



**Arusei & Co. Advocates v Independent Electoral and Boundaries Commission
(Successor to the Interim Independent Electoral Commission) (Miscellaneous
Civil Case E129 of 2023) [2025] KEHC 1954 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL CASE E129 OF 2023
EM MURIITHI, J
FEBRUARY 13, 2025**

**IN THE MATTER OF AN APPLICATION BY ELISHA NKAMANI M’MWARI FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

AND

**IN THE MATTER OF THE LOCAL GOVERNMENT ACT
CAP 265 (LOCAL GOVERNMENT ELECTION RULES)**

AND

**(IN THE MATTER OF ELECTIONS IN MWANGATHIA WARD-CENTRAL IMENTI IN
MERU HIGH COURT MISC APPLICATION NO. 98 OF 2009 (JR) BETWEEN REPUBLIC
–VS- THE CLERK, COUNTY COUNCIL OF MERU & ANOTHER AND CELESTINO
MUTUMA INOTI – INTERESTED PARTY, EX-PARTE ELISHA NKAMANI M’MWARI)**

BETWEEN

ARUSEI & CO. ADVOCATES APPLICANT

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(SUCCESSOR TO THE INTERIM INDEPENDENT ELECTORAL
COMMISSION) RESPONDENT**

RULING

1. By a chamber summons under certificate of urgency dated 5/9/2024 pursuant to Rule 11 (1) and (2) of the Advocates (Remuneration) Order, Section 3A of the Civil Procedure Act and all other enabling provisions of the law, the Applicant seeks that:

1. Spent



2. The Honorable court be pleased to allow the reference and interfere with the award of the Taxing Officer made on the 16th August 2024 because the taxing officer had erred in principle by making an award which was too low as to amount to an injustice to the Applicant and therefore the award is for setting aside.
 3. Upon setting aside the taxation above, the Honorable court be pleased to tax and/or reassess upwards Items 1 and 2 of the Applicant Bill of Costs dated the 28th November, 2023 to the sum set out in the Bill of Costs dated the 28th November, 2023 and/or to make an award that is necessary or proper for the attainment of justice in the matter.
 4. In the alternative to prayer (3) above, the Honorable court be pleased to refer the Bill of Costs dated the 28th November, 2023 for taxation before a different Taxing Officer/Deputy Registrar with the necessary and appropriate directions as the Honorable court deems it fit and necessary.
 5. The Honorable court be pleased to grant any other order or orders as it deem fit and necessary to grant in the interest of justice.
 6. Costs of this application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and echoed in the supporting affidavit of William Kipkorir Arusei, the Applicant's senior partner sworn on even date. He avers that the Taxing Officer taxed Item 1 at Ksh.1,000,000 and Item 2 at Ksh. 333,333. In his view, the Taxing Officer erred in principle in assessing the costs given the nature and importance of the matter, the interests of the parties, the general conduct of the proceedings in an election related matter and the inflationary trends. The awarded sum of Ksh.1,000,000 for instruction fees was so low as to amount to an injustice, considering the election dispute went all the way to the Court of Appeal at Nyeri. The Applicant charged Ksh.8,000,000 as instruction fees, which was reasonable and commensurate with the work done, which required time, investment in mobilizing researched arguments, extensive research and preparations, and relies on *Thomas James Arthur v Nyeri Electricity Undertaking (1961) E.A 492*. The Applicant's invitation in this reference is not for manifestly excessive instruction fees but for such sums as are just, necessary or proper for the attainment of justice, because it is trite law that a successful litigant ought to be fairly reimbursed for the costs he has incurred.
 3. The Applicant swore a further affidavit on 30/10/2024 in support of the application.
 4. The Respondent filed a replying affidavit in opposition to the application sworn by Chrispine Owiye, its Director, Legal and Public Affairs on 17/10/2024. He is aware that assessment of instruction fees under the Advocates Remuneration Order, 2014 is based on the value of the subject matter of the suit where the same can be determined from the pleadings or judgment or settlement of the parties. He is also aware that fees chargeable beyond the minimum scale must be reasonable and based on the complexity of the matter and the time expended by the advocates. He avers that the award of the Taxing Officer is reasonable taking into account the inflationary trends. He faults the Applicant for failing to point out the error of principle in the Taxing Officer's award, and urges the court to dismiss the application with costs for being fatally defective, bad in law and an abuse of the court's time.
 5. Submissions
 6. The Applicant cites *Ishamael & Co. Associates v Bajaj Electricals Limited & Wayne Homes (2020) eKLR*, *Humphrey & Company Advocates LLP v Rural Electrification Authority (2019) eKLR*, *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board (2005) eKLR*, *Thomas James Arthur v Nyeri Electricity Undertaking (1961) E.A 492* and *Devshi Dhanji Naran Patel No. 2 (1978) KLR 243* on the well settled principles of taxation. He faults the Taxing Officer for failing to exercise



