



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**JUDICIAL REVIEW APPLICATION 1 OF 2014**

**IN THE MATTER OF THE UNIVERSITIES ACT (ACT NO. 142 OF 2012 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE DECISIONS OF THE SENATE, EGERTON UNIVERSITY DATED 11<sup>TH</sup> OCTOBER, 2013  
EXPPELLING PRASUN MAULIK PATEL**

**AND**

**IN THE MATTER OF THE EGERTON UNIVERSITY'S APPEAL AND GRIEVANCES COMMITTEE HELD ON THE 30<sup>TH</sup>  
APRIL, 2014**

**AND**

**IN THE MATTER OF RATIFICATION OF APPEALS AND GRIEVANCES COMMITTEE'S DECISION BY THE FULL  
COUNCIL ON THE 5<sup>TH</sup> AUGUST, 2014.**

**AND**

**IN THE MATTER OF THE VIOLATION OF THE APPLICANT'S CONSTITUTIONAL RIGHT TO EDUCATION,  
UNIVERSITIES ACT AND THE EGERTON UNIVERSITY STATUTES**

**AND**

**IN THE MATER OF REPUBLIC**

**VERSUS**

**PATEL MAULIK PRASUN.....APPLICANT/SUBJECT**

**VERSUS**

**EGERTON UNIVERSITY.....RESPONDENT**

**RULING**

1. The Applicant/ Subject *vide* Chamber Summons dated 25<sup>th</sup> of March 2019 and filed on the 26<sup>th</sup> of March 2019 seeks the following orders:

*a. The Ruling / Decision of the Honourable Makau, Deputy Registrar of the High Court of Kenya given on the 12<sup>th</sup> of February 2019 on taxation of majority of the items in the Plaintiff's party to party bill of costs dated 27<sup>th</sup> of February 2018 be and is hereby set aside*

*b. This Honourable Court be pleased to tax and or allow such fees as it may deem appropriate in the circumstance of this case, more specifically in respect of Advocate's Court Attendance Fees, Instruction Fees for seeking leave, Instruction Fees in the main suit and Getting Up Fees in the Applicant's/ Subject's party to party bill of costs dated 27<sup>th</sup> of February 2018*

*c. The Deputy Registrar of the High Court be and is hereby directed to re-tax/ re-assess the items of Advocate's Court Attendance Fees for seeking leave, Instruction Fees in the main suit and Getting up Fees in the Applicant/ Subject's Party to Party bill of Costs*

dated 27<sup>th</sup> of February 2018.

*d. The Honourable Court be pleased to give the requisite factors and or guidance for consideration by the Deputy Registrar of the High Court of Kenya in respect of taxation/ assessment of the items of Advocate's Court Attendance fees, Instruction fees for seeking leave, Instruction fees in the main suit and Getting up fees in the Applicant's/ Subject's Party to Party bill of costs dated 27<sup>th</sup> of February 2018*

*e. The Costs of this Application be provided for*

2. The Application is based on the following grounds:

*a. On the 12<sup>th</sup> day of February 2018, the Hon. N. Makau, the Deputy Registrar of the High Court of Kenya, being the taxing master in this cause, taxed the Applicant's/ Subject's party to party bill of costs dated 27<sup>th</sup> of February 2018 and allowed a sum of Kshs 10,000 in respect of item 13 to wit instructions to prepare and file Application for Judicial Review Proceedings taxed off item 4 & 14.*

*b. In arriving at the said conclusions, the taxing master failed to exercise her discretion in accordance with the laid principles of law under schedule VI (j) (ii) & 2 of the Advocates Remuneration Order 2014*

*c. The Honourable Deputy Registrar erred in principle in failing to award the Applicant Party and Party bill of costs that he was entitled to under the law*

*d. The Honourable Deputy Registrar erred in principle in failing to recognize that the matter was opposed and by so doing he awarded the Applicant Party and Party costs under the Ordinary/lower case, especially on items of Advocate's Court Attendance Fees which were below what he was entitled to under the Law*

*e. The Instruction fees allowed were manifestly understated and under charged and denying the Applicant instruction fees for the substantive motion and Getting Up for trial fees was wrong and in breach of the law and should be set aside and re-taxed and re-assessed by this Honourable Court under the correct principles of law*

