



REPUBLIC OF KENYA



**Kieng & another v Karimi & 5 others (Miscellaneous Civil Case  
E028 of 2024) [2025] KEHC 1492 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1492 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CIVIL CASE E028 OF 2024  
EM MURIITHI, J  
FEBRUARY 13, 2025**

**BETWEEN**

**KOSKEI KIENG ..... 1<sup>ST</sup> APPLICANT**

**WU XIANG ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EVA KARIMI ..... 1<sup>ST</sup> RESPONDENT**

**REBECCA MWONJA LUMIRI ..... 2<sup>ND</sup> RESPONDENT**

**JUDY LEBUTE ..... 3<sup>RD</sup> RESPONDENT**

**TONNY GITONGA ..... 4<sup>TH</sup> RESPONDENT**

**KENFREY MWITI MBAE ..... 5<sup>TH</sup> RESPONDENT**

**JOHN LUMIRI ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. By Chamber Summons dated 13/2/2024 pursuant to Sections 1A, 3B, 3A of the *Civil Procedure Act*, Rule 11 of the Advocates (Remuneration) Order, Order 21 Rule 9A of the Civil Procedure Rules and all other enabling provisions of the law, the Applicants seek that:
  1. This Honorable court does find that the learned magistrate erred in law and in principle in fixing costs of each plaintiff notwithstanding the provisions Paragraph 62 of the Advocates Remuneration Order.
  2. The court does set aside the six certificates of costs dated 13<sup>th</sup> October, 2020 and substitute it with one certificate of costs in line with Paragraph 62 and schedule VII of the Advocates Remuneration Order.



3. This court does such further orders as it may deem fit and just in the interest of justice.
4. The costs of this application be provided for.
2. The grounds upon which the application is premised are set out in the application and the supporting affidavit of Koskei Kieng, the 1<sup>st</sup> Applicant herein sworn on even date. He avers that upon the conclusion of Githongo CMCC No. 50/2018, the firm of Vivian Aketch & Co. Advocates filed six Party & party Bills of Costs dated 13/10/2020 demanding Kshs. 551,985/=. He instructed his advocate on record to file an application seeking to review and set aside the certificates of costs and have the same assessed in conformity with Paragraph 62 and Schedule VII of the Advocates Remuneration Order, which application was dismissed vide the ruling dated 24/1/2022. The award was, in his view, high hence he instructed his advocates on record to file an application seeking leave to file a reference. He is reliably informed that the learned magistrate did not give reasons for taxation thus showing clear errors in principle and in law. He is further aggrieved by the failure of the court to give reasons for issuing each plaintiff with his own certificate of costs notwithstanding the provisions of Paragraph 62 of the Advocates Remuneration Order, noting that there were no separate pleadings or separate proceedings in this matter to justify the calculation and assessment of costs as set out herein above. The reference is therefore merited and it is just that the orders sought are granted.
3. The Respondents filed a replying affidavit in opposition to the application sworn by Vivian Loice Aketch, their Advocate on 15/10/2024. She avers that she represented and defended each of the 6 Respondents in Githongo CMCC No. 50/2018, subsequent to which 6 separate certificates of costs were issued. The Applicants' quest for review of the decision of the Taxing Master was dismissed by the trial court. The Applicants further raised a Preliminary Objection, which was equally dismissed by the trial court. The Applicants' conduct in this whole affair has been mischievous and in bad faith and the court ought to dismiss the application with costs.

### **Submissions**

4. The Applicants fault the Respondents for failing to serve them with the Bills of Costs for comments and/or disputes, which culminated in 6 different Certificates of Costs, and cite *Keziah Gathoni Supeyo v Yano T/A Yano & Co. Advocates (2019) eKLR*. They urge that the assessed costs as stated in the Certificates of Costs are erroneous for want of compliance with Paragraph 62 Schedule VII of the Advocates Remuneration Order. They urge that there were no separate pleadings or proceedings in this matter to justify the calculation and assessment of costs and the subsequent issuance of 6 different Certificates of Costs, and beseech the court to set them aside.
5. The Respondents urge that the Taxing Master's decision was just, because each plaintiff gave independent and separate instructions to the advocate, signed an instruction note and filed their separate statements, and cite *Nyamogo & Nyamogo Advocate v Kenya Bus Service & Another [2006] eKLR*, *Nguruman Limited v Kenya Civil Aviation Authority & 3 Others (2014) eKLR* and *Thomas James Arthur v Njeri Electricity Undertaking (1961) EA 492*.

### **Analysis**

6. The singular issue for determination is whether in taxing the 6 Bills of Costs separately, the Taxing Master fell into error.
7. The circumstances under which a judge can interfere with the taxation of a Taxing Master were set out in *Steel & Petrol (E.A) Ltd v Uganda Sugar Factory (1970) E.A. 141* as follows:



8. “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.”
9. The Respondents instructed the firm of Vivian Aketch & Co. Advocates to represent them in Githongo CMCC No. 50/2018. The said advocate filed joint pleadings on behalf of the Respondents and diligently prosecuted their cases to conclusion. After the conclusion of the trial, the Respondents’ said advocate filed 6 distinct Bills of Costs in respect of each Respondent and 6 separate Certificates of Costs were issued on 13/10/2020. The question then begs whether it was proper for the Taxing Master to issue 6 distinct Certificates of Costs in a matter where the same advocate represented all the Respondents.
10. Paragraph 62 of the Advocates Remuneration Order provides for costs where the same advocate is employed by two or more plaintiffs or defendants as follows:

“Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other proceedings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate’s bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.”
11. This court finds the 6 Bills of Costs ought to have been consolidated and then taxed as one instead of being taxed separately as though they had emanated from different proceedings.
12. The trial court thus erred in separately taxing the 6 distinct Bills of Costs by the Respondent’s advocates over the same subject matter. It is apparent from the foregoing that the taxation of the 6 Bills of Costs separately was an error of principle, which justifies this court’s intervention. The indisputable duplication of the Certificates of Costs rendered the concomitant award manifestly oppressive and excessive.
13. While this court’s jurisdiction to re-tax the Respondents’ Bills of Costs cannot be gainsaid, the proper course is only to afford the Respondents another level of consideration on possible second reference, as counseled by *D. Souza v Ferrao (1960) E.A 602* is that:

“Where there has been an error in principle, the practice has been to remit the question of quantum to be decided by the same or another taxing master, in light of the decision of the judge on the point of principle.”

## Orders

14. Accordingly, for the reasons set out above, this court finds that the application dated 13/2/2024 is merited and it is allowed in the following terms:
  1. The Court grants an order that the six Certificates of Costs dated 13<sup>th</sup> October, 2020 herein are set aside.
  2. The matter is remitted back for re-taxation of the Bills of Costs before a different Taxing Master.
15. The costs of the application shall be costs in the Cause.



Order accordingly.

**DATED AND DELIVERED THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

