



JM Njenga & Co Advocates LLP v Kimuri Housing Company Ltd (Environment and Land Miscellaneous Application E134 of 2023) [2025] KEELC 4138 (KLR) (16 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4138 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E134 OF 2023**

TW MURIGI, J

MAY 16, 2025

BETWEEN

JM NJENGA & CO ADVOCATES LLP APPLICANT

AND

KIMURI HOUSING COMPANY LTD RESPONDENT

JUDGMENT

1. Before me for determination is a Chamber Summons dated 17th October 2024 in which the Applicant seeks the following orders:-
 - a. That the time for filing the subject application be enlarged and the instant reference be admitted out of time.
 - b. That the taxation orders made on 30th August 2024 in regard to items 1, 4, 6, 12-15, 19, 24, 25, 32, 35, 41-43, 48, 51, 53, 54, 63, 65, 68-70, 77 and 79 of the Advocate/Client bill of costs dated 14th December 2023 be reviewed and/or set aside and the matter referred back to a taxing officer for the re-taxation of the said items.
 - c. Costs of the application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Vivianne Wachanga sworn on even date.

The Applicant's Case

3. The deponent averred that the Applicant was not informed of the taxation ruling as a notice was not issued to that effect. She further averred that they discovered from the online portal that a ruling had been delivered after the time for filing an objection had lapsed.



4. The deponent averred that the Applicant is aggrieved with the decision of the of the taxing master on the following grounds
 - a. That the taxing officer made an erroneous ruling under items 1 and 63 as she combined the two while they related to distinct items.
 - b. The taxing officer ignored the valuation report on record and relied on the purchase price of the suit property (Kshs. 1,840,000) yet the 2021 value was Kshs. 280,000,000.
 - c. That the taxing officer disallowed items 6, 19, 24, 32, 41, 43, 48, 51, 54, 65, 68, 69 and 70 relating to correspondence despite the same being supported by evidence.
 - d. The deponent admitted that the evidence relating to items 4, 12-15, 77 and 79 was not availed.
 - e. Regarding item 25, the deponent stated that the same relates to a court attendance that was inadvertently noted as 28/1/22 instead of 28/11/22.
 - f. Regarding item 53, the deponent noted that the taxing officer struck out the item despite a hearing date having been set.
5. In conclusion the deponent faulted the taxing officer for failing to award interest.

The Respondent's Case

6. The Respondent filed grounds of opposition dated 15th November 2024 whose gravamen was that the bill of costs was rightfully taxed based on the evidence availed.
7. The Reference was canvassed by way of written submissions.

The Advocate/applicant's Submissions

8. The Applicant filed its submissions dated 21st January 2025.
9. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:-
 - a) Whether prayer 1 for enlargement of time is merited?
 - b) Whether there exist any valid grounds for setting aside the objected items pursuant to the taxation orders made on 30/8/24?
 - c) Who is to bear the costs of this application?
10. On the first issue, Counsel submitted that the Applicant has explained the delay in bringing the present application.
11. With regards to the second issue, Counsel reiterated the contents of the affidavit in support of the Reference. Counsel submitted that while the initial bill of costs placed the value of the suit property at Kshs. 405,000,000 the same was revised to Kshs. 280,000,000 by a valuation report that was filed.
12. It was submitted that the taxing officer erred in failing to consider the value of the suit property as stated in the valuation report. It was further submitted that the taxing officer could have also been guided by the pleadings which placed the value of the suit property at Kshs. 171,000,000 in 2020. The cases of Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] KECA 587 (KLR), Ochieng, Onyango, Kibet & Another v Adopt a Light Limited [2007] KEHC 1904 (KLR), Kamunyoru & Company Advocates v Development Bank Of Kenya Limited [2015] KECA



- 595 (KLR), Peter Muthoka & another v Ochieng & 3 others [2019] KECA 597 (KLR) and Ambwere T.S & Associates v Frank Nyambu Wafukwa & others [2020] KEELC 416 (KLR) were relied upon.
13. Counsel reiterated the position set out in the foregoing sections concerning items 6, 19, 24, 32, 41, 43, 48, 51, 54, 65, 68, 69, 70, 4, 12-15, 77, 79, 25 and 53. The cases of Shamshudin Khosla As Chairman, Abdul Gafur Pasta as Honorary Secretary & Mohamed Bayusuf as Treasurer [On their Own Behalf and on Behalf of] The Members Of Kenya Transport Association V Kenya Revenue Authority [2011] eKLR, Kamau v Association of Action Aid International & 2 others [2022] KEHC 12718 (KLR) and KANU National Elections Board, Secretary General & Kenya African National Union v Salah Yakub Farah [2018] KEHC 9315 (KLR) were relied upon.
 14. In conclusion Counsel urged the court to allow the application with costs to the Applicant.