- her discretion properly in awarding instructions fees of Ksh. 1,000,000 which was so low as to amount to an injustice. He faults the Taxing Officer for failing to provide the rational criteria for taxing Item 1 at Ksh. 1,000,000, and cites Erastus Orina p/a E.M Orina & Co. Advocates v Kiptachich Tea Estate (Miscellaneous Application 5 of 2022) [2023] (KEELC 16709 (KLR) (23 March 2023) (Ruling).
7. The Respondent relies on Mbogo & Anor v Shah (1968) EA and Otieno, Ragot & Company Advocates v Kenya Airports Authority (2021) eKLR and Vipul Premchand Haria v Kilonzo & Co Advocates (2020) eKLR on the principles that guide interference with the exercise of discretion by a trial court. It faults the Applicant for failing to prove any complexity of the matter or difficulty in defending the 3 Bills of Costs to justify charging of fees beyond the minimum scale, and cites Kenya Airports Authority v *Otieno, Ragot & Company Advocates (Petition (Application) E011 of 2023)* [2023] KESC 56 (KLR) (Civ) (16 June 2023) (Ruling) and Peter Muthoka & Anor v Ochieng & 3 Others (2019) eKLR. It urges the court to dismiss the reference with costs for being incompetent, misconceived and an abuse of the court process.
 8. Analysis and Determination
 9. The issue for determination is whether the taxed sum of Ksh.1,000,000 and Ksh.333,333 under Items 1 and 2 respectively were reasonable.
 10. The circumstances under which a judge can interfere with the taxation of a Taxing Master, as with any other decision on discretion, were set out in Steel & Petrol (E.A) Ltd v Uganda Sugar Factory (1970) E.A. 141 as follows:

“ An appellate court will not interfere with an assessment of costs by a taxing officer, unless the taxing officer has misdirected himself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference.”
 11. The proceedings herein emanate from Meru Miscellaneous Application No. 98/2009 (JR) where the Applicant received instructions from the Respondent to oppose 3 Bills of Costs dated 10/11/2015 of Ksh. 1,806,414, 14/6/2017 of Ksh. 2,110,000 and 24/2/2024 of Ksh. 1,428,406 totaling to Ksh. 5,334,820.
 12. The Court of Appeal in Joreth Limited v Kigano & Associates (2002) eKLR stated 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).”
 13. In its Advocate-Client Bill of Costs dated 28/11/2023, the Applicant sought instruction fees of Ksh. 8,000,000 for “receiving instructions to object to the various items in the Ex-parte applicant (Elisha NkamaNi M’mwari) bill of costs dated 10th November, 2015 and filed on the 30th November, 2015 wherein the Ex-parte applicant presented in Meru High Court Misc Application No. 98 of 2009 (JR) a bill of Kshs. 1,806,414/- to the filing objections and/or submissions to the various items of the bill of costs and filing the same on the 25th February, 2016, to the various attendance in court make arguments/ written submissions to oppose the bill leading to a certificate of taxation issues on the 21st November, 2016 at Kshs. 1,411,088.00. To the instructions to oppose and/or tax 1st Respondent itemized Bill of Costs dated 14th June, 2017 and filed the same day for the total sum of Kshs. 2,110,000.00, to the objection to the same, to looking at the law and/or comparable cases. The Bill was taxed at Kshs. 431,127.50. To the instruction to oppose and/or tax the Celestine Mutuma Inoti Interested Party Bill of Costs filed on the 24th February, 2016 for the sum of Kshs. 1,428,406/- to the objection the same, to



looking at the case law, to research into law, the value of the subject matter, the interest of the parties, the urgency of the matter, to the time involved.”

14. This court finds that the Taxing Master considered the novelty and complexity of the matter and the time expended by the Applicant in defending the 3 Bills of Costs in awarding instruction fees of Ksh. 1,000,000 under Item 1.
15. Getting up fees is $\frac{1}{3}$ of the Instruction fees of Ksh.1,000,000, which is Ksh.333,333 awarded by the Taxing Master.
16. The court finds that it has not been established on the principle in *Steel & Petrol (E.A) Ltd v Uganda Sugar Factory (Supra)* that the Taxing Master erred in principle in awarding Ksh.1,000,000 and Ksh. 333,333 under Items 1 and 2 respectively, to justify this court’s interference.

Orders

17. Accordingly, for the reasons set out above, this court finds that the application dated 5/9/2024 is without merit and it is dismissed.
18. The applicant will pay the costs of this application to the Respondent.

Order accordingly.

DATED AND DELIVERED THIS 13TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Arusei for the Applicant.

