



**Ndirangu & another v Commissioner for Co-operative Development; Kenya
North America Diaspora Sacco Society (Interested Party) (Application
E118 of 2022) [2025] KEHC 8529 (KLR) (Judicial Review) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

APPLICATION E118 OF 2022

JM CHIGITI, J

JUNE 16, 2025

BETWEEN

MARGARET WACU NDIRANGU 1ST APPLICANT

LUCY NDEGWA MCKENZIE 2ND APPLICANT

AND

COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT RESPONDENT

AND

**KENYA NORTH AMERICA DIASPORA SACCO SOCIETY INTERESTED
PARTY**

RULING

1. The application before this Court is the Chamber Summons dated 15th May, 2024 the application is brought Under Rule 11 of the Advocates Remuneration Order 2014. It seeks the following orders:
 1. The Honorable Court be pleased to review the amount of costs awarded to the interested party as instructions fees.
 2. The Honourable Court be pleased to review and set aside the costs in service fees awarded as charged in items 7, 13, 16, 23 and 24 of the Interested Party's Bill of Costs.
2. It is supported by a Supporting Affidavit by Margaret Wacu Ndirangu sworn on 15th May, 2024.
3. It is the Applicant's case that on 2/05/2024 the taxing master taxed the Interested Party's Bill of Costs dated 2/05/2023 at Ksh. 641,340/=.



4. According to them, the instructions fees was taxed at Ksh. 600,000/- instead of the prescribed Ksh. 45,000/- set out under Schedule 6A (j) (i) of the Advocates Remuneration Order 2014 and even beyond Ksh. 100,000 prescribed under Schedule 6A (j) (2) for complex matters.
5. The Applicant deposes that the Honourable Deputy registrar in awarding the hefty award in as instructions fees cited, time taken in the matter and scope of work done and nature of the dispute failed to exercise her discretion judiciously by failing to consider the following relevant matters:
 - i. The Application was dismissed at the leave stage and it never got to the substantive stage.
 - ii. The Interested Party was not a main party in the proceedings.
 - iii. The Application was dismissed on a preliminary issue on jurisdiction of the High Court vis a vis that of the Cooperatives Societies Tribunal and not on merits.
 - iv. The Application and the Interested Party's Preliminary Objection was disposed of through written submissions without any oral hearing or highlighting of submissions being conducted.
 - v. The matter was not complex.
 - vi. The matter was concluded in a short time having been filed on 28th July, 2022 and the court on 24th January, 2023, in slightly less than 6 months after filing was done, issued a ruling date, parties having complied with directions on filing of submissions. The Ruling was delivered on 9th March, 2023.
 - vii. The Honourable Deputy Registrar awarded costs for physical service of documents by the Interested Party under Schedule 6 (9)(a) when the service was effected through email and ought to have been taxed under Schedule (9)(d).
6. The Applicants' canvassed their application with written submissions dated 30th April, 2024.
7. It is their submission that courts have classified research as part of an advocate's work that should not be the primary reason to increase instruction fees and clarified that an increase or reduction of instruction fees ought to be on ascertainable grounds.
8. Reliance is placed in the cases of *First American Bank of Kenya Limited v Gulab Shah & 2 Others* (2002) eKLR and *Tom Ojienda & Associates v Nairobi City County* (Judicial Review Miscellaneous Application 51 of 2017) [2022] KEHC 14353 (KLR) (Judicial Review) (27 October 2022) (Ruling).
9. Further, the Supreme court in *Kenya Airports Authority v Otieno Ragot & Company Advocates, SC* Petition No. E011 of 2023 gave guidance on taxation of instruction fees for matters that are struck out at the preliminary stage and held thus:

“(59) We are of a considered opinion that a claim in a suit which is struck out at the preliminary stage does not ipso facto render that claim or amount pleaded therein without more the value of the subject matter. The position still remains that the amount therein has not been ascertained or determined, and as such, it cannot be applied as the value of a subject matter in a disputed taxation. The application of such a claim or amount as the value of the subject matter would go against the rationale that the fees/costs paid to an advocate and a successful party should be reasonable. Consequently, we are not persuaded by the respondent's contention that even where the amount claimed in a pleading which is struck out by a court, as in the instant appeal, the said amount



would still act as the value of the subject matter when it comes to taxation of instruction fees”

10. The Applicants contest the justification of exercise of discretion by the taxing master and submit that discretion ought to be exercised judiciously and not in a manner to unjustly enrich a party in litigation.
11. The Applicants contend that the interested party in its Grounds of Opposition argues that it defended property worth Ksh.46, 581,024.65 which figure is strange to them as the matter was dismissed at the preliminary stage.
12. It is the Applicants’ submission that taxation of the service fees charged is at the discretion of the court and considering that there is no provision of law governing service of documents electronically, The Advocates Remuneration Order only governs physical service yet in the matter documents were served electronically.
13. The Applicants’ pray that their application dated 15/05/2024 on grounds that there was an error of principle in the taxation of the instruction fees and service fees awarded and set aside the decision of the taxing officer.

