



**JM Njenga & Company Advocates LLP v Kimuri Housing Company Limited (Environment & Land Miscellaneous Case E136 of 2023) [2025] KEELC 3723 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3723 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E136 OF 2023**

**JA MOGENI, J**

**MAY 7, 2025**

**BETWEEN**

**JM NJENGA & COMPANY ADVOCATES LLP ..... ADVOCATE**

**AND**

**KIMURI HOUSING COMPANY LIMITED ..... CLIENT**

**RULING**

1. Before this Court is a reference by way of Chamber Summons dated 12/06/2024. It is brought under the provisions of Rule 11 (2) of the Advocates (Remuneration) Order and seeks the review and/or the setting aside of the Ruling of the Taxing Officer delivered on 28/05/2024 in regards to items 1 and 6 of the Advocate/Client Bill of Costs on record. There is a further prayer that the Honorable Court be at liberty to retax the said items.
2. For purposes of this Ruling, the parties herein shall be referred to as Applicant and Respondent as they appear on this Ruling's title. The Chamber Summons dated 12/06/2024 is brought by the Applicant seeking:-
  1. That the taxation orders made on 28<sup>th</sup> May 2024 in regard to items 1 and 6 of the Advocate/Client Bill of Costs on record be reviewed and/or set aside and the matter referred back to a Taxing Master for re-taxation of the said items.
  2. That in the alternative to (1) above, the Honorable Court be at liberty to re-tax the said items.
  3. That the costs of this Application be provided for.
3. The Application is premised on the grounds that; the Advocate's Bill of costs dated 30/11/2023 was taxed vide a Ruling dated 28/05/2024 and he advocate is aggrieved by the said taxation orders in respect of items 1 and 6 of the said Bill of costs.



4. Further that in arriving at the taxation orders the Taxing Officer erred in principle and the Honorable Court ought therefore in the interests of justice set aside the said orders and give guideless on the re-taxation of the said items. That the Advocate is greatly prejudiced unless the orders are set aside.
5. The Application is also supported by the Supporting Affidavit of Vivianne Wachanga sworn on 12/06/2024. She deponed that the Applicant law firm received a typed copy of the Taxation Ruling on 3/06/2024 and upon perusal they noted the reasons behind the taxation of the items they are challenging.
6. That for item 1 the Taxing Officer despite agreeing that the issue in question was the sale of the Client's property for Kshs 271,000,000 she chose to be guided by provisions of Schedule 1 (first scale) of the Advocates' Remuneration Order 2014 to tax item 1 she instead taxed it under the provisions of the Schedule 5. She held that Order 1 was only applicable upon execution of the valid Sale Agreement and when the legal title has been vested on the purchaser.
7. That in so holding she misdirected herself since the operative words under Schedule 1 (first scale) are "The scale fee shall be calculated cumulatively on the basis of the consideration or value of the subject matter...." Further that the Taxing Officer relied on contentious issues of facts made the Client's Advocate in their submissions which were inadmissible as there was no Affidavit in support of the same. Since it was not the sale agreement that had not been executed by the purchaser but that the same was hi-jacked by the client and the fact that the agreement was signed by the purchaser is the one that prompted attempts to open a joint escrow account as per the letter dated 5/04/2022 which was attached to the documents in support of the Bill of Costs.
8. The Applicant avers that as for item 6 it relates to interest and the Advocate is entitled to claim but that the Taxing Officer declined to grant it claiming that it can only be granted by a Judge. That in so doing the Taxing Officer misdirected herself and erred in principle as the relevant provisions do not state so.
9. The Respondent filed Grounds of Opposition dated 26/09/2024 and raised three grounds namely:
  - i. The Application is incompetent, misplaced and devoid of merit.
  - ii. The learned Taxing Master judiciously exercised her discretion.
  - iii. In view of the uncontested fact that the Sale Agreement annexed to the supporting document was never executed by the purchaser.
10. Briefly the facts of this case are that the Respondent, who is the registered owner of the property that was the subject of the conveyancing transaction instructed the Advocate to act for it in the land sale transaction. The Advocate subsequently drafted a Sale Agreement for the sale of the said property known as L.R. NO. 10390/4 (IR no. 77197) and the sale price was Kshs. 270,000,000/-. The Sale Agreement was drawn and duly executed by the seller (client). After the agreement was executed by the Respondent, the Applicant forwarded it to the purchaser's Advocates as per the letters dated 1/4/22 at page 22 and 5/4/2022 at page 23 of the bundle of documents dated 30/11/2023 filed alongside the Bill of Costs.
11. It is the Applicant's contention that the Respondent hi-jacked the transaction and this led the Applicant to file the Bill of Costs dated 30<sup>th</sup> November, 2023, which was taxed vide a Taxation Ruling (annexure vww1) delivered on 28<sup>th</sup> May, 2024 in the sum of Kshs. 522,000/.
9. The Applicant was aggrieved by the said Ruling in respect of items 1 and 6 of the bill, and vide a letter dated 30<sup>th</sup> May 2024 (annexure vww2) the Applicant made known to the Taxing Officer of the items objected to and this was followed by the Application that is now before the Court.