*f. Denying the Applicant getting up and preparing for trial fees was erroneous and in breach of the law in that Getting up fees*

*g. Since the taxation was based on wrong principles and was in breach of the law, the same should be set aside to facilitate correct taxation being done by this Honourable Court.*

3. The Respondent in their grounds for opposition dated 24<sup>th</sup> of May 2019 and filed on the 27<sup>th</sup> of May 2019 opposed the Applicant's application as follows:

*a. The Application is bad in law, misconceived and an abuse of the process of the Court*

*b. The Applicant has not met the basic requirements for such an application to be entertained by the Court*

*c. The Deputy Registrar considered all the items and the taxation was properly done.*

4. The Application was argued by way of Written Submissions. The Applicant's principal argument is that the Deputy Registrar misdirected herself in applying Schedule 6j(i), in assessing instruction fees instead of applying Schedule 6j(ii). This is because, the Applicant argues, Schedule 6j(i) is applicable where the matter is not complex or opposed and where the sum allowable should not be less than Kshs 45,000. However, in this case, the Applicant argues, the Deputy Registrar took into consideration of the research and work done and enhanced the erroneous figure to Kshs 100,000. The Applicant submits that the applicable schedule was Schedule 6j(ii). They further submit that the Taxing Master erred or failed to take into consideration that the Application for Judicial Review proceedings sought for orders of certiorari, and mandamus. They conclude that the Taxing Master erred in applying the wrong principles and finding that the matter ought to be satisfied urgent by the Judge and that the scale applicable, is for unopposed matters yet the matter was opposed.

5. The Applicant also takes issue with the Taxing Master's reasoning on item 4 in the Bill of Costs. The Applicant argues that the Taxing Master erroneously taxed off the same by reason that it is a repetition of item 9. The Applicant argues that the two items are distinct from each other as item 4 relates to Drawing (preparing) an application for leave to be heard during the High Court Vacation while item 9 is Advocate fees for attending before the Deputy Registrar in Nakuru to have the file admitted as urgent be placed before a Judge in Nairobi.

6. On item 13 They submit that the Taxing Master erred in not taking into Consideration that nature and importance of the matter, wherein the Subject's right to education had been curtailed by the Respondent exercising its statutory powers ultra vires. Further, the Taxing Master failed to take into consideration the general conduct of the proceedings which entailed various intermittent issues arising, several rulings being made and interim directions issuing in regards the subject's education.

7. On item 14, the Applicant argues that the Taxing Master applied the wrong principles and misdirected herself in taxing off the entire sum of Getting up for trial fee. They submit that the Judicial Review Application was strenuously opposed and liability disputed and that, therefore, the Applicant is entitled to Getting up for Trial Fees.

8. On items 118, 119, 120, 121, 122, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 145, 146, 147,

148, 150 & 151, the Applicant submitted that even if the same did not take more than ½ hour, the same cannot be taxed under the lower scale and the fee applicable is the upper scale since the matter herein was opposed.

9. The Respondent, in its submissions dated 12<sup>th</sup> of July 2019, filed on the same date submitted as follows:

a. The Court taxed off item 4 because it was a repetition of item 9. The Court exercised its discretion correctly in refusing to double tax item 9. The Respondent submitted that the Counsel wants to “rip maximum benefits from the Respondent even if it means subsection the items to double taxation.”

b. In taxing item 13, the Taxing Master correctly exercised her jurisdiction as legally in principle. It is not possible to separate the application for leave with the substantive motion for prerogative orders for purpose of payment of instruction fees. They further submit that the Taxing Master used her discretion to increase the amount to Kshs 10,000.00. They draw Court’s attention to the case of **Republic v Kenya Revenue Authority Ex parte Middle East Bank Kenya Limited [2012] eKLR**, the gist of the case being that *it is impossible to commence Judicial Review proceedings before first seeking and obtaining leave to do so. The Application for leave is made pursuant to instructions to institute Judicial review proceedings...I find the Taxing Master applied the correct principles in finding that it is not possible to separate the application for leave with the substantive motion for prerogative orders for the purpose of payment of instruction fees.*

c. In item 14, was taxed off completely as it is not the levy of the same that was set down, the Court while granting instruction fee on item 1 did not certify the matter as complex.