The Respondent's Submissions

15. The Respondent filed its submissions dated 27th February 2025. On behalf of the Respondent, Counsel outlined the following issues for the court's determination:-
 - a) Whether time should be enlarged?
 - b) Whether the ruling of the taxing master dated 30th August 2024 should be reviewed, set aside and/or referred back for re-taxation.
16. On the first issue, Counsel submitted that the delay in filing the instant application is not justified as the ruling was delivered via email and uploaded on the e-filing portal. It was argued that the prayer for extension of time is not merited and ought to be disallowed.
17. With regards to the second issue, Counsel relied on the case of G. Mbaabu & Co. Advocates v Joseph Muoki Kakenyi & 2 others [2018] KEELC 1356 (KLR), Alice Yano t/a Yano & Co. Advocates v Rebecca Nadupoi Supeyo & another [2021] KEHC 5923 (KLR) and on the case of Mwangi Njenga t/a Mwangi Njenga & Company Advocates v County Government of Mombasa [2020] KEHC 830 (KLR) to submit that the Taxing Officer correctly applied Kshs 1,840,000/= as the value of the subject matter stated in the pleadings.
18. Counsel further submitted that the Taxing Officer noted that she would not rely on the valuation report as it had not been consented to by the parties.
19. Counsel also relied on the case of Haithar Haji Abdi & another [v Sand Southdowns Developers Limited 2022] KEELC 1385 (KLR) to submit that the taxing officer correctly applied the principles of taxation in arriving at the award.
20. With regards to Items 4, 6, 12-15, 19, 24, 32, 35, 41-43, 48, 51, 54, 63, 65, 68-70, 77 and 79, Counsel submitted that in the absence of evidence the same were rightfully disallowed.
21. Concerning item 25, Counsel submitted that the Applicant had admitted that there was no attendance on 28th January 2022.
22. With regards to Item 53, Counsel submitted that getting up fees were not justified as the suit never proceeded for hearing after the Applicant was instructed.
23. In conclusion, Counsel submitted that the Court cannot give substantive orders relating to interest as the item was not covered in the initial bill of costs.
24. The Applicant filed further submissions and reiterated the contents of the replying affidavit and its earlier submissions.



Analysis And Determination

25. Having considered the Reference, the respective affidavits and the rival submissions, the following issues fall for determination:
- a) Whether the reference should be admitted out of time
 - b) Whether the taxation ruling should be set aside

Whether the reference should be admitted out of time

25. On the first issue, Counsel submitted that the Applicant was not aware of the ruling on taxation as they were not notified of the same. The Applicant contended that they became aware of the ruling after the time to file an objection had lapsed.
26. The Respondent on the other hand argued that the delay in filing the reference was not justified as the ruling was delivered via e-mail and uploaded on the e-filing portal on 6th September 2024.
27. I have noted that in the ruling, the taxing officer stated that the ruling would be delivered via e-mail to the parties as the Court was indisposed. There is no evidence on record to show that an e-mail was sent to the Applicant.
28. From the foregoing, I find that the Applicant has reasonably explained the reason for the delay in bringing this application. Consequently, I will interest of justice admit the reference out of time.

Whether the taxation ruling should be set aside

29. The circumstances under which the Court can interfere with the decision of a Taxing Officer were stated as follows in the case of *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] KEHC 1277 (KLR):

“First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle. (See *Steel & Petroleum (e.a) Ltd Vs. Uganda Sugar Factory* (Supra). Of course. It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates Remuneration Order itself, some of the relevant factors to take into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge. Needless to state not all the above factors may exist in any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the Taxing Officer for re-assessment unless the Judge is satisfied that the error cannot materially have affected the assessment.”

30. With regards to items 1 and 63, the Applicant claims that there was an error of principle as the Taxing Officer failed to consider the correct value of the subject matter. The Respondent contends that the Taxing Officer had rightfully applied the purchase price of Kshs. 1,840,000/= stated in the pleadings.



31. The Taxing Officer noted in her ruling that though there was a valuation report on record, the same was persuasive as it had not been consented to by both parties. She therefore relied on a sale agreement dated 17th September 1993 that placed the cost of the suit property at Kshs. 1,840,000/=.
32. I have perused the Bill of Costs dated 14th December 2023. I have noted that the Applicant was instructed on 7th July 2021; a matter that was also noted by the Taxing Officer. It is also worth noting that the fact that prices of land increase with time is a matter of public knowledge. As to how much the price of the suit property increased between 1993 and 2021 is up to debate.
33. The Applicant claims that the subject matter was valued at Kshs. 405,000,000/= (later revised to Kshs. 280,000,000) at the time of filing the Bill of Costs. The Respondent is silent on the matter only stating that the pleadings provided for Kshs. 1,840,000/= being the purchase price.
34. In my view that the Taxing Officer ought to have considered the value of the subject matter at the time the suit was filed when computing the instruction fees. While she stated that the valuation report on record was persuasive as it was not consented to by the parties, nothing stopped her from calling for other forms of evidence that would have assisted her to ascertain the current value of the suit property. Paragraph 13A of the Advocates Remuneration Order gave her the power to call for such evidence in the following terms:

“For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.”

