



**Magugu v Venture Holdings Limited (Miscellaneous Application E205 of 2021)  
[2025] KEHC 3353 (KLR) (Commercial and Tax) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E205 OF 2021  
BK NJOROGE, J  
MARCH 20, 2025**

**BETWEEN**

**MIRIAM SUSAN NJAMBI MAGUGU ..... CLAIMANT**

**AND**

**VENTURE HOLDINGS LIMITED ..... RESPONDENT**

**RULING**

1. For ease of reference VENTURE HOLDINGS LIMITED is the Applicant herein and will be referred to as the Applicant. MIRIAM SUSAN NJAMBI MAGUGU is the Respondent for purposes of this Ruling.
2. The Applicant herein filed the Chamber Summons dated 14<sup>th</sup> February 2024 under Section 1A, 1B, 3A and Section 63(3) of the *Civil Procedure Act* Cap 21, Section 11 Rule (1) and (2) of the Advocates Remuneration Order and Order 10 Rule 11 and 50 Rule 6 of the Civil Procedure Rules. It seeks the following orders;
  1. That this Honourable Court be pleased and do hereby grant leave to allow the firm of Kounah & Company Advocates to come on record for the Respondent herein in place of J. Thongori & Company Advocates.
  2. That the Honourable Court be pleased to vacate and set aside in its entirety the ruling and reasoning of the learned Taxing Officer Honourable Mary Osoro (D.R) dated and delivered on 25<sup>th</sup> January, 2024 upon such terms as are just.
  3. That this Honourable Court be pleased and do hereby grant the Respondent leave to file an Objection and a Taxation Reference against the Ruling of the Taxing Officer Honourable Mary Osoro (D.R) dated and delivered on 25<sup>th</sup> January 2024.



4. That the leave granted in prayer (3) above do operate as stay of execution of the taxed costs pursuant to the Ruling of the Taxing Officer aforesaid and any other consequential proceedings, pending the outcome of this motion.
5. The Objection to the Taxing Officer and the Application for Reference annexed hereto be deemed as duly filed and served upon payment of requisite fees.
6. The costs of this application be in the cause.
3. The Application was supported by the Affidavit of John Thongori who contended Thatthe Taxing Officer did not take into account the evidence, or lack thereof. This is as to the existence of a Consent recorded by both parties on 13<sup>th</sup> January 2020 and Consent Award made and published by the Arbitrator on 12<sup>th</sup> November 2020. The Taxing Officer therefore begun and completed the taxation on an unfounded premise and without jurisdiction.
4. Further, the Taxing Officer erred in principle by failing to consider Thatthe Applicant agreed to settle both the Arbitrator's fees and the Respondent's costs, subsequent to the registration of the lease.
5. The Taxing Officer also erred in principle by failing to consider Thatthe value of the subject matter was the stamp duty which at the time was Kshs.2,000,000 and not the actual value of the property of Kshs.50,000,000. The Taxing Officer merely reduced the taxation into a mathematical exercise hence arriving at a wrong decision.
6. In addition, the Taxing Officer erred in principle on the whole of the taxation, the award made by the Taxing Officer is so manifestly excessive as to attract a finding Thatit was unjustified and/or improper.
7. On the other hand, the Respondent filed a Replying Affidavit sworn on 22<sup>nd</sup> July 2024. It stated Thatthe Application is incurably defective as it offends the mandatory provisions of Paragraph 11 of The Advocates Remuneration Order. Thatthe delay in seeking an extension of time is inordinate, deliberate, and in bad faith.
8. Moreover, the matters being referenced to by the Applicant in their Application, and the nature of their prayers are essentially not matters of principle which now hinders the Court from interfering with the said Ruling.
9. In addition, the Respondent pointed out Thatthe Applicant's Counsel was not properly on record. The Court has read and considered the submissions files by the parties herein to bolster their respective positions.
10. Having considered the written submissions together with the Application and the response the Court frames the following issues for determination;
  - a. Whether leave should be granted to allow the firm of Kounah & Company Advocates to come on record.
  - b. Whether leave should be granted to file an Objection and a Taxation Reference out of time.
  - c. Whether the ruling and reasoning of the learned Taxing Officer should be set aside.



