



**Superior Homes (Kenya) PLC v Water Resources Authority (WRA); Gems Management Limited & 8 others (Interested Parties) (Environment and Land Constitutional Petition 12 of 2019 & Judicial Review Miscellaneous Application 192 of 2018 (Consolidated)) [2025] KEELC 587 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 587 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 12 OF 2019 &  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 192 OF 2018 (CONSOLIDATED)**

**CA OCHIENG, J**

**FEBRUARY 10, 2025**

**IN THE MATTER OF THE PROTECTION OF THE RIGHT TO PROPERTY AS  
ENSHRINED UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ENFORCEMENT ORDERS ISSUED ON 31ST MAY,  
2018 BY THE WATER RESOURCES MANAGEMENT AUTHORITY  
IN RESPECT OF HOUSE NO. TB 023A, FB 025A, FB 027A, FB 029A,  
AND FB 030A SITUATE ON GREENPARK ESTATE, MACHAKOS;**

**AND**

**IN THE MATTER OF ARTICLES 22, 23 & 40 (3),  
47, 50 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE INTERPRETATION AND APPLICATION OF REGULATION  
116 (2) OF THE WATER RESOURCES MANAGEMENT REGULATIONS (2007)**

**BETWEEN**

**SUPERIOR HOMES (KENYA) PLC ..... PETITIONER**

**AND**

**THE WATER RESOURCES AUTHORITY (WRA) ..... RESPONDENT**

**AND**

**GEMS MANAGEMENT LIMITED ..... INTERESTED PARTY**

**MICHAEL ANTHONY NYABUTI ..... INTERESTED PARTY**



**ROSELIND KATUMBI KOTI ..... INTERESTED PARTY**  
**NANCY NTHAMBI KATINGIMA ..... INTERESTED PARTY**  
**JAMES MAINGI MBITHI & EMMA MBINYA MUTIO ..... INTERESTED PARTY**  
**DANIEL GICHUKI KARIUKI & EMILY NJERI KAROKI INTERESTED PARTY**  
**FAITH WANGUI THIONGO & ALLAN NJUGI MURIMI INTERESTED PARTY**  
**STELLA BONARERI MOGERE & KEPHA NYAMONGO**  
**OENGA ..... INTERESTED PARTY**  
**ANTHONY MAGANDA CHACHA & RUTH MUTHONI**  
**NJIHIA ..... INTERESTED PARTY**

## **RULING**

1. What is before Court for determination are two Chamber Summons applications. In the Chamber Summons application dated the 9<sup>th</sup> November, 2021, the Respondent/Applicant seeks the following Orders:
  1. The decision of the Taxing Master of 14<sup>th</sup> July 2021, on the Petitioner's Party and Party Bill of Costs dated 12<sup>th</sup> November, 2019 as relates to items number 1, 2, 3, 4, 6, 7, 9, 12, 13, 15, 19, 20, 23, 24, 27, 28, 31, 32, 34, 35, 38, 39, 41, 42, 46, 50, 51, 53, 54, 56, 58, 64, 65, 67, 74, 75, 79, 81, 82, 83, 84 and 85 be set aside.
  2. The Petitioner's Party and Party Bill of Costs dated 12<sup>th</sup> November, 2019 be referred back to the Taxing Master with directions for fresh taxation of items number 1, 2, 3, 4, 6, 7, 9, 12, 13, 15, 19, 20, 23, 24, 27, 28, 31, 32, 34, 35, 38, 39, 41, 42, 46, 50, 51, 53, 54, 56, 58, 64, 65, 67, 74, 75, 79, 81, 82, 83, 84 and 85 in the said Bill of Costs.
  3. In the alternative, the decision of the Taxing Master of 14<sup>th</sup> July, 2021, on the Petitioner's Party and Party Bill of Costs dated 12<sup>th</sup> November, 2019 as relates to items number 1, 2, 3, 4, 6, 7, 9, 12, 13, 15, 19, 20, 23, 24, 27, 28, 31, 32, 34, 35, 38, 39, 41, 42, 46, 50, 51, 53, 54, 56, 58, 64, 65, 67, 74, 75, 79, 81, 82, 83, 84 and 85 be varied.
  4. This Honourable Court do give such other further directions as it may deem fit under the circumstances of this case.
  5. The costs of this Application be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of MOHAMED M. SHURIE, the Chief Executive of Water Resources Authority. He confirms that on 14<sup>th</sup> July, 2021, the Taxing Officer delivered the Ruling with respect to the Petitioner's Party and Party Bill of Costs dated the 12<sup>th</sup> November, 2019 and taxed it at a sum of Kshs. 1, 470, 570.00. He explains that on 1<sup>st</sup> October, 2021, their Advocates filed a Notice of Objection to the entire Taxing Master's decision of 14<sup>th</sup> July, 2021 as well as an application seeking to file a reference out of time. Further, on 14<sup>th</sup> October, 2021, they obtained leave, by consent to file the reference out of time. He contends that the Taxing Master erred in law and fact by failing to take into account the Schedule VI (1) (j) of the Advocates (Remuneration) Order 2014. Further, she failed to confirm the filed court documents thus making a wrong finding as relates to the disbursements. He insists that the award of Kshs. 500,000/= as Instruction Fees was excessive. Further, that she erroneously failed to confirm from



