awards on these items are hereby vacated/set aside.
21. In the end, the reference is partially allowed and the bill of costs is hereby taxed off in an all-inclusive sum of Kshs.2,417,313.70.
22. I make no order as to costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 20TH DAY OF MARCH, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of:

1. Mr. Ochieng for the Applicant.
2. M/S Moraa for the Respondent



3.Bett C/A

