



REPUBLIC OF KENYA



KENYA LAW
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**Karanja v Karanja & another (Miscellaneous Reference Application
E067 of 2024) [2025] KEHC 2884 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2884 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS REFERENCE APPLICATION E067 OF 2024**

**JK SERGON, J
MARCH 13, 2025**

BETWEEN

GEOFFREY GITHAIGA KARANJA APPLICANT

AND

JOSEPH KUYU KARANJA 1ST RESPONDENT

MOIZ MOTORS LIMITED 2ND RESPONDENT

RULING

1. The application coming up for determination is a chamber summons dated 18th October, 2024 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That the decision of the learned magistrate dated the 15th day of October 2024 with respect to Items 2, 7, 9, 14, 16, 19, 21, 24, 26, 29, 31, 34, 37 and 40 (drawing), 3, 10, 15, 20, 25, 30 and 35 (making copies) 4, 8, 12, 17, 22, 27, 32 and 36 (attending court to file documents) 5 and 6 (service of summons), 13, 18, 23, 28, 33, and 38 (attending court for mentions and hearings), 39 (plaintiff's travelling subsistence, 44, 46, 48, 50, 51, 52, 53, 54, 55 and 56 (on commissioning), 43,45,47 and 49 (on court fees on affidavit), 51, 53, 55 and 57 and VAT, be set aside and taxed afresh by this Honourable Court.
 - (iv) That the costs of this application be provided.
2. The application is based on grounds on the face of it and the supporting affidavit of Lydiah Kemunto Ongwacho an Advocate of the High Court of Kenya practicing as such in the firm name and style of M/S KIMONDO GACHOKA & COMPANY ADVOCATES and having the conduct of this matter for and on behalf of the Applicant.



3. She avers That counsel on record for the applicant and 1st respondent had negotiated and entered a consent on costs in respect of Kericho Cmcc no 74 of 2019 Joseph Kuyu Karanja v Joseph Kuyu Karanja & Moiz Motors Limited, she annexed a copy of the consent.
4. She avers That the applicant's insurer did pay the entire claim as advised by counsel for the applicant she attached a copy of the said remittance.
5. She avers That on or about June 2024, the applicant's insurer had some issues with some of his shareholders which led to their system failure which the 1st respondent's advocates took advantage of and filed his bill of costs for taxation in court.
6. She avers That at the time counsel for the applicant was filing a response to the 1st respondent's bill of costs, they were not at the position to tell whether the matter had been settled in full.
7. She avers That the applicant filed his submissions to the 1st respondent's bill of costs which was not factored in by the Honourable Court while writing the ruling.
8. She avers That the ruling on the plaintiff's bill of costs in Kericho Cmcc no 74 of 2019 was delivered on the 15th day of October 2024 and plaintiff's costs taxed at Kshs. 201,402.80/=.
9. She avers That the Respondent prepared Bill of costs dated the 10th day of June 2024 which was opposed by the Applicant who filed submissions against it dated 20th September, 2024 and Ruling was delivered on the 15th day of October 2024 though during delivery from the learned magistrate intimated That at the time of writing the ruling the applicant's response was not on record yet the same was filed on 24th September 2024. (Attached herewith and marked as LKO-2 and LKO-3 are copies of the said Bill of costs and submissions by the Applicant).
10. She avers That after informing the Applicant's insurer under their rights of subrogation, the contents of the said Ruling, they were aggrieved with the assessment by the taxing officer and they instructed them to write a letter to the Taxing Officer notifying him of the Applicant's objection to taxation of Items 9 and 10 (Services) and Item 11 (swearing fee for affidavit), as the award was excessive and the same was awarded without giving any justification.
11. She avers That they have issued a notice of objection in respect to the said ruling.
12. She avers That the taxing officer failed to take into account the scale of fees prescribed under the Schedule 7 of the Advocates (Remuneration) Order 2014 in the award for services.
13. She avers That the taxing officer disregarded the submissions by the Applicant though filed demonstrating what would amount to a fair and reasonable costs in view of the circumstance of this suit.
14. She avers That the learned magistrate made serious errors in principle in taxing the said Bill of Costs and thereby arrived at the wrong decision.
15. She avers the said taxation is hence irregular and the decision of the Learned Magistrate ought to be set aside and the opposed items in Bill of Costs dated the 10th day of June 2024 be taxed afresh.
16. She avers That the Applicant is apprehensive That the Respondent will execute on the said costs upon the lapse of 30 days causing the Applicant to incur substantial loss and rendering this Application nugatory.



