



REPUBLIC OF KENYA



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Gogra v Lahori Jethnand Manghnani t/a Sachdeva & Company Advocates (Environment & Land Miscellaneous Case E073 of 2024) [2025] KEELC 3202 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE E073 OF 2024**

SM KIBUNJA, J

APRIL 8, 2025

BETWEEN

BHUPINDER SINGH GOGRA APPLICANT

AND

**LAHORI JETHNAND MANGHNANI T/A SACHDEVA & COMPANY
ADVOCATES RESPONDENT**

RULING

Amended Chamber Summons Dated 28th September 2024

1. The applicant moved the court through the amended chamber summons dated 28th September 2024, seeking for orders inter alia that:
 - a. The decision of the taxing master, Hon. Nyariki, delivered on 28th August 2024, on the bill of costs dated 25th March 2024 on instruction and getting up fees be set aside, reviewed or otherwise varied;
 - b. A finding that the taxing master erred in law and principle in relying on the figure of Kshs 45,000,000 that is on the valuation report filed after judgement, and not forming part of the pleadings, judgement or settlement of the parties;
 - c. The court to re-tax the Advocate/Client 3rd defendant's party and party bill of costs; or
 - d. Alternatively, remit the party and party bill of costs dated 25th March 2024 to a different taxing master for re-taxation;
 - e. That the 1st and 2nd defendants/applicants be granted leave to defend the suit in terms of the draft defence annexed hereto;
 - f. Costs.



The application is based on the nine (9) grounds on its face marked (a) to (i) respectively, and supported by the affidavits of Bupinder Singh Dogra, the applicant, sworn on 28th September 2024 and 22nd October 2024 respectively, deposing inter alia that Mombasa ELC No E228 was struck out through the ruling of 15th March 2023, for want of procedure with costs to the 3rd defendant, respondent herein, to be paid by the applicant; that respondent filed the bill of costs dated 31st March 2024, and on 24th July 2024 sought for and was granted leave to file some valuation report; that the taxing master in his ruling of 28th August 2024, based instruction fees on the value of Khs.45,000,000 on the valuation report, which was an error as it was filed almost two years after the judgement, and no pleadings had value for the suit property; that the taxing officer ignored his advocates submissions on the valuation report; that the court should set aside the award on instructions and getting up fees which were based on the value on the valuation report dated and filed on 24th July 2024, and that the issues raised herein had been raised by the applicant in his submissions dated 20th August 2024 in answer to the bill of costs.

2. The respondent opposed the application through the three grounds of opposition dated the 25th September 2024, to the effect that the application is misconceived and bad in law; that the bill of cost was taxed in ELC No E228B of 2021 and any reference should have been filed in that suit; and no stay of execution orders can issue in this application as no decree has been passed herein.
3. The learned counsel for the Applicant and Respondent filed their submissions dated the 27th December 2024 and 19th February 2025 respectively, which the court has considered.
4. The issues for determinations by the court are as follows:
 - a. Whether the taxation of the instructions and getting up fees was based on Kshs 45,000,000 on the valuation report dated and filed on 24th July 2024, and if so, whether the taxing master erred in law and principle.
 - b. Whether 1st & 2nd defendants have met the threshold for leave to defend the suit in terms of the draft defence to be granted.
 - c. Who pays the costs.
5. The court has carefully considered the grounds on the chamber summons, affidavit evidence, submissions by the learned counsel, superior courts decisions cited therein and come to the following findings:
 - a. As corrected submitted by counsel for the respondent, the judge should not interfere with the exercise of discretion by the taxing officer except where shown that there was a misdirection on the law and or principle applicable in taxation. In support of that contention, counsel cited relied on the decision in the case of *Joreth Limited v Muturi Kigano & Company Advocates* [2002] eKLR. The respondent has through his grounds of opposition and submissions contended that this being an issue relating to Party and Party bill of costs, then the application is totally misconceived, incompetent and bad in law, as it ought to have been filed in ELC No E228 of 2021, *Enacta Limited v Martin Mureithi Ngari & 5 others*, instead of through a miscellaneous application, which applies in *Advocates/Client bill of costs* under paragraph 13 of the Remuneration Order. The applicant has termed the respondent's objection as one of procedure, and submitted that the respondent has not challenged their main contention that the taxing officer taxed the instructions and getting up fees on the basis of the valuation report filed on the 24th July 2024, which was not part of the pleadings, and amounts to a misdirection and error of principle in taxation. Further, that as a reference is an appeal against the decision



of the taxing officer, then the objection that it was filed through a miscellaneous application instead of in the parent suit record is misplaced.

- b. Both counsel cited the case of *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR), to emphasize their positions. In that case, the court of appeal inter alia held that;

“..the value of the subject matter for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement 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.”