## Analysis

### a. Whether leave should be granted to allow the firm of Kounah & Company Advocates to come on record.

11. On the issue of whether the firm of Kounah & Company Advocates should be granted leave to come on record, Order 9, Rule 9 of the Civil Procedure Rules provides as follows;  

“When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

  - (a) upon an application with notice to all the parties; or
  - (b) upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be.”
12. The Respondent took issue with the fact Thatthe Advocates were not properly on record.
13. The Court indeed noted Thatthere is no evidence Thatthe former Advocates were served with this application and neither is there a consent executed between the former and current Advocates. Moreover, the Advocates herein did not file any Notice of Appointment.
14. From the above-mentioned provision, the Court finds Thatthe requirement is Thatthe former Advocate must be served or the two firms enter into a consent Thatthe new firm takes over conduct of the matter. In other words, the essence of Order 9 Rule 9 of the Civil Procedure Rules is to protect Advocates from mischievous clients who will wait until a judgment has been delivered and then sack the Advocate and either replace him with another Advocate or act in person. The provision is therefore an important one and ought not to be disregarded.
15. Looking at the justice of the case, the former Advocate has sworn the Affidavit in support of this Application. Perhaps the mischief sought to be curbed through notification of former Counsel, does not lie in this matter. The Court is minded to grant the leave in this one instance so Thatthe matter can move forward. In any event there is no prejudice or harm occasioned to the Advocate/Respondent if the leave is granted.
16. In the circumstances leave is granted to the firm of Kounah & Company Advocates to come on record.

### b. Whether leave should be granted to file an Objection and a Taxation Reference out of time.

17. The relevant section dealing with extension of time in references is Section 11 of the Advocates Remuneration Order which states as follows;
11. Objection to decision on taxation and appeal to Court of Appeal
  - (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
  - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.



- (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
  - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding That the time sought to be enlarged may have already expired.
16. This Court is vested with jurisdiction to extend time. Time lapsed on 7<sup>th</sup> February, 2024 and this Application was filed on 14<sup>th</sup> February, 2024. A delay of Seven (7) days only cannot be said to be inordinate. The Court is minded to extend time. Leave is granted to file the reference out of time and this reference is deemed as duly filed.

**c. Whether the ruling and reasoning of the learned Taxing Officer should be set aside.**

17. The main complaint is on the instruction fees. The Respondent in his Bill of Costs dated 2<sup>nd</sup> August, 2022 based the instruction fees on a value of the property at Kshs.100,000,000/-.
18. The Applicant complains That the value of the property from the pleadings in the Arbitration was Kshs.50,000,000/-. In any event it is submitted That the Taxing Officer should have relied upon the stamp duty value. That stamp duty was at the core of the dispute between the parties.
19. This Court is of the considered opinion That stamp duty was not at the heart of the dispute between the parties. The dispute was about the property itself. The Respondent clearly sought an order of specific performance of the sale agreement, against the Applicant. In the alternative she pleaded for compensation for the value of the property. From the pleadings before the learned Arbitrator, the purchase price was Kshs.35,000,000/-.
20. In the application before the Court, the Applicant places the value of the property at Kshs.50,000,000/-. This is the developer of the properties and would be in the know as to the value of the Apartment. The Court rejects the value of Kshs.100,000,000/- which is not backed by any valuation.
21. The Court follows the decision in *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR) which states 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 importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”
22. It follows That the Taxing Officer used the incorrect value of the property and arrived at the incorrect instruction fees. The Taxing Officer should have used the value set out in the pleadings or used her discretion to arrive at the instruction fee. This is a proper matter to be remitted back to the Taxing Officer to retax Item 1 being the instruction fees. This should be based on the value of the Apartment as can be discerned from the pleadings before the Court.



23. The Applicant's application does not lay any other grounds to challenge the rest of the items in the Bill of Costs.
24. As to costs, the same ordinarily follow the event. In this particular matter the Applicant prays That the costs be in the cause. It is so ordered.

**Determination**

25. The Chamber Summons dated 14<sup>th</sup> February, 2024 is allowed in the following terms.
- a) Leave is granted to the firm of Kounah & Company Advocates to come on record for the Respondent herein in place of J. Thongori & Company Advocates.
  - b) Leave is granted to the Applicant to file an Objection and a Taxation Reference against the Ruling of the Taxing Officer Honourable Mary Osoro (D.R) dated and delivered on 25<sup>th</sup> January 2024, and the Reference by way of Chamber Summons dated 14<sup>th</sup> February, 2024 is deemed as duly filed in time.
  - (c) The Ruling of the Taxing Officer dated 25<sup>th</sup> January, 2024 touching on the assessment of item No. 1 (instruction fees) in the Bill of Cost dated 2<sup>nd</sup> August, 2022 is hereby set aside;
  - (d) The Bill of Costs dated 2<sup>nd</sup> August, 2022 be and is hereby remitted back to the Taxing Officer for re-taxation only on item No. 1 (instruction fees) bearing in mind the directions set out in this Ruling.
  - (e) The costs of this application be in the cause.
26. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MARCH, 2025.**

**NJOROGE BENJAMIN. K**

**JUDGE**

In the presence of: -

.....the Applicant

.....for the Respondent

Court Assistant: .....

