



**Narok County Government v Kemboy Law Advocates (Miscellaneous Application E010 of 2023) [2024] KEELC 4497 (KLR) (3 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4497 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
MISCELLANEOUS APPLICATION E010 OF 2023**

**EM WASHE, J**

**JUNE 3, 2024**

**BETWEEN**

**NAROK COUNTY GOVERNMENT ..... CLIENT**

**AND**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**RULING**

1. The Client (hereinafter referred to as “the Applicant”) filed a Chamber Summons dated 30.01.2024 (hereinafter referred to as “the present Reference”) seeking the following Orders; -
  - a. That the Ruling of the Deputy Registrar dated 10.08.2023 together with the Certificate of Taxation resultant thereto be and is hereby set-aside and the Advocate’s/Respondent’s Client Bill of Costs dated 25.01.2023 be taxed afresh and;
  - b. That the decision of the Deputy Registrar as evidenced in the Ruling delivered on the 10<sup>th</sup> of August 2023 with respect to Items 1,2,5,7,9,11,14,16,17,19,32,34,36,40 and 50 of the Applicant’s Advocate- Client Bill of Costs dated 25.01.2023 be set-aside and taxed afresh by the Honourable Court.
  - c. That costs of this Application be provided for.
2. The Applicant adduced various grounds in support of the prayers hereinabove including but not limited to the following; -
  - a. The Deputy Registrar was wrong in law and principle in awarding an unreasonably high figure as Instruction Fee.
  - b. The Deputy Registrar similarly erred in awarding the attendance fees contained in Items No. 5,7,9,11,19,32,34,36 and 40 which were not justified.



- c. Consequently, the Deputy Registrar erred in principle by awarding an excessive assessment of the Bill of Costs dated 25.01.2023 presented by the Respondent.
  - d. In addition to the above, the Deputy Registrar further denied to hear and determine the Applicant's Preliminary Objection dated 24.07.2023 on the basis that the Court was on transfer thereby denying the Applicant an opportunity to be heard.
  - e. In essence therefore, the Deputy Registrar erred and misdirected herself which was contrary to established principles regarding taxation and various precedents thereby arriving at a wrong assessment.
  - f. The Applicant in the present Reference sought to have the entire assessment pronounced on the 10.08.2023 be set-aside and thereafter this Court do tax the said Bill of Costs dated 10.08.2023 afresh.
3. The Respondent upon being served with the present Reference did not file any Reply to the same.
  4. The Court directed that the present Reference be canvassed by way of written submissions.
  5. The Applicant duly filed their submissions on the 19.02.2024 while the Respondent filed their submissions on 19.03.2024.
  6. The Court had indeed perused the present Reference and the submissions of the parties and the issues for determination are as follows;-
    - Issue No. 1- Whether or not the taxing master applied the correct principles in assessing the bill of costs dated 25.01.2023?
    - Issue No.2- Whether or not the taxing master correctly applied the principles mentioned hereinabove in assessment of 1,2,5,7,9,11,14,16,17,19,32,34,36,40 & 50 of the bill of costs dated 25.01.2023?
    - Issue No. 3- IS the applicant entitled to the prayers sought in the present reference?
    - Issue No. 4 - Who bears the costs of the present reference?
  7. The issues having been duly outlined hereinabove, the same will now be discussed and determined as hereinbelow; -

**Issue No. 1- Whether or Not the Taxing Master Applied the Correct Principles in Assessing The Bill of Costs Dated 25.01.2023?**

8. The first issue for determination in the present Reference is whether or not the Taxing Master applied the relevant principles in the assessment of the Bill of Costs presented in Court.
9. The taxation of any proceedings is first and foremost guided by the [Advocates \(remuneration\) \(amendment\) Order](#), 2014 which is premised on the [Advocates Act](#), Cap 16.
10. The Bill of Costs dated 20.07.2023 is one that relates to an Appeal filed before this Court by the Respondent on the 19.06.2020.
11. For this reason, the Applicable section of the [Advocates \(Remuneration\) \(Amendment\) Order](#) is the Appeals section on Page 292.