the court record and consider the correct number of folios from the drawings made by the Petitioner and awarding the amounts as drawn in the Petitioner's Party and Party Bill of Costs as relates to certain items highlighted therein. He avers that the Taxing Master failed to apply the provisions of Schedule VI (4) (f) and 6 (6) of the Advocates (Remuneration) Order 2014 with respect to drawing of an Affidavit of Service and correspondence between parties as relates to items 9 and 15. Further, she erroneously awarded high amounts for court attendances. He reiterates that the Taxing Master failed to consider their submissions.

3. The Petitioner opposed the instant application by filing a replying affidavit sworn by SHIV ARORA, its Chief Executive Officer, where he provides a highlight of the issues that were raised in the Petition. He contends that the said issues were weighty rendering the matter complex. Further, that five (5) experts with specialized skills were involved to discern the constitutional issues that had been raised. He provides an explanation of what constitutes a folio and insists that items 3, 4, 6, 7, 10, 12, 13, 15, 17, 19, 20, 23, 24, 27, 28, 31, 34, 35, 38, 39, 41, 42, 46, 50, 51, 53 and 56 were awarded as per the guiding standards contained in paragraphs 4 and 8 of Schedule VI of the Advocates (Remuneration) Order 2014. He argues that the Taxing Officer did not ask the Petitioner to avail receipts in respect to items No. 79, 81, 82, 83, 84 and 85. He reiterates that the Taxing Officer addressed her mind properly in awarding items Nos. 79, 81, 82, 83 and 85 respectively.
4. The Petitioner filed a Chamber Summons application dated the 12<sup>th</sup> April, 2022 where it sought for the following Orders:
  1. That the Honourable Court be pleased to review, revise and/or vary the decision of the Honourable Taxing Officer rendered and/or delivered on 14<sup>th</sup> July 2021, and in particular, the decision relating to Items No. 1, 2 and V.A.T.
  2. That this Honourable Court be pleased to Order that the Petitioner's Party and Party Bill of Costs dated 12<sup>th</sup> November 2019, be taxed afresh.
  3. That in the alternative to orders (1) and (2) above, this Honourable Court be pleased to re-assess and/or re-tax the costs lawfully payable under the Petitioner's Party and Party Bill of Costs dated 12<sup>th</sup> November, 2019 as pertains to Items No. 1, 2 and V.A.T.
  4. That this Honourable Court do issue any such other and further orders and/or directions as it may deem fit to issue in the interests of justice.
  5. That the costs of this Reference be provided for.
5. The application is premised on the grounds on the face of it and the supporting affidavit of SHIV ARORA, where he explains the proceedings herein. He deposes that the Deputy Registrar failed to appreciate that Schedule VI (1) (j) of the Advocates Remuneration Order 2014, provides that the Taxing Officer shall consider the amount or value of the subject matter. Further, that the Taxing Officer failed to appreciate that special damages in the sum of Kshs. 466, 955, 673, the subject matter of the Consolidated Petition and Judicial Review herein were properly pleaded, particularized and quantified in the further affidavit of Judith Maroko sworn on 15<sup>th</sup> February, 2019. He states that the Deputy Registrar erred in law and fact in awarding it, Kshs. 500,000/=. Further, that the Taxing Master failed to ascertain the value of the subject matter from the pleadings, judgment or settlement. He avers that the Deputy Registrar erred in law and fact in awarding the sum of Kshs. 75,000/= as Getting Up fees. Further, that VAT charged was also erroneous.
6. The Respondent opposed the Petitioner's Chamber Summons Application by filing Grounds of Opposition dated the 23<sup>rd</sup> March, 2022 where it contended that the Taxing Master did not commit any



error in principle in taxing the Petitioner's Party and Party Bill of Costs as pertains to item (1) and (2) save for failing to give reasons for increment of Instruction fees from Kshs. 100,000 to Kshs. 500,000.

