



**Nairobi Water and Sewerage Company Limited v G.M Gamma
Advocates LLP (Environment and Land Miscellaneous Application
E214 of 2024) [2025] KEELC 1237 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1237 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E214 OF 2024
TW MURIGI, J
MARCH 6, 2025**

**BETWEEN
NAIROBI WATER AND SEWERAGE COMPANY LIMITED APPLICANT
AND
G.M GAMMA ADVOCATES LLP RESPONDENT**

RULING

1. Before me for determination is the Chamber Summons dated 11th December 2024 in which the Applicant seeks the following orders:-
 - a. That there be a stay of execution pending the hearing and determination of the Respondent's Reference to the Taxation on the Taxing Master's Ruling dated 2nd December 2024.
 - b. That the Honourable Court be pleased to vary/set aside the decision of the Taxing Master in the ruling dated 2nd December 2024 relating to item No. 1 (instruction fees) on the Respondent's Advocate-Client Bill of Costs dated 14th October 2024.
 - c. That the Honourable Court be pleased to re-assess the fees due on Item No. 1 on the Respondent's Advocate-Client Bill of Costs dated 14th October 2024.
 - d. In the alternative and without prejudice to the foregoing, the Court be pleased to remit item No. 1 on the Respondent's Advocate-Client Bill of Costs dated 14th October 2024 for taxation before a different Taxing Master.
 - e. That the Costs of this application be awarded to the Appellant.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Viola Odhiambo, the Applicant's Legal Officer.



The Applicant's Case

3. The deponent averred that the Applicant is aggrieved by the ruling delivered by the Taxing Officer on 2nd December 2024 for the following reasons:-
 - i. The Taxing Master misdirected and acted contrary to the established principles of taxation of an Advocate-client bill of costs as provided under Schedule 6 of the Advocates (Remuneration) (Amendment) Order 2014.
 - ii. The taxing master exercised his discretion erroneously and in an injudicious manner by awarding the Respondent a sum of Kshs. 17,000,000 on Item No. 1 (instruction fees) while the instruction fees did not apply under Schedule 6 of the Advocates Remuneration Amendment Order 2014 since the Respondent did not sue or defend any suit.
 - iii. The Taxing Master erred in holding that the Applicant submitted that the bill of costs should be taxed under other business not otherwise provided for under Schedule 6. That based on this holding, the Taxing Master proceeded to assess the instruction fees outside the express parameters provided under schedule 6 thereby arriving at an erroneous decision.
 - iv. The Taxing Master erred in failing to consider the Applicant's submissions relating to Item No. 1 (Instruction Fees) on the Advocates-client bill of costs.
4. The deponent contended that the Taxing Master exercised his discretion injudiciously by awarding instruction fees that did not avail to the Respondent. She further contended that the instruction fees were manifestly high and oppressive in the circumstances of the case. Based on the foregoing, the deponent urged the court to allow the application as prayed.

The Respondent's Case

5. The Respondent opposed the application through a replying affidavit of Gad Ouma Advocate sworn on 16th December 2024. The deponent averred that there existed an Advocate-Client relationship between the parties herein in which the Applicant instructed the Respondent to institute proceedings seeking declaratory orders of adverse possession and prescriptive rights as well as to recover and register the subject land in the name of the Applicant.
6. That on instructions of the Applicant, the Respondent conducted searches, prepared legal opinions, drafted pleadings and submitted the same for signature before they could be filed. He deposed that despite numerous reminders, the Applicant failed to return the signed pleadings for filing. She further deposed that the Respondent eventually terminated the Advocate-Client relationship due to the unusual conduct of the Applicant.
7. He went on to state that the Respondent filed a bill of costs after failing to reach an agreement with the Applicant on the fees payable for the work and services rendered. He averred that both parties made submissions before the Taxing Master who upon hearing proceeded to tax the bill and rendered his decision. He deposed that the Applicant submitted to the Taxing Master that the court had no discretion to tax the bill under any other provision of the law except Schedule 6 Part B which the Respondent had elected to proceed under. He contended that the Applicant cannot turn around as both parties were in agreement that the taxation would proceed under Schedule 6 Part B of the *Advocates Remuneration Order*.
8. He further contended that the Taxing Master exercised his discretion judiciously to award a sum of Kshs. 17,000,000 as instruction fees. It was argued that the instructions issued to the Respondent did



not limit the scope of their work as they were to take all the necessary steps to secure the interest of the Applicant. It was further contended that the subject property was of immense significance to the Applicant as it was the centre of provision of critical water and sanitation services to a large size of population around Nairobi City. In conclusion, the Respondent asserted that the Taxing Master acted judiciously and that no basis has been laid to interfere with the decision.