d. They further submit that the jurisdiction of taxation of cost is conferred upon the Taxing master by the Advocates Remuneration order. The Application by the Applicant seeks to interfere with that jurisdiction by questioning the discretion of the Taxing Master and manipulating the same through the High Court and creating unjust enrichment upon himself.

e. Taxation is not a mathematical exercise it entirely matter of opinion and discretion based on the experience of a taxing master. The Applicant has not demonstrated that the Taxing Master erred in principle in reaching the determination. They draw Court’s attention to the case of **KANU National Elections Board & 2 others V Salah Yakub Farah [2018] eKLR** that made reference to the case of **Republic v Ministry of Agriculture & 2 others Ex parte Mushier W’njuguna & 6 others**, the gist of the case being that *Taxation of costs in 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.*

10. I will begin with the easiest controversy to resolve: items 118, 119, 120, 121, 122, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 145, 146, 147, 148, 150 & 151. The Learned Taxing Master taxed off some amounts by applying the Lower Scale and remarked that the attendances in Court each took less than half an hour. With respect, that was a misdirection. The Lower Scale is applied in cases where the suit is not opposed. In this case, the Judicial Review Application was opposed and the Higher Scale should apply.

11. I will now turn to the principal controversies. On Item 1, the Applicant claims that the Taxing Master misdirected herself in applying Schedule 6j(i), in assessing instruction fees instead of applying Schedule 6j(ii). This is because, the Applicant argues, Schedule 6j(i) is applicable where the matter is not complex or opposed and where the sum allowable should not be less than Kshs 45,000. I see no such misdirection. Schedule 6j(i) is used “where the matter is not complex or opposed”. The schedule provides for a floor of Kshs. 45,000/- which may be enhanced according to the discretion of the Taxing Master. Here, the Taxing Master came to the conclusion that the matter was not complex as it had not been adjudged so by a judge. That is one of the criteria specified in Schedule 6j(i). Schedule 6j(ii) is used when two prongs are satisfied: the matter is opposed and is found to be complex. In the present case, while the matter was opposed, it was not adjudged complex. Therefore, the correct schedule was applied. In her discretion, the Learned Taxing Master enhanced the figure to Kshs. 100,000/- due to the quantum of work required. I find no misdirection.

12. That brings us to item 13. The Applicant proposed a figure of Kshs. 3 Million. This was taxed off to Kshs. 5,000/-. The Learned Taxing Master applied Schedule 6(1)(viii) to come to that conclusion. She was right. The Applicant’s counsel has already been awarded instructions fees for bring the Judicial Review Application under item 1. It would be double assessment to recover more instructions fees for filing the substantive Notice of Motion Application. The instructions fees for Judicial Review applications envisage the filing of both the application for leave and the substantive application.

13. On item 14, the Applicant is right. The Taxing Master taxed off the entire sum claimed as getting up fee. Her reasoning is that this was a Judicial Review Application that did not require preparation for trial involving witnesses. However, getting up fees are payable even for trials or court cases which do not require preparation of witnesses. For example, the Schedule envisages getting up fees for appeals which, obviously, do not involve preparation of witnesses. There is no good reason why getting up fees should not be payable for preparing for trial for Judicial Review Applications. In the present case, since the instructions fees was reduced to Kshs. 100,000, it follows that the getting up fees will be a third of that or Kshs, 33,333/-.

14. Finally, on item 4, I would also agree with the Applicant that it is not a repetition of Item 9. The Application for leave was presented during the Court recess. The Court was not sitting in Nakuru. It was necessary for the Advocate to attend before the Deputy Registrar to make representations that the file should be conveyed to Nairobi so that a Judge could give directions. The fee charged for that item is, therefore, restored.

**15. In the end, therefore, the Applicant has succeeded in some of his claims. Each party shall bear the costs of this Application. The final order shall be to remand the matter to the Taxing Master to prepare a new assessment of fees in accordance with this ruling.**

16. Orders accordingly.

Dated and delivered at Nakuru this 27<sup>th</sup> day of January, 2020

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JOEL NGUGI

JUDGE