7. The two references were canvassed by way of written submissions.

### **Analysis and Determination**

8. Upon consideration of the two Chamber Summons applications dated the 9<sup>th</sup> November, 2021 and 12<sup>th</sup> April, 2022 respectively, including the respective affidavits, Grounds of Opposition together with rivalling submissions, the following are the issues for determination: Whether the Taxing Officer erred in awarding the Instruction Fees and Getting Up Fees as she did. Whether the Taxing Officer erred in taxing items number 1, 2, 3, 4, 6, 7, 9, 12, 13, 15, 19, 20, 23, 24, 27, 28, 31, 32, 34, 35, 38, 39, 41, 42, 46, 50, 51, 53, 54, 56, 58, 64, 65, 67, 74, 75, 79, 81, 82, 83, 84 and 85 as she did.

As to whether the Taxing Officer erred in awarding the Instruction Fees and Getting Up Fees as she did.

9. The Petitioner claims the Taxing Officer failed to take into account the value of the subject matter from the pleadings, settlement or judgment and hence made an erroneous award. The Respondent on the other hand insists that the award of Kshs. 500,000/= as Instruction fees was excessive and no explanation was given for the same.
10. On award of Instruction Fees, Schedule VI of the Advocates (Remuneration) Order 2014 provides that:

‘The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it — (a) To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defense or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties and (b) To sue in any proceedings described in paragraph (a) Where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties..’

11. In the current scenario, both the Petitioner and Respondent's main contention is the failure of the Taxing Officer to adhere to principles applicable in Schedule VI of the Advocates (Remuneration) Order. They have each proffered different reasons as enumerated above, for opposing the said award of Instruction fees. From a perusal of the impugned Ruling by the Taxing Officer, which is being challenged, I note the Taxing Officer appreciated that taxation of Constitutional Petitions as the one herein, is done differently. She noted that no monetary award was made and since the matters were consolidated, a lot of time was taken for preparation of the case including legal research.
12. As per Schedule VI (j) of the Advocates (Remuneration) Order 2014 it stipulates that:

‘To present or oppose an application for a Constitutional and Prerogative Orders 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— (i) where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000 (ii) where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000.’



13. In the case of *Joreth Limited V Kigano & Associates* [2002] eKLR the court held inter alia:
- “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.”
14. While in the case of *Republic v Ministry of Agriculture and 2 others: Exparte Muchiri W’Njuguna & Others* (2006) eKLR it was held as follows:
- “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. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant facts”
15. Further, in the case of *Violet Ombaka Otieno & 12 Others v Moi University* [2021] eKLR, the Judge held that:
- “In determining the second issue as to whether the taxing officer exercised her discretion judiciously, the starting point is to identify the legal parameters within which this Court can interfere with a taxing officer’s discretion. In the case of *Premchand Raichand Ltd v Quarry Services of East Africa Ltd* [1972] E.A. 162 it was held that: “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, and 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 so high or so low as to amount to an injustice to one party or the other.”
16. Based on the facts as presented while relying on the legal provisions cited and associating myself with the quoted decisions, I find that both the Petitioner and the Respondent have failed to demonstrate with precision on how the Taxing Officer misapprehended and misapplied the law including principles of taxation in awarding the Instructions fees as she did. I opine that the Taxing Officer had the discretion to increase or decrease the amount awarded. Further, they have failed to demonstrate how she failed to apply the applicable principles and formula provided for in Schedule VI of the Advocates (Remuneration) Order 2014. In the circumstances, I find that the Taxing Officer did not err in principle by taxing Item (1) of the Bill of Costs as she did, as it was based on the law including her discretion and she had powers to do so. I will hence not interfere with it. On the issue of Getting Up fees, I find that it was proper for her to award Kshs. 75,000/- which is 15% of the Kshs. 500,000, awarded as Instruction fees, as provided for under Schedule V1 of the Advocates (Remuneration) Order.
- As to whether the Taxing Officer erred in taxing items number 1, 2, 3, 4, 6, 7, 9, 12, 13, 15, 19, 20, 23, 24, 27, 28, 31, 32, 34, 35, 38, 39, 41, 42, 46, 50, 51, 53, 54, 56, 58, 64, 65, 67, 74, 75, 79, 81, 82, 83, 84 and 85 as she did.



17. I have perused the Bill of Costs including the impugned Ruling sought to be challenged and find that the Taxing Officer relied on the provisions of Schedule VI (4) of the Advocates Remuneration Order (2014) while calculating the sums and provided proper reasons for taxing the said amounts as she did. In my view she properly exercised her discretion and I will hence not interfere with the amounts as taxed.
18. It is against the foregoing that I find no reason in interfering with the Taxing Officer's decision dated the 14th July, 2021, and will uphold it.
19. In the circumstances, I find the Chamber Summons applications dated the 9<sup>th</sup> November, 2021 and 12<sup>th</sup> April, 2022 unmerited and will proceed to dismiss them but make no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>th</sup> DAY OF FEBRUARY 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Onchagwa for Nyachoti for Petitioner

Court assistant: Joan