The Interested Party’s case;

14. The Respondent filed Grounds of Opposition dated 28th November, 2024 and written submissions dated 30th April, 2025 in response to the Applicants’ Chamber Summons dated 15th May, 2024.
15. The Interested Party (hereinafter referred to as the IP) opposes the application on the following grounds:
 1. Pursuant to Schedule 6(1)(j) of the Advocates (Remuneration) Order 2014, a matter seeking prerogative orders, such as the one in question, can only be taxed at a minimum of Kshs. 100,000.
 2. The Applicants sought orders against the inquiry report of 26th February, 2022. The said report was in respect to, inter alia, the unlawful disposal of Nanyuki/Marura Block 11/3373 (hereafter “the property”) by the Applicants which property was irregularly sold for the sum of Kes. 46,581,024.65.
 3. The value of property being in excess of Kes. 46,581,024.65 is of high value and the assertion that the minimum amount of Kshs. 100,000 is sufficient undermines the true scope of work done by which the Honourable Deputy Registrar recognized and awarded adequately.
 4. In the Chamber Summons and Statutory Statements dated 27th July 2022, the Applicants admitted to the exceptional circumstances that revolve around the matter. The nature of the dispute required a detailed analysis of the provisions of the *Co-operative Societies Act*, Cap 490 of the Laws of Kenya and the previously adjudicated matters which evidences the complexity of the matter, which the Honourable Deputy Registrar recognized and awarded adequately.
 5. The allegation that the taxation of the Interested Party’s Bill of Costs dated 2nd May, 2023 (hereinafter referred to as “the Bill of Costs”) at Kes. 641,340 by the Honourable Deputy Registrar on 2nd May, 2024 is hefty are untrue, misleading and undermines the true scope of work done herein. In coming to this award, the Honourable Deputy Registrar factored in the time taken in the matter, the scope of work done and the nature of the dispute. Given these circumstances, in addition to the value of the subject matter, the award is justified and appropriate, not hefty.



6. Time and labour were expended by the Interested Party and as a result, the taxation ought to be in accordance with Schedule 6 of the Advocates (Remuneration) Order 2014.
 7. Although sued as an Interested Party, the Interested Party's affairs constituted a central aspect of the suit's subject matter, rendering its stakes equally significant to those of the principal parties. Moreover, the legal outcome would invariably bear substantial implications on the Interested Party, irrespective of their status as a non-primary party. Therefore, the award was both proportionate and justified in view of the Interested Party's substantial interest and potential impact from the suit's resolution.
 8. The Deputy Registrar has the discretion to determine matters either through a hearing or by relying exclusively on written submissions, as it deems fit.
 9. There is no statutory or procedural mandate requiring courts to dispose preliminary objections through oral hearing or highlighting of the written.
 10. Schedule 6(9) of the Advocates (Remuneration) Order 2014 does not address virtual service. In the absence of this provision, the assessment based on physical service continue to apply.
 11. The Applicants herein are thus misleading this Honorable Court and the Application is an abuse of the Court process and ought to be dismissed forthwith
16. It is submitted that Applicants are attempting to mislead this Court by stating that Schedule 6A U) (ii) of the Advocates Remuneration Order provides that the instruction fee should have been assessed to a maximum of Ksh. 100,000.
 17. According to them, the Deputy Registrar as the taxing master correctly stated that the taxing officer has a discretion to increase the minimum provided figure based on a number of factors including the following:
 - a. The nature and importance of the course or matter
 - b. The amount or value of the subject matter
 - c. The interest of the parties.
 - d. The general conduct of the parties.
 - e. The Complexity of the issues raised and novel points of law.
 - f. The time, research and skill expended in the brief.
 - g. The volume of documents involved.
 18. It is the IP's case that the Applicants have failed to substantially explain how the Deputy Registrar erred in her finding in awarding them the instruction fees.
 19. It is also their case that the Applicants objected against the amounts taxed in the items 7, 13, 16, 23 & 24, but failed to address the items in both their supporting affidavit and their submissions dated 30th January 2025.
 20. The IP contends that the Taxing Officer found that these items had been drawn to scale and proceeded to allow them as drawn.
 21. The Interested Party prays that this Honourable Court does proceed to dismiss the Chamber Summons application dated 15th May 2024 with costs.



Determination;

22. In determining whether this court should interfere with the taxing officer's findings on taxation, I am guided by the case of Republic vs. Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others [2006] eKLR wherein it was held 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 somewhat too high or too low; it will only interfere if it thinks the award 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 interference that it was based on an error of principle.”

23. I have also sought guidance in the case of First American Bank of Kenya vs Shah and others [2002] E.A. 64 where it was held: -

“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.”

24. In the instant suit the court finds that the applicant has made out a case to the effect that the amount of is excessive. The court finds that in taxing the instructions fees at Ksh. 600,000/- the taxing master awarded an excessively high amount.

25. This was an unproportional increment way above the prescribed Ksh. 45,000/- set out under Schedule 6A (j) (i) of the Advocates Remuneration Order 2014 and even beyond Ksh. 100,000 prescribed under Schedule 6A (j) (2) for complex matters.

26. This court has looked at the complexity of the matter as set out in the pleadings. The court has also considered that the matter was determined at the leave stage which in judicial review proceedings is a phase that is preliminary in nature.

27. Further guided by the case of Nyangito & