



REPUBLIC OF KENYA



**Munyito v Kibui (Miscellaneous Civil Application E024 of 2024)
[2025] KEHC 8175 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CIVIL APPLICATION E024 OF 2024**

LN MUTENDE, J

JUNE 12, 2025

BETWEEN

SAMUEL NDERI MUNYITO APPLICANT

AND

PAUL MUIRURI KIBUI RESPONDENT

RULING

1. The Applicant brought an application dated 19th August, 2024, pursuant to Rule 11(2) of the Advocates Remuneration Order; Section 3A of the [Civil Procedure Act](#) and all the other enabling provisions of the law, seeking orders thus;
 - i. That the decision of the Taxing Master, Hon. S. Mogute, on the assessment of costs vide certificate of stated costs dated 5th June, 2024, be reviewed, varied and/or set aside.
 - ii. The assessment of Party and Party/instructions fees of Kshs.50,000/- be reviewed, varied and/or set aside.
 - iii. That the assessment of attendances at Kshs.35,000/- be reviewed, varied and/or set aside.
 - iv. That the assessment of disbursement (service) at Kshs.9,025/- be reviewed varied and/or set aside.
 - v. That the cost of this reference be paid by the Respondent.
2. The application is premised on grounds that;
 - a. The learned Taxing Officer erred in law and in fact by assessing instructions fees at Kshs.50,000/- without considering the fact that the Respondent lost substantial part of his claim, and only succeeded in a claim for Kshs.2,962/-.



- b. The learned Taxing Officer erred in law and in fact by assessing attendances at Kshs.35,000/- without due regard to the fact that the Respondent had lost the substantial part of his claim, and in some instances, the Respondent was not entitled to attendances costs.
 - c. The learned Taxing Officer erred in law and in fact by assessing court fees at Kshs.67,820/- without due regard to the fact that the Respondent had lost the substantial part of his claim, and that the fact that the substantial part of the court fees were paid for a sum of Kshs.1,273,500/- which was not awarded.
 - d. The learned Taxing Officer erred in law and in fact by assessing disbursements (service) at Kshs.9,025/- without due regard to the fact that the Respondent had lost the substantial part of his claim, and the fact that the Respondent was not entitled to some disbursements (service) costs.
3. The application is supported by affidavit evidence deposited by Nderitu Komu, Counsel for the Applicant herein, who was in conduct of Nyahururu CMC No. 11 of 2018 that was instituted by the Respondent by plaint on 12th January, 2018, seeking general damages and injunction orders, which was later amended to include a prayer for Kshs.1,273,500/- as special damages.
 4. Judgment was entered after trial for the sum of Kshs.2,962/- with interest making it to a total of Kshs.5,600/-. However, on 5th June, 2024, the court issued a certificate of costs in the sum of Kshs.16,445/-.
 5. That the Taxing Officer erred in law and in fact by assessing instructions fees at Kshs.50,000/- without considering the fact that the Respondent had lost the substantial part of the claim and only succeeded in a claim of Kshs.2,962/-.
 6. That the learned Taxing Officer erred in law and fact by assessing attendances at Kshs.67,820/- without due regard to the fact that the Respondent had lost the substantial part of the claim; and, that the learned Taxing Officer erred in law and in fact by assessing disbursements (services) at Kshs.9,025/- without regard that the Respondent had lost the substantial loss part of the claim.
 7. In response, thereto the Respondent Paul Muiruri Kibui filed a replying affidavit where he deposes inter alia that the assessment of the instruction fees of the Party to Party bill of costs assessed and taxed at Kshs.50,000/- is per the provisions of Section 2 of the Schedule VII of the Advocates (Remuneration) (Amendment) Order 2014 which provides for applicability of the higher scales in matters where defence has been entered as per the discretion of the court and subject to the nature and importance or the difficulty of the matter not to exceed Kshs.50,000/-.
 8. That the Respondent's advocates attended court on diverse dates for mentions and hearing and on 12th August, 2021 a Fisheries Officer stationed at Kinangop Jimmy Keroids adduced evidence as an expert, hence the amount awarded as court attendances was warranted. That the court attendances assessed and taxed at Kshs.35,000/- is per Section 6, 7 and 8 of the Schedule VII of the Advocates (Remuneration) (Amendment) Order 2014.
 9. That service fees were assessed per the number of times the Applicant was served and an affidavit of service filed to that effect as per the Bill of Costs dated 21st March, 2024 pursuant to the provisions of Section 10 of the Schedule VII of the Advocate's (Remuneration) (Amendment) Order 2014.



10. The application was disposed through written submissions. It is urged by the Applicant that principles for guiding taxation were stated by the Court of Appeal of Uganda in *Makula International v Cardinal Nsubuga & Another* (1982) HCB 11 where the court stated that;

“The taxing officer should, in taxing a bill, first find the appropriate scale fee in schedule VI, and then consider whether the basic fee should be increased or reduced. He must give reasons for deciding that the basic fee should be increased or decreased. When he has decided that the scale should be exceeded, he does not arrive at a figure which he awards by multiplying the scale fee by a multiplication factor, but places what he considers a fair value upon the work or responsibility involved. Lastly, he taxes the instruction fee, either by awarding the basic fee or by increasing or decreasing it.”

11. That the Respondent lost a substantial part of the claim, therefore, the figure of Kshs.2,962/- ought to have been the guiding factor in assessing the instructions fees, Schedule 7A paragraph 1 of the Advocates (Remuneration) Amendment Order 2014 is applicable. That the applicable instructions fees is Kshs.15,000/-.

12. That the lower court matter was not complex in nature and did not require too much time and skill to research on which called for reduction fees to a sum of Kshs.7,500/- as the Respondent dragged the Applicant in court for 5 years only to be awarded a sum of Kshs.2,962/- hence Kshs.7,500/- is sufficient.

13. That the court did not give details of how it arrived at the figure of Kshs.35,000/- for court attendances; the Respondent being entitled to a total of Kshs.12,600 – for the mentions that were on 26th November, 2018, 4th July, 2019, 12th March, 2021, 23rd June, 2022, 13th November, 2022, 8th November, 2022, 3rd October, 2023 and 7th November, 2023 @ 1,400/-.

14. And, when the matter came up on 12th March, 2020, 24th June, 2021, 12th August, 2021, 25th November, 2021, 3rd March, 2022 and 1st September, 2022 the Respondent sought adjournment hence the Applicant being entitled to costs of Kshs.12,600/- at Kshs.2,100/-.

15. And when the matter proceeded to hearing on 9th May, 2023 and 28th August, 2023 each attendance was Kshs.2,100/- hence a total Kshs.4,200/-.

16. On the question of service reliance is placed on Schedule 7 paragraph 10(1) and an agreement advanced that apart from the summons to enter appearance and pleadings, the Applicant was not served with any other document. That dates were fixed by consent hence the Respondent was entitled to Kshs.3,400/- for the service to enter appearance Kshs.2,000/- and reply to the defence Kshs.1,400/- the total was Kshs.3,400/-.

17. That awarding Kshs.76,845 was erroneous as the Respondent lost the substantial part of the claim. That he is entitled to Kshs.3,475/- (filing of the plaint) Kshs.225/- (reply to defence) Kshs.150/- (mention) Kshs.150 (two affidavits of service) and Kshs.500/- (Assessment of costs). The total is Kshs.4,500/-.

18. That the Respondent was entitled to Kshs.66,345 paid for the amended claim of Kshs.1,273,500/- as he failed to prove the claim and the attached payment receipt for Kshs.1,145/- paid on account of P&A No. 23 of 2017. Hence the Respondent was entitled to Kshs.4,500 for court fees.

19. Reliance is placed on *Rogan Kamper & Grosvenor* [1989] KLR where the court held that;

“The taxing officer may allow a fee for instructions which he shall consider reasonable; the judge, on a reference to him, may make a deduction or addition thereto which will render the



bill reasonable only if he is of the opinion that a bill of costs as taxed, in all the circumstances, is manifestly excessive or manifestly inadequate.”

