



REPUBLIC OF KENYA



**Ondaba & Partners Advocates v Stuart & another (Miscellaneous Application
284 of 2019) [2025] KEHC 4075 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 4075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION 284 OF 2019
F WANGARI, J
FEBRUARY 7, 2025**

BETWEEN

ONDABA & PARTNERS ADVOCATES APPLICANT

AND

COLIN STUART 1ST RESPONDENT

SEA TURTLE LIMITED 2ND RESPONDENT

RULING

1. This is the 2nd ruling in respect to the Respondent's Chamber Summons dated 10/10/2022. The application was struck out via the 1st ruling dated 29/9/2023 and Applicant was directed to comply with the mandatory procedure as set out under Rule 11 of the Advocates (Remuneration) Order. Thereafter, in the later proceedings, it was directed that a fresh application be filed. By consent of the parties, the Chamber summons was reinstated for determination. They relied on the pleadings earlier filed.
2. The application seeks the following orders: -
 - a. That there be a stay of execution of the ruling delivered by the Taxing Master on 29th September 2022 and all other consequential process flowing from the ruling pending the hearing and determination of this reference.
 - b. The Taxing Master (Hon. Orora) ruling of 29th September 2022 be set aside.
 - c. The matter be referred back to the Taxing Master for reconsideration with appropriate guidance on instruction fee and fee for getting up or preparing for trial.
 - d. In the alternative, the court does exercise its inherent jurisdiction and be pleased to reconsider the items relating to instruction fee and getting up fees afresh.



- e. The costs of this application be provided for.
3. From the pleadings on record, two issues are up for determination. That is the Instruction Fees and Getting Up Fees.

Analysis and Determination

4. On Instruction fees, the Applicant stated that the taxed fees was manifestly disproportionate to the work carried out. It is settled that instruction fees is calculated from the value of the subject matter which is determined from the pleadings, judgment or settlement.
5. In the case of Joreth Ltd vs Kigano & Associates [2002] 1 E.A. 92, it was held as follows;

“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, judgment or settlement (if such be the case), but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”
6. I do agree with the Taxing Master while taxing this item based on the value of the Consent Judgment. The taxed item shall not be interfered with.
7. On the Getting up fees, the Applicant stated that the hearing need not be confirmed for the fees to be paid. The Advocates Remuneration Order provides the getting up fees as a third of the instruction fees and chargeable once the matter has been confirmed for hearing. Consent judgment was entered before the matter proceeded for hearing. The item is therefore taxed off.
8. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
 - a. That stay of execution of the ruling by the taxing master dated 29/9/2022 on the Bill of Costs dated 9/7/2019 is hereby granted.
 - b. The decision on Instruction Fees is upheld.
 - c. That Kshs. 95,493.33 being Getting up Fees is taxed off.
 - d. Bill of Costs is now taxed at Kshs. 403,884.67
 - e. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 7TH DAY OF FEBRUARY, 2024.

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F. WANGARI

JUDGE

In the presence of:

Wangari Advocate for the Applicant

Muriithi Advocate for the Respondent

Barile, Court Assistant