12. In instances where the subject matter or reliefs in the Appeal relates to a certain monetary value, then the taxable fees can be ascertained through the formula provided under Schedule 6 of the *Advocates (Remuneration) (Amendment) Order*, 2014.
13. However, if the subject matter or the reliefs in the Appeal are not in monetary value, then Part (a) of the Appeals section will set the minimum figure and then, the Taxing Master can increase the minimum fees based on the following provision found on Page 293 of the *Advocates (Remuneration) (Amendment) Order*, 2014; -
  - i. The taxing officer may take into consideration other fees and allowances due to the Advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or the matter, the interest of the Parties, general conduct of the proceedings, any directions by the Trial Judge and all other relevant circumstances thereof.
14. In essence, while taxing an Appeal whose subject matter or reliefs are not in monetary value, the Taxing Officer should also be guided by the principles outlined hereinabove in arriving at a reasonable assessment of instruction fees.
15. In the case of *Joreth Limited-versus- Kigano & Associates* (2002) 1 EA, 92, the Court made the following finding; -
 

“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, judgement 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 instructions fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any directions by the Trial Judge and all other relevant circumstances thereof”
16. Having properly established the applicable principles to guide a Taxing Officer in the assessment of a Bill of Costs as provided in the *Advocates (Remuneration) (Amendment) Order*, 2014 and perusing paragraph 1 of the Ruling by the Taxing Officer dated 10.08.2023, this Court is satisfied that the Taxing Officer applied the correct principles in the taxation of the Bill of Costs dated 20.07.2023.

**Issue No.2- Whether or Not The Taxing Master Correctly Applied the Principles Mentioned Hereinabove in Assessment of 1,2,5,7,9,11,14,16,17,19,32,34,36,40 & 50 Of The Bill of Costs Dated 25.01.2023?**

17. The second issue for determination is whether or not the Taxing Officer applied the above principles in the assessment of the various items outlined in the present Reference.

**Item 1- Instruction Fees**

18. The first objection by the applicant is the amount assessed for Item No. 1.
19. According to the Bill of Costs dated 20.07.2023, the Respondent proposed an Instruction Fee of KShs 5,000,000/- which was then assessed at KShs 4,500,000/- by the Taxing Officer in the Ruling dated 10.08.2023.
20. The Applicants submission is that although the Taxing Officer had the powers to assess the said Instruction Fees, such a discretion should have been exercised judicially by providing satisfactory grounds on how the figure has been arrived at.



21. In the Ruling of the Taxing Officer dated 20.07.2023, there were no reasons and/or substantive discussion of the principles applicable in arriving at the assessed figure and therefore the entire assessment was devoid of the principles of taxation.
22. On the other hand, the Respondent submitted that the Taxing Officer's assessment of the Instruction Fees was lawful having taken into consideration the principles of assessing Instruction Fees.
23. The Respondent outlined the Grounds contained in the Memorandum of Appeal dated 19.06.2020 to demonstrate the complexity of the Appeal and the importance of the subject matter as well as the Care and Labour required during the conduct of the matter.
24. Indeed, I have perused the Memorandum of Appeal and the substantive Record of Appeal and note that the subject matter was a prime piece of land which is next to the Kilgoris General Hospital.
25. According to the Applicant in the present Reference, the subject matter was of ultimate importance because it was alleged to be a public property meant for the Kilgoris General Hospital which had been allocated unlawfully.
26. The Appellant who is the Applicant in the present Reference therefore attached a lot of significance to the said Appeal as it deemed the subject matter to be an important asset to its facility known as Kilgoris General Hospital.
27. The Record of Appeal prepared by the Respondents comprised of about 572 pages of pleadings containing various pleadings, witness statements, applications, exhibits, proceedings, submissions and lastly the judgement.
28. It is therefore clear in the mind of this Court that the Respondents had a very complex, difficult and challenging brief from the Applicant requiring a lot of researching, preparation, compiling, filing and generally handling the entire Appeal on behalf of their client therein.
29. Based on this finding, this Court hereby makes a finding that the sum of KShs 4,500,000/- assessed by the Taxing Officer on the 10.08.2023 in the Bill of costs dated 20.07.2023 was reasonable and fair keeping in mind the principles of taxation outlined hereinabove.

