



**Christopher O. Kenyariri t/a Kenyariri & Associates Advocates v
First Community Bank Limited (Commercial Case E145 of 2021)
[2025] KEHC 2149 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E145 OF 2021
JWW MONG'ARE, J
FEBRUARY 13, 2025**

BETWEEN

**CHRISTOPHER O. KENYARIRI T/A KENYARIRI & ASSOCIATES
ADVOCATES PLAINTIFF**

AND

FIRST COMMUNITY BANK LIMITED DEFENDANT

RULING

Introduction and Background

1. It is common ground that on 18th March 2024 the court delivered judgment where the Plaintiff's suit was dismissed with costs being awarded to the Defendant. On 4th April 2024, the Defendant filed its Party & Party Bill of Costs seeking a sum of Kshs.816,731.00/=(“the Bill of Costs”) which the court's Deputy Registrar taxed at Kshs.713,833.00/= as per her ruling of 18th November 2024(“the Ruling”). The Plaintiff is dissatisfied with the Ruling and now seeks to set aside the same and have the Bill of Costs taxed afresh through his reference filed by way of the Chamber Summons dated 20th November 2024(“the Reference”). The Plaintiff relies on the grounds set out on the face of the Reference and his supporting affidavit sworn on 20th November 2024. The Defendant has opposed the Reference through the replying affidavit of its Manager, Legal Services, Claris Ogombo, sworn on 18th December 2024. The Reference was canvassed by way of written submissions which together with the pleadings, I have considered and will make relevant references to in my analysis and determination below.

Analysis and Determination

2. Having carefully considered all the pleadings and the rival submissions by the parties, I note that the issue for the court's determination is whether the Ruling of the Deputy Registrar ought to be set aside



and the Bill of Costs taxed afresh. It is trite law that the Court will only interfere with the decision of a taxing officer in cases where there has been shown to be an error of principle. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] KECA 325 (KLR) the Court of Appeal affirmed that taxation is a matter wholly within the discretion of the taxing officer and the judge on reference will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs. The same principle was reiterated in *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W'Njuguna & 6 others* [2006] KEHC 3504 (KLR) where Ojwang' J.,(as he was then) held 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 is somewhat too high or too low; it will only interfere if it thinks the award is 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 inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.

3. The Plaintiff submits that Item No. 1 in the Bill of Costs on instruction fees ought to have been taxed at a lower scale under Schedule 6 of the *Advocates Remuneration Order* as there was no order by the court certifying costs to be taxed on the higher scale. He relied on Paragraphs. 50 & 50A of the Order which provide as follows:-

50. Costs in High Court according to Schedule 6

Subject to paragraphs 22 and 58 and to any order of the court in the particular case, a bill of costs in proceedings in the High Court shall be taxable in accordance with Schedule 6 and, unless the court has made an order under paragraph 50A, where Schedule 6 provides a higher and a lower scale the costs shall be taxed in accordance with the lower scale.

50A. Schedule 6 costs on the higher scale

The court may make an order that costs are to be taxed on the higher scale in Schedule 6 on special grounds arising out of the nature and importance or the difficulty or urgency of the case. The higher scale may be allowed either generally in any cause or matter or in respect of any particular application made or business done.

4. The Plaintiff has not disputed that the value of the subject matter was Kshs.15,000,000.00/=. In the Ruling, I note that the Deputy Registrar applied Kshs.120,000.00/= for the first Kshs.1,000,000.00/= and 2% on the balance (Kshs.14,000,000.00/=) to arrive at a total sum of Kshs.400,000.00/=. However, the Plaintiff argues that she ought to have applied Kshs.75,000/= for the first Kshs.1,000,000.00/= and 1.5% for the balance. Going through Schedule 6A 1(b) of the Order, I note that the Kshs.75,000.00/= is for the first Kshs.500,000.00/= and not Kshs.1,000,000.00/=. This computation by the Plaintiff cannot therefore be right. However, I agree that rather than apply a percentage of 2%, the Deputy Registrar ought to have applied the lower scale of 1.5% for the remaining Kshs.14,000,000.00/= bringing a sum of Kshs.210,000.00/= and a total of Kshs.330,000.00/=. I find this to be an error of principle that warrants the court's interference as any application of Schedule 6 has to be on the lower scale unless stated otherwise by a court order.
5. The instruction fees thus ought to have been taxed at Kshs.330,000.00/= and not Kshs.400,000/=. As the getting up fees flows directly from the instruction fees, the same would thus be Kshs.110,000.00/=



and not Kshs.133,333.00/=. The Plaintiff has also contended that the other items in the Bill of Costs were taxed at the higher scale. However, I have gone through the Order, the Bill of Costs and Ruling and I agree with the Deputy Registrar and the Defendant that the same were reasonably drawn to scale and I find no reason to interfere with the said findings.

6. The Plaintiff has also contended he was disadvantaged by the Defendant not furnishing him with documents he had requested from it, documents which the Defendant stated were confidential and privileged. However, the Plaintiff has not stated whether he brought the same to the attention of the Deputy Registrar as the same is not mentioned by her in the Ruling. If the said documents were indeed important to the Plaintiff's case, then he ought to have raised it with the Deputy Registrar who could have invoked her powers under Paragraph 13A of the Order and '...direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before [her]. It should not be lost that in determining a reference from the decision of a Taxing Master, this court exercises an appellate jurisdiction. It cannot determine an issue that was not before the Taxing Master and is raised for the first time in a reference (see *M Mochama & Co Advocates v Kiongera* (Miscellaneous Application No. E140 of 2022) [2024] KEHC 10722 (KLR)).

Conclusion and Disposition

7. In the foregoing, I find that the Plaintiff's reference dated 20th November 2024 succeeds but only to extent that the instruction fees is taxed at Kshs.330,000.00/= whereas getting up fees is taxed at Kshs.110,000.00/=. The Plaintiff shall have the costs of this reference taxed at Kshs.15,000.00/=.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH DAY OF FEBRUARY 2025

J.W.W. MONGARE

JUDGE

In the Presence of:-

1. Dr. Kenyariri for the Applicants.
2. Ms. Faheema holding brief for Mr. Issa for the Respondent.
3. Amos - Court Assistant