35. While referring to the above provision, the Court in the case of Masore Nyang’au & Co. Advocates v Kensalt Limited [2019] KEELC 2712 (KLR) stated as follows:

“At the end of the day, costs will need to be pegged on the value of the subject matter, and my own view of the matter, is that the court is not precluded from asking for evidence so as to determine what the value of the subject matter may be for purposes of taxing costs, or refer to other documents provided in the course of the case, and which may point at the value of the subject matter. Such documents may include the sale agreement, valuation report, or the consideration noted in the transfer instrument or title. Indeed, Rule 13 of the Advocates’ Remuneration Order does allow the court to even call for evidence for purposes of determining a dispute before it. The said provision of the law is drawn as follows :-

13 A. Powers of taxing officer

For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.

It is thus a fallacy to suppose that the court can look at nothing else other than the pleadings, or judgment, or settlement, so as to determine the value of the subject matter. If the court can call for witnesses to determine the matter at hand, a fortiori, the court can certainly refer to documents presented before the court, so as to determine the value of the subject matter, which will then lead to a decision on instruction fees.



In the case before hand, the plaint did actually give a value of the subject matter as Kshs. 5.3 Million, as at the year 1979. This is the amount that the plaintiff stated it paid as consideration for the acquisition of the land. The suit was filed in the year 2012, and it cannot be that the same land was valued at Kshs. 5.3 Million, more than 30 years later.”

36. The import of the foregoing is that the price of the suit property cannot be what it was in the year 1993. Additionally, the Taxing Officer was not bound by the purchase price stated in the pleadings. The Taxing officer would have requested for other documents that could have assisted her ascertain the price of the suit property in the year 2022. I therefore find that there was an error of principle in how the taxing officer arrived at the value of the subject matter and consequently in how she calculated the instruction fees. The taxing officer’s decision on instruction fees under items 1 and 63 is therefore set aside.

37. The Applicant also contends that the Taxing Officer erroneously lumped together items 1 and 63 for the purposes of coming up with the instruction fees. It was argued that the two items were distinct as item 1 related to acting for the Plaintiff (Respondent herein) while item 63 related to defending (on behalf of the Respondent herein) a counter-claim filed by the 6th Defendant. In the case of Project Innovations Limited v Aziza Residential Suites Limited & another [2025] KEHC 722 (KLR) the Court stated as follows:

“To this court, a counter claim is a separate suit and attracts separate instruction fees hence taxable independently from the instruction fees in the main suit and the taxing master erred in failing to consider the same.”

38. The import of the foregoing is that the Taxing Officer erred in consolidating the instruction fees listed under Items 1 and 63 as the same item Since the counter-claim constitutes a separate suit, the instruction fees thereon should have been taxed separately.

39. The Applicant faulted the taxing officer for disallowing Items 6, 19, 24, 32, 41, 53, 54, 65, 68, 69 and 70 despite being supported by evidence. I have perused the virtual Court record and have found no such evidence. The Applicant’s claim on those items therefore fails.

40. The Applicant stated that the date on item 25 was erroneously noted. That was a mistake on the part of the Applicant and should not be visited on the taxing officer. The claim under item 25 therefore fails.

41. The Applicant also faulted the taxing officer for failing to award interest. The Respondent argued that interest was not an item in the Bill of Costs. The Court in the case of Otieno Ragot (Supra) stated as follows:

“Finally, regarding computation of interest, while I agree with Murgor, JA’s conclusion, that the award of interest is a discretionary matter, I wish only to emphasize, as Onguto, J. did in Mercy Nduta Mwangi t/a Mwangi Keng’ara & Company Advocates vs. Invesco Assurance Company Limited [2017] eKLR, that, that discretion comes with the power to reduce the period for which interest is payable. It extends to altering the rate at which interest is payable and even to withholding the entire interest payable in the interest of justice. Considering the amount involved in this claim, it is my belief that the award of interest would escalate this amount to disproportionate levels. For that reason, I would not award any interest.”

42. Having established that the awarding of interest is a discretionary matter, I find that there cannot be an error in principle if the same is not awarded. The Taxing Officer exercised her discretion in not



awarding the interest. The Applicant has not argued that the discretion was not exercised properly. The claim therefore fails.

43. In view of the foregoing I find that the reference partially succeeds in the following terms:-
- a. Items 1 and 63 is set aside and submitted to another taxing officer for re-taxation.
 - b) Costs to await the outcome of the taxation.

RULING DATED, SIGNED & DELIVERED VIA MICROSOFT TEAMS THIS 16TH DAY OF MAY 2025

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T. MURIGI

JUDGE

In The Presence Of:

Wachanga for the Applicant

Kalii for the Respondent

Ahmed – Court Assistant