17. The respondent filed a replying affidavit sworn by Dennis Manono Nyatundo an advocate of the High Court of Kenya practicing as such in the firm of M/S Nyatundo & Co. Advocates with conduct of this matter for the 1st Respondent Joseph Kuyu Karanja.
18. He avers That no consent was ever entered into as alleged or at all by the applicant on the one hand and the 1st respondent on the other and therefore the averment to That effect in the supporting affidavit is irresponsible, misleading and reckless.
19. He avers That the material decree was clear and the payment referred to the supporting affidavit was merely towards partial settlement of decree herein leaving a clear outstanding sum with costs and interests.
20. He avers That the trial court properly exercised court's mandate under section 27 of the [Civil Procedure Act](#) as read with the schedule 7 of the Advocates Remuneration Order in force.
21. He avers That it is not denied That the court assessed costs properly exercising given judicial discretion under the given provisions after having considered material before it.
22. He aver That there was no misdirection, error, over-reach and/or omission whatsoever on the part of the court in assessment of said costs.
23. He avers That the Reference is herein frivolous, misconceived and lacking in merit.
24. The matter came up for hearing and this court finds That the following issue (s) are ripe for determination whether the reference herein has merit. On one part, the applicant is contending the ruling of the taxing master in respect to plaintiff's bill of costs in Kericho Cmcc no 74 of 2019 which was delivered on the 15th day of October 2024 and plaintiff's costs taxed at Kshs. 201,402.80/=, the applicant is adamant That the bill of costs was taxed without considering their submissions which had been filed demonstrating what would amount to a fair and reasonable cost in view of the circumstance of this suit and therefore the taxing officer disregarded the submissions by the applicant. The applicant contended That the learned magistrate made serious errors in principle in taxing the said Bill of Costs and thereby arrived at the wrong decision. On the other part, the respondent maintained That the trial court properly exercised court's mandate under section 27 of the [Civil Procedure Act](#) which states as follows;



(1)	<p>“ (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact That the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:</p> <p>Provided That the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.</p>
(2)	<p>(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”</p>

25. The respondent maintained That the bill of costs as taxed was compliant with the schedule 7 of the Advocates Remuneration Order in force and therefore the court assessed costs properly exercising given judicial discretion under the given provisions after having considered material before it. The respondent was adamant That there was no misdirection, error, over-reach and/or omission whatsoever on the part of the court in assessment of said costs.
26. This court having considered the disposition by both parties and the ruling on the party to party bill of costs dated 15th October, 2024 and finds That the submissions by the applicant’s notwithstanding, the taxing master exercised his discretion and taxed off party to party bill of costs dated 10th June, 2024 from Kshs. 296,577.80/= to Kshs. 201,402.80/= and provided sound reasonings for his decision. It is the finding of this court That the applicant has not aptly demonstrated That the taxing master committed any error in law to merit the court’s interference with the exercise of discretion. This court’s position therefore is That the discretion was properly exercised and the award ought to stand and remain. In the case of Peter Muthoka & another v Ochieng & 3 others [2019] eKLR, the Court of Appeal held: - “ It is not lost to us That matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown That there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole That the discretion was improperly exercised, resulting in mis-justice, to borrow the holding in Mbogo v Shah (Supra), then the decision though discretionary, may properly be interfered with. See also Attorney General of Kenya v Prof. Anyang’ Nyong’o & 10 Others, EACJ App. No. 1 Of2009.”



27. The totality of my analysis is That no basis has been laid to merit disturbance of the decision. Consequently, the application dated 18th October, 2024 is dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 13TH DAY OF MARCH, 2025

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Ongwacho for Applicant

No Appearance for the Respondent

