



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**HIGH COURT CIVIL CASE NO. 377 OF 2014**

**INTERCOUNTRIES IMPORTERS & EXPORTERS.....PETITIONER/RESPONDENT**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**  
**CHIEF LAND REGISTRAR.....2<sup>ND</sup> RESPONDENT**  
**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**  
**TELEPOSTA PENSION SCHEME.....4<sup>TH</sup> RESPONDENT/APPLICANT**

**AND**

**PARK AVENUE INVESTMENTS.....1<sup>ST</sup> INTERESTED PARTY**  
**JUBILEE INSURANCE COMPANY LIMITED.....2<sup>ND</sup> INTERESTED PARTY**  
**TRUST BANK LIMITED (In Liquidation).....<sup>RD</sup> INTERESTED PARTY**  
**COMMISSIONER OF LANDS.....4<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. The application dated 18<sup>th</sup> April, 2017 seeks orders that:

**1. That Honourable court be pleased to set aside the decision of the Taxing officer delivered on 4<sup>th</sup> February, 2016 as far as the same relates to taxation of item one (1) of the Petitioner’s and 3<sup>rd</sup> interested party’s Bill of costs dated 4<sup>th</sup> June, 2014 and 24<sup>th</sup> June, 2015 respectively, the quantum awarded thereon and reasoning with respect to the said award.**

**2. That this Honourable Court be pleased to re-tax item one (1) the said Bills of costs.**

**3. That in the alternative of prayer 2 above, this Honourable court be pleased to remit the Petitioner’s and the 3<sup>rd</sup> Interested party Bill of costs dated 4<sup>th</sup> June, 2014 and 24<sup>th</sup> June, 2015 for re-taxation of item one (1) thereof to a different taxing officer with appropriate direction thereafter.**

#### **4. That costs of this Application be provided for.”**

2. The application is predicated on the grounds stated therein and is supported by the affidavit sworn by Anne Mathenge, counsel for the 4<sup>th</sup> Respondent/Applicant. It is stated that the sum of Ksh.2,000,000/= allowed by the Taxing Officer as the instruction fee is manifestly excessive and founded on wrong principles. According to the Applicant, the Taxing Officer failed to take into account relevant factors during the taxation and failed to exercise his discretion properly. It is further averred that the Taxing Officer failed to appreciate that the proceedings the subject of the suit were compromised midway when the parties entered into a consent. It is stated that the Taxing Officer failed to take into account the provisions of Schedule VI of the Advocates Remuneration Order.

3. The application is opposed. The Petitioners’ in their replying affidavit have asserted that the application herein is fatally defective for failure to annex the Ruling and Reasons of the Taxing Officer in respect of the taxation. It is stated that the Taxing Officer took into account the provisions of Schedule VI (1) of the Advocates Remuneration Order and applied the principles that govern proceedings that are not quantifiable. It is further stated that the application lacks merits and should be dismissed with costs.

4. The 3<sup>rd</sup> Interested party in it’s replying affidavit filed in opposition to the application supported the Ruling of the Taxing Officer. It is stated that the taxing Officer took into account, *inter alia*, the complexity of the matter, the nature of the proceedings and Schedule VI of the Advocates Remuneration Order.

5. The application was canvassed by way of written submissions. I have considered the application, the response to the same and the submissions filed.

6. The Court of Appeal set out the principles to be followed during the taxation of instruction fees in the case of **Joreth Ltd v Kigano [2002] eKLR** as follows:

**“We would at this stage point out 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) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances.”**

7. Schedule VI (i) (j) of the Advocates Remuneration Order:

**“To present or oppose an application for a Constitutional and Prerogative Order such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate.”**

8. All the parties are in agreement that the applicable law is Schedule VI (i)(j) of the Advocates Remuneration Order (2014).

9. Looking at the ruling and reasons for the taxation, it is clear that the Taxing Officer appreciated the value of the land the subject of the proceedings was 240,000,000/= and that the nature of the proceedings was not quantifiable. The Taxing Officer also took into account the principles to be considered in such a case as set out in the case of **Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others [2008] eKLR** where the guiding principles in taxation were stated as follows:

**“(ii) the taxation of advocates’ instruction fees is to seek no more and no less than reasonable compensation for professional work done;**

**(iii) the taxation of advocates' instruction fees should avoid any prospect of unjust enrichment, for any particular party or parties;**

**(iv) so far as apposite, comparability should be applied in the assessment of advocate's instruction fees;**

**(v) objectivity is to be sought, when applying loose-textures criteria in the taxation of costs;**

**(vi) where complexity of proceedings is a relevant factor, firstly, the specific elements of the same are to be identified and stated; and secondly, complexity is to be judged on the basis of the express or implied recognition and mode of treatment by the trial judge;**

**(vii) where responsibility borne by advocates is taken into account, its nature is to be specified;**

**(viii) where novelty is taken into account, its nature is to be clarified;**

**(ix) where account is taken of time spent, research done, skill deployed by counsel, the pertinent details are to be set out in summarized form."**

10. The Taxing Officer exercised her discretion and awarded the sum of Ksh. 2,000,000/= as instruction fee. The value of the property the subject matter was given at 240,000,000/=. The case was therefore of importance and interest to the parties. This court holds that the Taxing Officer properly exercised her discretion and is not inclined to interfere with the same.

11. As stated in the case of **First American Bank v Shah and others [2002]1EA 64**, where the court stated as follows:

**"First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle...And according to the Advocates Remuneration Order itself, some of the relevant factors to take into account include the nature and importance of the cause or matter, the amount or value of the subject matter involves, the interest of the parties, the general conduct of the proceedings and any direction by the Trial Judge."**

12. Consequently, the application is dismissed with costs.

Dated, signed and delivered at Nairobi this 31<sup>st</sup> day of May, 2018

**B. THURANIRA JADEN**

**JUDGE**