#### **Item No. 2-Getting Up Fees.**

30. As regards Item No. 2, the Respondent sought for a sum of KShs 1,500,000/- for getting up fees in the Appeal.
31. On page 294 of the *Advocates (Remuneration) (Amendment) Order*, 2014, Clause 3 provides as follows;

“In any appeal to the High Court in which a Respondent appears at the hearing of the appeal and which the Court at the conclusion of the hearing has certified that in view of the extent or difficulty of the work required to be done subsequently to the lodging of the appeal the case is a proper one for consideration of a getting up fee, the taxing officer may allow such a fee in addition to the instruction fee and such fee shall not be less than one third of the instruction fees.”

32. The Court's understanding of the above provision of the *Advocates (Remuneration) (Amendment) Order*, 2014 is that getting up fees is actually payable to an Advocate but only if the same is certified by the Court based on the extent and difficulty of the work done in lodging and handling the Appeal.



33. Consequently, a Taxing Officer can only award getting up fees if there is a certification by the Appellate Judge that such an Appeal was of a difficult nature in its preparation and subsequent prosecution to warrant the getting up fee.
34. In this respect, a perusal of the proceedings in the Appeal file does not show that these proceedings were certified by the Judge that the Advocate is entitled to getting up fees.
35. In essence, the Taxing officer misdirected herself in awarding the getting up fees of KShs 1,500,000/- to the Respondent without a certification by the Court in line with the above provision.

**Items No. 5,7,9,11,14,16,17,19,32,34,36,40 & 50**

36. As regards Items No. 5,7,9,11,14,16,17,19,32,36,40 & 50, this Court finds the said items to have been properly assessed by the Taxing Officer and shall remain the same.

**Issue No. 3- Is the Applicant Entitled to the Prayers Sought in the Present Reference?**

37. The third issue is whether the Applicant is entitled to the prayers sought in the present Reference.
38. Indeed, this Court has satisfied itself that the Taxing Officer applied the correct principles in the assessment of the Bill of cost dated 20.07.2023.
39. However, Item No. 2 was wrongly awarded without a certification that the Advocate is entitled to getting up fees due to the extent and/or difficulty of preparing the said Appeal.
40. Similarly, the Applicant has submitted that the Respondents were not entitled to the increase of 50 % keeping in mind that the Party and Party Bill of costs had not been assessed yet.
41. The Applicants presented various authorities in support of this submission.
42. The Court has considered the submissions of the Applicants and the Respondents and the authorities filed by the Applicant.
43. On the guidance of the various cited authorities which this Court fully agrees with, the Respondents herein were not entitled to an increment of 50 % on the taxed Advocate -Client Bill of Costs as the Party and Party Bill of Costs has not been taxed yet.
44. In essence therefore, the Taxing Officer erred in awarding a sum of KShs 4,410,475.00/- which was an increment of 50% on the assessed amount.

**Conclusion**

45. In conclusion therefore, this Court hereby makes the following Orders in determination of the Application dated 30.01.2024; -
  - A. The bill of costs dated 20.07.2024 be and is hereby re-assessed by removing the getting up fees amounting to kshs 1,500,000/- & the increment of 50% amounting to kshs 4,410,475/- from the total assessment of the bill of costs dated 20.07.2023.
  - B. The taxing officer is hereby directed to re-calculate the new assessed amount and issue the new certificate of costs in favour of the respondent.
  - C. Each party will bear its own costs.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 3<sup>RD</sup> JUNE 2024.**



**EMMANUEL.M.WASHE**

**JUDGE**

In the presence of:

Court Assistant: Mr.ngeno

Advocate for the applicant: Ms. Lyonah

Advocates for the respondent: Mr. Kere

