



**Ngoge t/a OP Ngoge & Associates v Kenya Koch Light Industries Limited & another (Environment & Land Miscellaneous Case 3 of 2020) [2025] KEELC 1113 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1113 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND MISCELLANEOUS CASE 3 OF 2020  
A OMBWAYO, J  
MARCH 6, 2025**

**BETWEEN**

**PETER O NGOGE T/A OP NGOGE & ASSOCIATES ..... APPLICANT**

**AND**

**KENYA KOCH LIGHT INDUSTRIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**REKHAVANTI PANKAJ SHAH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. This is a ruling in respect the application dated 13th November, 2024 filed by the Applicant seeking the following orders:
  - a) Spent.
  - b. That the Learned Taxing Officer's extremely low assessment of the Applicant's instruction fees on items 1A, 1B and 47 be reviewed, varied and enhanced to the amount which was pleaded by the Applicant in the Applicants Bill of Costs dated 9th September, 2021.
  - c. That the said enhanced amount be increased by ½ under part B of the Schedule.
  - d. That the costs of this Application be borne by the Respondents herein.
2. The Application was based on grounds set out and supported by the Affidavit of Peter O. Ngoge the Applicant herein sworn on 13th November, 2024.
3. He stated that being highly aggrieved by the taxing officer's decision dated 5th November, 2024, he objected to the same vide a letter dated 11th November, 2024. He further stated that the value of the subject matter was not pleaded in the Plaintiff's suit thus the taxing officer ought to have ascertained the



approximate value based on the materials on record vide the list of documents dated 10th September, 2024. He added that the taxing officer failed to accord him a fair hearing thus denying him the right to effectively access judicial remedies. He urged the court to allow the application as prayed.

## **Response**

4. The Respondent filed its replying affidavit sworn by one Faith Wambui the 1st Respondent's
5. General Manager sworn on 6th February, 2025. She averred that the taxing officer on 5th November, 2024 delivered a reasoned ruling on the Bill of Costs. She further averred that the Applicant failed to adduce any evidence to indicate that the taxing officer's assessment of the instruction fees was unsustainable. She averred that there was no document annexed that justified the value of 15 billion as pleaded by the Applicant. She also averred that the letter dated 11th November, 2024 did not meet the requirements under paragraph 11(1) of the Advocates (Remuneration) Order. She went on to aver that the Applicant failed to submit that the amount awarded was not within the Remuneration Order. She averred that the Applicant failed to establish any substantive defect in the taxing officer's decision. She added that there was no legal or factual basis to interfere with the taxing master's decision. She urged the court to dismiss the application with costs.
6. The Respondent also filed its grounds of opposition dated 6th February, 2025 on the following grounds:
  - a. That the instant application does not meet the threshold required by law for challenging a taxing officer's exercise of discretionary power.
  - b. That the application is fatally defective, ill conceived, incompetent and hence an abuse of the court process.
  - c. That the letter dated 11-11-2024 does not meet the requirement of paragraph 11(1) of the Advocates (Remuneration) Order.

## **Submissions**

7. Counsel for the Applicant filed his submissions dated 12th February, 2025 where he submits that the Respondents through their previous advocates had lodged a disciplinary cause (Advocates Disciplinary Tribunal Cause 72 of 2019) against the Applicant denying the existence of a retainer in the instant matter. He added that conservatory orders staying the disciplinary case was issued for this court to determine the retainer and taxation. He went on to submit that since the Respondents have not challenged the ruling by the Deputy Registrar dated 15th November, 2024, it implies that the said disciplinary case was malicious and in bad faith. He submits that the Respondents and their new advocates were yet to comply with Order 9 Rule 9 of the Civil Procedure Rules.
8. It was counsel's submission that the value of the subject matter is the basis for which an advocate would charge his legal fees. He added that the value of the subject matter was not discernible from the pleadings, judgment and the parties' settlement. He submits that the taxing officer still had the discretion to assess the value of the subject matter based on the evidence and average purchase price of one acre. He relied on the Supreme Court case in Petition No. E011 of 2023 Kenya Airports Authority V Otieno Ragot & Co. Advocates and submits that the taxing officer exercised her discretion in a vacuum without considering the Applicant's evidence. He urged the court to allow the application as prayed.
9. Counsel for the Respondent filed their submissions dated 22nd February, 2025 where they identified one issue for determination being whether the instant application meets the threshold required by



law for challenging a taxing officer's exercise of discretionary powers. They relied on the case of Joreth Limited V Kigano & Associates [2002] KECA 153 (KLR) and submits that the Applicant did not adduce any supporting evidence to justify the value of Kenya Shillings 15 Billion as pleaded in the application. They submit that the Applicant failed to clearly articulate how the taxing officer erred in law and facts or abused her judicial powers and discretion. It was their submission that the taxing officer took cognizance of the claim in question in determining the instruction fees of Kshs. 100,000 to be reasonable for the work done. They further submit that the Applicant failed to provide any persuasive authority to indicate that the taxing officer's assessment of the instruction fee was arbitrary or based on an error. They urged the court to dismiss the application with costs.

### **Analysis and Determination**

10. This court has considered the application, replying affidavit, grounds of opposition and submissions and is of the view that the main issue for determination is whether the Taxing Officer judiciously applied her discretion in assessing the Applicant's instruction fees herein.
11. It is trite law that taxation of costs is a discretionary function of the Taxing Officer and this court will not interfere with the Taxing Officer's exercise of discretion merely on the basis that the award is too low or too high, unless it is with clarity demonstrated either that the assessment was anchored on an error of principle or the amount awarded was manifestly excessive or too low to justify a conclusion that it was based on an error of principle. In the case of Peter Muthoka & Another V Ochieng & 3 others NRB CA Civil Appeal No. 328 of 2017 [2019] eKLR the court held as follows: "It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court."
12. Further, in the case of Joreth Ltd V Kigano & Associates [2002] eKLR, the Court of Appeal held as follows:

"The value of the subject matter for 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 ascertainable, the taxing officer is entitled to use his discretion to assess such instruction fees as he considers just taking into account, amongst other matters, the nature and the 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." [Emphasis mine]
13. In her ruling dated 5th November, 2024, the Taxing Officer found that the value of subject matter could not be determined from the pleadings. She dismissed the Applicant's submission that the value of the subject matter was in the sum of Kshs. 15 Billion. It was her finding that there was no basis provided by the Applicant to assess the value of the claim at that amount. I have perused the court record and in as much as the pleadings were not present, it was not in dispute that the value of the claim could not be ascertained from the pleadings. It therefore meant that the Taxing Officer would therefore proceed to exercise her discretion in assessing the instruction fees.
14. For this court to interfere with the Taxing Officer's discretion, it must be shown that the Taxing officer erred in principle by failing to consider relevant factors or putting into account irrelevant factors. In view of the fact that the Taxing officer confirmed that the value of the claim could not



be ascertained from the pleadings, she proceeded to consider relevant matters in the award of Kshs. 100,000/= for instruction fees. It is a fact that the Taxing Officer in exercising her discretion based the instruction fees of Kshs.100,000 on the fact that the claim was not complex. She also considered the time, skill and resources spent by the Applicant in defending their client as evidenced in her ruling dated 5th November, 2024. This court is thus not persuaded that there was material placed before it to demonstrate that she exercised her discretion injudiciously. In the premises, I find and hold that the Taxing Officer properly exercised her discretion in awarding the amount stated for instruction fees. I also find that the awarded sum of Kshs. 100,00/= was properly assessed.

15. In the upshot of the foregoing is that the application is without merited and is hereby dismissed with costs to the 1st Respondent. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

