



Prof Tom Ojienda & Associates v County Government of Nairobi (Environment and Land Miscellaneous Application E115 of 2023) [2025] KEELC 3383 (KLR) (28 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3383 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E115 OF 2023
CG MBOGO, J
APRIL 28, 2025
IN THE MATTER TAXATION OF THE ADVOCATE-CLIENT

BETWEEN

PROF TOM OJIENDA & ASSOCIATES ADVOCATE

AND

COUNTY GOVERNMENT OF NAIROBI CLIENT

RULING

1. Before this court for determination is the chamber summons dated 13th February, 2025 filed by the advocate/applicant and it is expressed to be brought under Sections 1A, 1B, 3A and 80 of the Civil Procedure Rules, and Rule 11 of the Advocates Remuneration Order seeking the following orders: -
 1. Spent.
 2. That this honourable court be pleased to set aside the taxation ruling dated 3rd February, 2025 with respect to items 1 and 2 of the said Bill of Costs.
 3. That the applicant's Advocate-Client Bill of Costs dated 30th October 2023 be placed before another Taxing Officer for re-taxation of items 1 and 2 of the Bill of Costs being the instructions fees and the getting up fees.
 4. That the court be pleased to grant any other orders it deems fit in the interest of justice.
 5. That costs of this application be provided for.
2. The application is premised on the grounds *inter alia* that the applicant filed an advocate-client bill of costs dated 30th October, 2023 seeking a total sum of Kshs. 24,212, 925.80/- being instruction fees to the tune of Kshs. 10,000,000/- and other charges pursuant to legal services rendered to the respondent



in ELC Case No. 607 of 2017; *Mount Kenya Investments Limited v Allan Ng'ethe, Mwangi Gaithe & City Council of Nairobi*.

3. The application is supported by the affidavit of Prof. Tom Ojienda, Senior Counsel, sworn on even date. The learned Senior Counsel deposed that the dispute in ELC Case No. 607 of 2017 was a parcel of land measuring 10 acres and identified as Plot No. 10 'A' Kahawa West Industrial Area, and that in the bill of costs dated 30th October, 2023, the applicant/ advocate specifically referred to the subject matter at item 1 as per the valuation report dated 27th April, 2022 annexed to the Bill of Costs, and which was valued at Kshs. 420,000,000/-.
4. The learned counsel deposed that in its ruling, the taxing officer noted that the subject matter was unascertainable, and proceeded to tax the instruction fees at Kshs. 500,000/- in complete disregard to the principles of taxation. That awarding the sum of Kshs. 500,000/- as instruction fees where the value of the subject matter is Kshs. 420,000,000/- will not only be prejudicial, but will also deny the applicant/advocate its rightful legal fees. Further, that the findings of the taxing officer with regards to items 1 and 2 are clearly erroneous in light of the valuation report that was annexed to the bill of costs.
5. The learned Senior Counsel deposed that there is need for the advocate-client bill of costs to be placed before another taxing officer for re-taxation of items 1 and 2, taking into consideration the value of the subject matter.
6. The client/respondent did not file its response to the chamber summons.
7. The chamber summons was canvassed by way of written submissions. The advocate/applicant filed its written submissions dated 2nd April, 2025. While relying on the cases of *DK Law Advocates v Zhong Gang Building Material Co. Ltd & another* [2021] eKLR, and *Kipkorir Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the advocate/applicant submitted that the taxing officer made a grave error of principle by failing to take into consideration the value of the subject matter which stood at Kshs. 420,000,000/- ascertainable from the pleadings annexed to the bill of costs. While further relying on the case of *Joreth Ltd v Kigano & Associates* [2002] 1 EA. 92, the advocate/ applicant submitted that the valuation report formed part of the pleadings filed in the parent file, and that the value of the subject matter was ascertainable from the pleadings.
8. The advocate/applicant further submitted that the taxing officer failed to take into consideration what was at risk that it defended. Further, that the advocate/ applicant was called to defend a suit to the tune of Kshs. 420,000,000/-, and assessing the fee for the sum of Kshs. 500,000/- is a grave injustice, and does not amount to fair remuneration for legal services rendered. To buttress on this submission, reliance was placed in the cases of *Kamunyori & Company Advocates v Development Bank of Kenya Limited* [2015] Civil Appeal 206 of 2006 and *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR.
9. In conclusion, the advocate/client submitted that the award by the taxing officer is manifestly low, and not commensurate to the legal services rendered by the applicant to the respondent and the value of the subject matter.
10. I have considered the application and the written submissions filed by the advocate/applicant. In my view, the issue for determination is whether the taxing officer erred in taxing items 1 and 2 of the advocate-client bill of costs.
11. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation



as was held in the leading case of *Premchand Raichand Ltd Another -v- Quarry services of East Africa Ltd and Another* No. 3 (1972) EA 162. The principles laid out are: -

- i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.
- ii. The taxing master was expected to tax each bill on its merits;
- iii. The value of the subject matter had to be taken into account;
- iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;
- v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy.
- vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference."

12. In the case of *Joreth Ltd v Kigano & Associates* [2002] 1 EA 92, the Court of Appeal stated 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 the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances."

13. Also, in the case of *Peter Mutboka & another v Ochieng & 3 others* [2019] eKLR it was stated that;

"It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive."

14. In the reference before me, the advocate/applicant contended that the taxing officer failed to consider the instruction fees of the subject matter which was valued at Kshs. 420,000,000/- as per the valuation report filed in the parent file. In arriving at its decision, the taxing officer noted that the value of the



subject matter was unascertainable as per the pleadings and proceeded to exercise discretion in awarding the sum of Kshs. 500,000/-.

15. Having considered the arguments made by the advocate/ applicant, and upon perusal of the file, I do note that there were three valuation reports dated 10th October, 2009, 13th March, 2017 and 27th April, 2022. All these reports were filed by the plaintiff in the suit, and there was strictly no joint report as would support the advocate/ applicant's claim on instruction fees. In their submissions, and while defending the 3rd defendant, it was clear that the valuation reports produced were challenged and the 3rd defendant urged the court to consider the value of the land as that which existed when it became clear that the plaintiff could not make a claim. In other words, the 3rd defendant disagreed with the valuation report containing the value at the market of Kshs. 420,000,000/-. More importantly, and as I observed is that the court did not rely on the valuation report in making its determination.
16. A valuation report that was challenged during the hearing of a case cannot form the basis for a claim of instruction fees whereas the same was not produced as a joint report. In my view, the taxing officer exercised her discretion correctly and properly applied her mind to the laid down principles that govern taxation. I see no reason whatsoever to fault her finding.
17. Arising from the above, the chamber summons dated 13th February, 2025 therefore lacks merit, and it is hereby dismissed. Each party to bear its own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 28TH DAY OF APRIL, 2025.

HON. MBOGO C.G.

JUDGE

28/04/2025.

In the presence of:-

Mr. Benson Agunga - Court assistant

Ms. Ojienda holding brief Professor Tom Ojienda (Senior counsel) for the Advocate/Applicant – present