The counsel for the respondent cited the case of *Kassim v Habre International Limited* (2000) 1EA 98 (SCU) in which it was held that:

- (a) The Supreme Court will entertain a reference on taxation on two grounds namely on point of principle or on ground that the bill of costs as taxed is in all circumstances manifestly excessive or manifestly inadequate.
- (b) The principles governing taxation of costs by a taxing master are well settled.
- i. Firstly the instruction fee should cover the advocate work including taking the instructions and any other work necessary for presenting the case for trial or appeal.
 - ii. Secondly, it would be proper to give a slightly higher award to counsel for the appellants although there is no rule requiring the court to do so.
 - iii. Thirdly, the taxing master is expected to tax each bill on its merit and nobody can pretend that by any mathematical calculation the taxing office will arrive at an exact award of costs.
 - iv. Fourth, the taxing master will have to take into account the value of the subject matter.
 - v. Fifth, although the taxing master has discretion, he was to exercise it judiciously and not whimsically or capriciously.
 - vi. Sixth, while the successful litigant is entitled to a free reimbursement of the costs we has incurred, the taxing master must take into consideration the public interest since cost must not be allowed to rise to such a level as to confine access to the court to the wealthy although the general level of remuneration of Advocate must be such as to attract recruits to the profession. “

And the applicant’s counsel cited the decision in the case of *SG Mbaabu & Company Advocates v Joseph Muoki Kakenyi & 2 others* [2018] eKLR, where A.O. Angote J, observed as follows:

“Indeed, the filing of valuation reports for the purpose of guiding the taxing officer in taxation ought to be discouraged for the simple reason that such a value was never the basis of the suit in the first place. If the value of the



suit property is so important to a litigant, then it should form the basis of his claim and should be specifically pleaded.”

The unmistakable message from the foregoing superior courts decisions among others, is that the factual materials to be considered by the taxing officer in arriving or determining the value of the suit property for purposes of taxing the instructions fees, and getting up fees, which is a percentage of the former, must only be either from the pleadings already filed or judgement/settlement/order.

- c. By the time the parent suit, that is, Mombasa ELC No E228 of 2021, Enacta Limited v Martin Mureithi Ngari & 5 others, was struck out/terminated on the 15th March 2023, the valuation report dated the 24th July 2024 did not exist and had not been filed. The said report did not exist and had not been filed by the time the respondent sought and obtained an order for costs against the applicant. It did not exist by the time the respondent filed the party and party bill of costs dated the 31st March 2024, and the applicant’s deposition that the said valuation report was only filed on 24th July 2024 has not been rebutted. The applicant has attached a copy of their submissions to their further supplementary affidavit sworn on 22nd October 2024, and at paragraphs 12 to 20 raised their objection to reliance on the value on the said valuation report. While this court may not know how the respondent reacted to that submission, it is clear the taxing officer went ahead to take the value of suit property to be Kshs 45million as contained in the said report filed after the leave was sought and obtained on 24th July 2024. The ruling inter area reads:

“

“ 1. Item 1

This item provides for instruction fees where the value of the suit as per the valuation report was Kshs 45,000,000/-. I will be guided

That as the applicant’s contention and depositions to the effect that the pleadings filed in ELC No E228 of 2021, Enacta Limited v Martin Mureithi Ngari & 5 others, and the ruling striking out the suit had no value ascribed to the suit property, then taxing officer erred in law and in principle by not only allowing the filing of the valuation dated 24th July 2024, but also by relying on the value thereon to determine instructions fees and thereafter the getting up fee. On that score, the court finds the reference meritorious.

- d. While I agree with the respondent that this reference should have been filed in ELC No E228 of 2021, Enacta Limited v Martin Mureithi Ngari & 5 others, being a reference arising out of the Party and Party Bill of Costs, I do not see any hardship or prejudice that the respondent has been exposed to by filing the it through a miscellaneous application. That objection, if upheld would definitely lead to the reference being struck out, but the applicant would most probably move back to court for leave to file the reference out of time, and this would run contrary to the Oxygen Principles’ provisions of sections 1A and 1B of the *Civil Procedure Act* chapter 21 of Laws of Kenya, and section 19 of the *Environment and Land Court Act* No 19 of 2011, and Article 159(2)(d) of the *Constitution*, that emphasize on substantive justice as opposed to procedural technicalities. That ground is therefore rejected.
- e. Having found merit with the applicant’s reference in respect of the taxing officer’s awards on instructions and getting up fees, the said items are set aside and the bill of



costs is to be remitted back to another taxing officer to tax the two items without giving any considerations to the contents of the respondent's valuation report dated and filed on 24th July 2024.

- f. Prayer (6) for leave for the 1st & 2nd defendants to defend the suit in terms of the draft defence, is definitely out of place, but I notice the applicant has at paragraph 2 of their submission indicated it was "a typing error and the same is withdrawn." As the prayer has been withdrawn, then the court does not need to pronounce itself on it.
- g. That costs under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya, follow the event. As this reference was necessitated by the reliance by the taxing officer on the valuation report filed by the respondent on 24th July 2024, despite the applicant's protestations, and as the applicant has succeeded in his reference, the respondent will pay him the costs.

6. Flowing from the foregoing determinations, the court finds and orders as follows:

- a. That the reference filed through the amended chamber summons dated the 28th September 2024, is allowed in the following terms:
 - i. The decision of the taxing master, Hon. Nyariki, delivered on 28th August 2024, on the bill of costs dated 25th March 2024 on instruction and getting up fees is hereby reviewed and set aside.
 - ii. That the party and party bill of costs dated 25th March 2024, is hereby remitted to the current taxing officer for re-taxation on instructions and getting up fees items only.
- b. The contents on the valuation report dated and filed on 24th July 2024 by the respondent should not be considered during the re-taxation.
- c. The respondent to bear the costs of this reference.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 8TH DAY OF APRIL 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Applicant : No Appearance

Respondent : No Appearance

Shitemi – Court Assistant.