20. And also, *Danson Mutuku Muema v Julius Muthoka Muema & Others* Civil Appeal No. 6 of 1991 where Mwera J (as he then was) stated that;

“Then the taxing officer while applying the schedules should know and seriously apply their minds, within the discretion allowed, with due seriousness to their exercise. They should ensure that only proper lawful and justified bills roll of their desks.”

21. On his part the Respondent submitted that it isn't in dispute that the Applicant did not succeed in all his prayers but out of the prayers sought the court allowed, the prayer for general damages for negligence, trespass and nuisance as well as special damages that amounted to Kshs.2,962/- plus interest at court rates from the date of filing the suit until payment in full which was part of what was sought in the amended plaint dated 14th October, 2023. That an argument that the cost of any suit should be based on the success rate of prayers sought is a misconception. Reliance is placed on the case of *M/s Lubuleilah & Associates Advocates v NK Brothers Limited (Miscellaneous Civil Case 52 of 2012)* [2014] KEHC 7393 (KLR) (Commercial and Tax) (24th January, 2014) (Ruling) where it was held thus;

“48. From the Applicant's submissions, it is evident that it sought to have the value of the subject matter based on amounts claimed for liquidated pecuniary claim, declaration for breach of contract of the said sum and compound interest. This cannot form the basis of the subject matter as they could be allowed or disallowed. They are merely figures that a party claims in its pleadings and they can only be determined after hearing the case on merit.

49. If the position of calculating the subject matter was to be based on sums claimed in a pleading, nothing would stop any rogue advocate from plucking figures from the air because he would know that his instruction fees would be based on figures indicated in the pleadings, despite knowing very well that he would not succeed in such a claim at the end of the day. This would be a travesty and miscarriage of justice.”

22. That the Applicant also disregarded the reality that the court granted permanent injunction thus justifying the costs awarded. That the court in awarding the costs of the suit never prorated the same to the extent of the success of all the prayers sought or otherwise. He called upon the court not to interfere with the discretion of the taxing officer as he did not err on principles and that the instructions fees, court attendances, court fees and disbursements were properly computed as per the Advocates (Remuneration) Order.

23. In *Chiriatti v Kahlili & 3 Others* (1991) KLR, it was held that;

“The Court is entitled to interfere with the order of the Taxing Officer only if the Court is satisfied that the award of the taxing officer is so high or so low as to amount to injustice to one party.”

24. With that in mind, I note that on Assessment of instructions fees an award of Kshs.50,000/- was made which is challenged. In awarding instructions fees in party to party costs, the Taxing Officer is obligated to provide clear well reasoned arguments. Where the matter is complex this must be captured. If the case is simple such that it does not raise significant legal issues it will be outlined.



25. Schedule 7A of the Advocates Remuneration Order provides that;
- “Where the sum found due (in the case of a wholly or partially successful Plaintiff) or the sum sued for (in case of a wholly successful Defendant).”
26. The claim was for Kshs.1,273,500/- but the court awarded the Respondent Kshs.2,962/- in special damages. Notably the Respondent herein was partially successful. The sum awarded of Kshs.50,000/- was not supported by reasons as to how the Taxing Officer had the discretion to award the costs but he could not act based on random whim in reaching the decision hence the need to give reasons.
27. In Premchand Raichand Ltd & Another v Quarry Services Ltd [1972] EA 162 it was stated that;
- “... so far as practicable there should be consistency in the award made and...The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party..”
28. Attendance fees is contested. It is apparent that some costs were awarded when the adjournment was sought by the Respondent. This calls for the scrutiny of the entire proceedings.
29. Seemingly, the Taxing Officer took into consideration irrelevant documents which were relied on as a basis of awarding the costs. For instance, what was paid on account of the P&A matter. Items that were not supposed to be included were considered. This was a misapplication of the law.
30. The upshot of the above is that I find that a detailed scrutiny of the Bill of Costs is required for the Taxing Officer to make an informed assessment. In the premises, I allow the Reference, set aside the decision of the Taxing Officer with the certificate thereto dated 5th June, 2024 and refer the matter back to the Taxing Officer for reconsideration.
31. The error having been occasioned by the court, each party shall bear their own costs.
32. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF JUNE, 2025.

.....
L.N. MUTENDE
JUDGE