9. The Respondent filed a Notice of Motion dated January 9, 2025 seeking the following orders:-
 - a. That the Honourable court be pleased to enter judgement for the sum of Kshs. 19,742,562/= in accordance with the Certificate of Taxation dated 9th December 2024 together with interest at 14% from the date of filing the Bill of costs being 14th October 2024.
 - b. That pursuant to the judgment, a decree be issued for enforcement/execution.
 - c. That the costs of the application be borne by the Respondent.
10. The application is premised on the grounds appearing on its face together with the supporting affidavit of Gad Ouma Advocate sworn on even date. The deponent averred that the Applicant's Bill of Costs dated 14th October 2024 for Kshs. 66,715,731 was taxed at Kshs. 19,742,562. He urged the court to enter judgment in terms of the Certificate of Taxation.
11. The parties agreed that the said application be treated as a response to the Applicant's application.
12. The application was canvassed by way of written submissions.

The Applicant's Submissions

13. The Applicant filed its submissions dated 3rd February 2025. On its behalf, Counsel submitted that the Applicant engaged the Respondent to prepare a legal opinion on the judgment delivered in Nairobi ELC No. 393 of 2015 in addition to commencing proceedings for adverse possession in order to vest the property rights on the Applicant.
14. Counsel further submitted that the engagement emanated from the judgment delivered on 26/05/2022 in ELC No 393 of 2015 in which the Applicant had been sued for trespass, mesne profits and compensation. He averred that the suit was dismissed for being statute barred and that the Respondent was found to have acquired prescriptive rights to the suit land. That in a bid to secure a declaration of its prescriptive rights and register the suit land in its name, the Applicant engaged the Respondent to prepare a legal opinion from the judgment and to share a draft of the Originating Summons for review.
15. It was submitted that the Applicant neither approved the draft nor instructed the Respondent to sue for prescriptive rights accrued in its favour. It was further submitted that the bill of costs was in respect of the preliminary tasks performed by the Respondent which included preparing legal opinions drafting correspondences and not to the work done in ELC No. 393 of 2015.
16. Counsel relied on the case of *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* (2014) KEHC 5481 (KLR) to submit that the Taxing Master erred in principle in assessing the instruction fees outside the express parameters provided under Schedule 6 of the *Advocates Remuneration Order 2014* which applies where a suit has been instituted. Counsel submitted that the Taxing Master erred in principle in awarding instruction fees under Schedule 6 as no suit had been instituted. Counsel further submitted that Schedule 6A of the Advocates Remuneration Order provides for guidelines on charging of instruction fees where the value of the subject matter cannot be determined from the pleadings. Counsel contended that the value of the subject matter was not determinable from the documents



placed before court hence the taxation of instruction fees could only be based on Schedule 6A which provides for other matters. According to Counsel, the Respondent is entitled to a sum of Kshs. 75,000 as instruction fees. To buttress this point, Counsel relied of cases of *Ratemo Oira & Co Advocates v Magereza Sacco Society Ltd* [2019] eKLR and on the case of *Sophie Chirchir v Africa Merchant Assurance Co. Ltd* [2022] eKLR.

17. Counsel submitted that the Taxing Master erred in holding that the Applicant submitted that the Advocate-client bill of costs should be taxed under other business not otherwise provided under Schedule 6. That based on the holding, the Taxing Master proceeded to assess the instruction fees outside the express parameters provided under Schedule 6. Counsel submitted that there was nothing complex in the preliminary tasks performed by the Respondent which included drafting correspondences, preparing a brief legal opinion and shared information from the land registry.
18. In conclusion, Counsel contended that entry of judgement can only be granted where there is no objection to taxation or where there is no error of law or principle in the taxation.

Finally, Counsel urged the court to allow the application as prayed.

The Respondent's Submissions

19. The Respondent filed its submissions dated 17th December 2024. On its behalf, Counsel submitted the court can only interfere with the decision of a Taxing master if it is demonstrated that the taxing master erred in principle in assessing the bill of costs. Counsel relied on the cases of *Arthur v. Nyeri Electricity* [1961] EA 492, *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* [2014] KEHC 5481 (KLR) and *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR, to submit on the principles governing the jurisdiction of the court in a reference.
20. Counsel submitted that the reference being against quantum does not lie as Applicant has failed to plead with precision the principles that were violated by the Taxing Master
21. It was further submitted that the Taxing Master conducted the taxation under Schedule 6 Part B as per the choice made by the Respondent and acquiesced to by the Applicant who through submissions pleaded that the Taxing Officer was bound by the Respondent's decision to proceed with the taxation under Schedule 6 Part B. Counsel contended that the Applicant cannot change its mind about the applicability of Schedule 6 Part B having agreed to it before. Counsel further submitted that the Applicant did identify any other provision of the Advocates Remuneration Order that would apply to the taxation. To buttress this point, Counsel relied on the case of *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR .
22. Counsel submitted that the Taxing Master rightfully found that the taxation related to a contentious matter as the Applicant was to sue a party who was in possession of a title that the Applicant was claiming. It was further submitted that instruction fees is an independent item and is not determined on the stage the suit has reached. Counsel contended that the Applicant is entitled to instruction fees regardless of whether the Applicant elected to proceed with filing the suit or not. To buttress this point, Counsel relied on the cases of *Joreth Limited v Kigano & Associates* [2002] eKLR, *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No 3)* [1972] E A 162 and *Havi & Company Advocates v Purma Holdings Limited & 2 others* [2024] KEHC 3690 (KLR) .
23. Counsel contended that contrary to the Applicant's assertions, the instructions given to the Respondent constituted more than preliminary work. Counsel relied on the case of *Kamunyori & Company Advocates v Development Bank Of Kenya Limited* [2015] eKLR to submit that an Advocate



is entitled to instruction fees once he has acted on the instructions and it is immaterial whether the client becomes indolent thereafter.