10. On 24/07/2024 the parties agreed to canvass the Application by way of written submissions. The Applicant filed their submissions dated 4/02/2025 and the Respondent filed theirs dated 27/09/2024.
11. It was the Applicant's submission that whereas the Taxing Officer found the transaction not to have been completed, Advocates' costs are not dependent on the outcome of a matter and all that matters is whether the Advocate executed the client's instructions of preparing a Sale Agreement.
12. Thus, the Applicant contends that taking into account that it is not disputable that the sale price of the suit property was Kshs. 270,000,000/- and that a Sale Agreement was prepared and executed partially or otherwise, the instruction fees should be calculated based on this value in strict compliance with the provisions of Schedule 1 (first scale) of the Advocates (Remuneration) Order, 2014 giving forth to a sum of Kshs. 3,600,000/- under item 1. Reliance was placed on the cases of *Mwangi Keng'ara & Co. Advocates vs Upward Scale Investment Co. Ltd & 3 others* [2019] eKLR, *Hayanga & Co. Advocate vs Royal Garden Developers Limited* [2006] eKLR, and *Robison Kigen t/a Wesonga, Mutembei & Kigen Advocates vs Sauth Mohamed & Sawzan Liban Mohamed (Miscellaneous Civil Application E050 of 2018)* [2019] KEHC 3449 [KLR],
13. The Applicant submitted that the value of the property could easily be discerned from the Sale Agreement and this is what the Taxing Officer should have used.
14. On the Item 6 it was the Applicant's submission that the Taxing Officer neglected her duty and also misdirected herself and committed an error of principle when she stated that interest can only be awarded by a Judge. The Applicant placed reliance on the case of *Amondi & Co. Advocates vs County Government of Kisumu (Miscellaneous Civil Application 169 of 2020)* [2021] KEHC 710 [KLR], *Akide & Co. Advocates vs Kenindia Assurance Company Ltd* [2018] eKLR and *Kanu National Elections Board & 2 Others V Salah Yakub Farah* [2018] eKLR, The High Court Cited The South African Case Of *Visser V Gubb* 1981 (3) SA 753 (C) 754H – 755C.
15. It was the Applicant's submission that in the interest of justice that the taxation orders should be reviewed and/or set aside and the matter referred back to a Taxing Officer for re-taxation of the objected to items based on such directions as the Honorable Court shall issue.
16. On the other hand, the Respondent submitted that contrary to the grounds in the Application, the Taxing Master correctly exercised her discretion by taxing the Advocate/Client Bill of Costs under Order 5 of the Advocates Remuneration Order as opposed to Schedule 1. The rationale thereof being that the Agreement for Sale attached to the Advocate's List of Documents had not been executed by the purchaser. Reliance was placed on the case of *Kamunyori & Company Advocates V. Development Bank of Kenya Limited* [2015] eKLR, and the case of *Questworks Limited V. Treboruamak Real Estate Investment Management Company Limited & 2 others* [2020] eKLR.

### **Analysis Determination**

17. It is now trite law that the Court will only interfere with the decision of a Taxing Master in cases where there has been shown to be an error in principle. In the case of *Republic v Ministry of Agriculture & 20 Others Ex-Parte Muchiri W' Njuguna* [2006] eKLR, Hon. Justice J.B. Ojwang (Retired) stated as follows: -

“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, 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.... 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 interference that it was based on an error of principle.”

