



**RSA Limited v Managing Director, Kenya Industrial Property Institute (KIPI);
Cruise East Africa & 3 others (Interested Parties) (Miscellaneous Application
E061 of 2018) [2025] KEHC 6689 (KLR) (Commercial and Tax) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E061 OF 2018**

JWW MONG'ARE, J

MAY 26, 2025

BETWEEN

RSA LIMITED APPLICANT

AND

**THE MANAGING DIRECTOR, KENYA INDUSTRIAL PROPERTY
INSTITUTE (KIPI) RESPONDENT**

AND

CRUISE EAST AFRICA INTERESTED PARTY

RANA BODY BUILDERS LIMITED INTERESTED PARTY

ISLAND SPRAY PAINTERS LIMITED INTERESTED PARTY

TOYOTA KENYA LIMITED INTERESTED PARTY

RULING

Introduction and Background

1. Before the court for determination are various references filed by the Applicant by way of Chamber Summons dated 12th May 2023 (“the references”) seeking to set aside various decisions of the Taxing Officer/Deputy Registrar all dated 27th April 2023 (“the rulings”) in respect of the Interested Parties’ Party and Party Bill of Costs (“the Bill of Costs”) and arising out of the ruling of the court (Thande J.,) of 3rd December 2020. The references are supported by the grounds on its face and the affidavits of the Applicant’s Managing Director, Manmohan Bharna and the advocate in conduct of this matter on their behalf, Nicholas Mue Kamwendwa. They are opposed by the Interested Parties through the replying affidavits of Aaron James Kinyanjui, an advocate in conduct of the matter on behalf of the



- 1st, 2nd and 3rd Interested Parties and; Agnes Muia, the Legal Counsel and Company Secretary of the 4th Interested Party.
2. The court directed that the references be canvassed by way of written submissions which are on record and which together with the pleadings, I have considered and I will be making relevant references to them in my analysis and determination below.

Analysis and Determination

3. The Applicant seeks to set aside the rulings of the Deputy Registrar or in the alternative, have the Bill of Costs taxed afresh by the court. It is now 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. As submitted by the 1st, 2nd and 3rd Interested Parties, in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] KECA 325 (KLR) the Court of Appeal asserted this position as follows:-

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the Taxing Officer, erred in principle in assessing the costs. In *Arthur v Nyeri Electricity Undertaking* [1961] EA 497, the predecessor of this Court said at page 492 paragraph I: “where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.

4. As cited and relied on by the Applicant, 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.”

5. From its submissions, the Applicant faults the Deputy Registrar’s taxation of the Bill of Costs largely on the items in respect of instruction fees and getting up fees. The parties agree that in arriving at the instruction fees, the value of the subject matter ought to be ascertained and the same can be deduced either from the pleadings, judgment or settlement, if such be the case, but if the same is not ascertainable, a taxing officer is entitled to use their discretion and the parties have rightly cited the decision in *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR) which supports this position. The parties are in further agreement that in her rulings, the Deputy Registrar stated that the subject matter was not ascertainable from the pleadings and such she could only use her discretion in determining the appropriate instruction fees to award which as per the decision in *Joreth* (supra), the Deputy Registrar ought to be guided by factors such as 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. It should also not be lost that these factors are not exhaustive.



6. It is this exercise of discretion by the Deputy Registrar that the Applicant is faulting and its position is that the Deputy Registrar ought not have increased the basic fee of Kshs.75,000/- that was provided for in Schedule 6 of the Order to Kshs.200,000.00/= as she did as the claim was general, no inordinate time was consumed in the volume of documentation as averred by the Deputy Registrar. As stated, the court ought to be circumspect in interfering with a Deputy Registrar's discretion in taxation matters. The Court of Appeal, in *Ouma v Warega* [1982] KECA 27 (KLR) emphasized that judges must extend some latitude to taxing officers and avoid unnecessary interference with questions of quantum in which taxing officers have greater experience, unless, of course there is some misdirection.
7. In arriving at her decision to enhance the basic fee provided in the Order, I note that she was guided by the aforementioned decision in *Joreth*(supra) and considered the urgency of the matter and the volume of documents. In my view, I find that the Deputy Registrar was properly guided and I fail to see any whimsical application of discretion in this case. The court cannot interfere just because it would have considered other factors than those cited by the Deputy Registrar. Once it is shown that discretion was based on established principles and guidelines on factors to consider when arriving at instruction fees, such as the present case, then discretion was properly exercised and I find no reason to interfere with the same. I further note that the Applicant seeks to review the awarded sum of Kshs.75,000.00/= as set out in Schedule 6 (A)(1) of the Order and that the court substitutes it with Kshs.5,000.00/= as set out in Schedule 6(A) (c)(viii) of the Order. I am in agreement with the Interested Parties' submission that this cannot stand as the latter is in respect of appeals and matters arising during appeal proceedings, which is not the case in this matter.
8. On getting up fees, the Applicant submits that there was no viva voce evidence adduced and that the proceedings did not involve adduction of witness statements, thus getting up fees ought not to have been awarded in these proceedings that involved affidavit evidence only. In her Ruling, I note that the Deputy Registrar was guided by the decision of Lenaola J., (as he was then) where it was held that a 'hearing' does not only entail the calling of witnesses and the adduction of viva voce evidence. As the subject application was set down for hearing and the matter proceeded by way of affidavit evidence, I find that the Deputy Registrar was properly guided and bound to hold that this was sufficient to allow the getting up fees sought by the Interested Parties. This ground by the Applicant therefore fails.
9. I also note that the Applicant has stated that the Interested Parties had already filed a Bill of Costs in respect of the main suit which was taxed at Kshs.295,857.00/= and that they had filed another bill of costs which was taxed at Kshs.89,688.00/=. However, my perusal of the record indicates that both applications filed by the Applicant were dismissed and/or withdrawn with costs to the Interested Parties. Thus, they had every right to tax the costs in each of the said applications where they were awarded costs. I am also in agreement with the Interested Parties' submission that the Deputy Registrar was cognizant of this fact and captured the same in her rulings.
10. It is thus my finding that the Deputy Registrar followed the correct principles of law in reaching her decisions and that she properly exercised her discretion soundly and judicially. Further, the awards issued were not manifestly high in the circumstances to warrant the court's interference.

Conclusion and Disposition

11. It is for the above reasons that I dismiss the references dated 12th May 2023 with costs assessed at Kshs.40,000.00/=. I also affirm the Deputy Registrar's rulings of 27th April 2023.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Kamwendwa for the Applicant.

Ms. Ndiho holding brief for Mr. Kinyanjui for the 1st -3rd Interested Party.

Ms. Natalie Mbago holding brief for Mr. Mbaluto for the 4th Interested Party.

Amos - Court Assistant