24. In conclusion, Counsel submitted that no basis has been laid to warrant this court to interfere with the decision of the Taxing Master. To buttress this point, Counsel relied on the case of *Republic vs Minister for Agriculture & 2 others Ex parte Samuel Muchiri W Njuguna & 6 others* (2006) eKLR.

Analysis And Determination

25. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Taxing Officer erred in awarding instruction fees in the manner that he did.

26. The Principles of taxation were aptly stated in *Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others* (1972) EA 162 where the court noted as follows:

- “(a) a) successful litigant ought to be fairly reimbursed for costs he has had to incur
- (b) That costs be, not allowed to rise to such level as to confine access to justice to the wealthy.
- (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and
- (d) that as far as practicable there should be consistency in the awards made.
- (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances
- (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically
- (g) the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”

27. In the case of *Kipkorir Titoo & Kiari Advocates vs Deposit Protection Fund Board* (2005) 1 KLR 528 the court of Appeal held that:-

“On a reference to a judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer erred in principle in assessing the costs- an example of an error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles.”

28. In the case of *Joreth vs Kigano Associates* (2002) EA 92 the Court of Appeal set out the various factors to be considered in determining the instruction fees which include the importance of the matter, general conduct of the case the nature of the case time taken for dispatch and the impact of the case on parties.

29. It is not in dispute that the Applicant engaged the services of the Respondent’s law firm to prepare a legal opinion in respect of the judgment delivered in ELC No. 393 of 2015, in addition to preparing a draft Originating Summons for the Applicant’s review. In this regard, the Respondent prepared legal



opinions, conducted searches, drafted pleadings and submitted the same to the Applicant for signature before filing.

30. In the case of *Ratemo Oira & Co Advocates vs Magereza Sacco Society Ltd* (2019) the court held that:-
“Indeed it is trite that an Advocate is entitled to his fees once he is instructed, retained or employed by a client.”
31. Having engaged the Respondent law firm to prepare a legal opinion and commence proceedings for adverse possession, it is the finding of this court that the Respondent is entitled to its fees.
32. The Applicant is challenging the instruction fees awarded to the Respondent on the grounds that the same were assessed outside the express parameters provided under Schedule 6 of the *Advocates Remuneration Order 2014*. It was argued that the instruction fees are high and oppressive in the circumstances of the case.
33. The Applicant contended that under Schedule 6, instructions fees accrue when a suit has been instituted. The Respondent on the other hand contended that the parties herein agreed to proceed with taxation under Schedule 6 Part B.
34. In the case of *First American Bank of Kenya v Shah and another* (2002) 1 E A 64, the court held that an Advocate becomes entitled to full instruction fees to defend a suit the minute a suit is filed and the subsequent progress of the matter is not relevant. The same reasoning applies to a plaintiff. The Advocate who draws and files a plaintiff is entitled to full instruction fees.
35. It is not in dispute that the Applicant did not act on the services rendered by the Respondent and no litigation ensued from the legal advice rendered therein.
36. It is also not in dispute that the no suit was filed in court involving the Applicant versus another party. In awarding the Respondent a sum of Kshs 17,000,000 as instructions fees, the Taxing Master took into account the importance of the subject matter to the Applicant and what it stood to suffer in the event that the suit property was lost. No proceedings were instituted for recovery of the suit property. From the foregoing, this court finds that the finding by the Taxing Officer that the taxation related to a contentious matter was made in error.
37. It must be noted that an Advocate is entitled to payment of reasonable fees commensurate to the work done.
38. In the end I find that the application is merited and the same is hereby allowed in the following terms:-
 1. The taxation of the Respondent’s Bill of Costs dated October 14, 2024 in reference to Item No. 1 is hereby set aside.
 2. The Advocate-client bill of cost dated October 14, 2024 is remitted for taxation on item No 1 to another Taxing Officer.
 3. The Certificate of Taxation dated December 9, 2024 is hereby set aside.
 4. Costs of the application to await the outcome of the taxation.

RULING DELIVERED DATED AND SIGNED VIA MICROSOFT TEAMS THIS 6TH DAY OF MARCH 2025

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T. MURIGI



JUDGE

In The Presence Of:

Ooko holding brief for Bwire for the respondent

Pravin Odoyo for the applicant

Ahmed – Court Assistant