18. Differently put, before the Court can interfere with the decision of the Taxing Master it must be satisfied that the Taxing Master's Ruling was clearly wrong. This means that the Court will not interfere with the decision of the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master's view of the matter differs so materially from its own that it should be held to vitiate the Ruling.
19. In *Hayanga & Co. Advocates –Vs- Royal Garden Developers Ltd* [2006]eKLR, the Court held thus:-

“On his part, the learned taxing officer did not award the full instruction fees because the work had been substantially completed. The reason given by him, for awarding the fees is that the advocate had been instructed to complete the transaction within 2-3 weeks. In my considered view, the fact that the transaction was supposed to be completed within 2-3 weeks, was not reason enough to warrant the award of full instruction fees. The proper consideration, whether or not the position prevailing in England applies here, is the ascertainment of the work actually done vis-a-vis the nature and extent of the instructions. In effect, if an advocate was instructed to prepare an Agreement for Sale, he would have earned his full instruction fees, as soon as the said Agreement for Sale was ready. [own emphasis]
20. In the instant Application the Bill of Costs raised in this matter was for the preparation of the Sale Agreement. It was not for vesting of the title to the purchaser. Based on the above authority, I find that the Advocate/Applicant earned and was entitled to be paid the commensurate amount considering the value of the of suit property upon completion of the Sale Agreement.
21. On interest, paragraph 7 of the Advocates Remuneration Order provides as follows;

“An advocate may charge interest at 14% per annum on his disbursements and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided such a claim for interest is raised before the amount of the bill has been paid or tendered in full.”
22. My understanding of paragraph 7 of the Advocates Remuneration Order is that interest on costs is chargeable 30 days after service of the Bill of Costs, which bill ought to include a claim on interest.
23. In the instant case, the Taxing Officer declined to grant interest and stated that it can only be granted by a Judge upon a formal Application being made. The Applicant challenged this position arguing that Order 6 of the Remuneration Order entitles the Advocate to claim interest.
24. My understanding of the said provision is that entitlement to interest is pegged on non-compliance by the Client in 30 days after receiving service of Bill of Costs, which bill must include a claim on interest. Therefore, in such case, interest would start running from 30 days after the date of service of the Bill of Costs. Besides, the same bill served on the Client should be the same that is filed before the Taxing Officer, to entitle the Advocate to interest.
25. Both parties in this regard cited several well known cases which elucidate the principles governing the assessment of costs in the Application of the Schedules in the Advocates (Remuneration) Order. In



the case of Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No. 3) [1972] EA 162 the Court outlined these principles as follows;

- a. That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy,
- b. that a successful litigant ought to be fairly reimbursed for the cost he has had to incur,
- c. that the general level of remuneration of Advocates must be such as to attract recruits to the profession and
- d. so far as practicable there should be consistency in the award made and
- e. 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.

26. In the case of Joreth Limited v Kigano & Another [2002] E.A. 92 the Court set out various factors that are to be considered in determining the instruction fee namely; the importance of the matter, general conduct of the case, the nature of the case, time taken for its dispatch and the impact of the case on the parties. The cases cited also emphasise the principle that the Taxing Master is vested with discretion to increase or decrease instruction fees and that in exercising such discretion, the taxing officer must act judicially by taking into account relevant factors stipulated in the Advocates (Remuneration) Order 2014 including importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances. (See also First American Bank of Kenya Ltd v Gulab P Shah & Others [2002]1 E.A. 61 and Republic v Minister for Agriculture & 2 Others ex Parte Samuel Muchiri W’Njuguna & 6 Others (2006) e KLR).

27. I therefore accordingly order that the decision of the Taxing Master in the Ruling delivered on 28/05/2024 as regards items 1 and 6 of the Applicant’s Advocates/Clients Bill of Costs dated 30/11/2023 be and is hereby set aside, and that the said Bill of Costs be referred back to another Taxing Officer for fresh taxation according to the principles enunciated herein. Each party shall bear their own costs of the Application.

28. Mention before the Deputy Registrar on 28/05/2025 for further directions.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 7<sup>TH</sup> DAY OF MAY, 2025.**

.....

**MOGENI J**

**JUDGE**

Ruling read in virtual Court in the presence of :

Mr. Kailii holding brief for Mr. Mutua, SC for the Respondent

Ms. Wachanga for the Advocate

Melita - Court Assistant.

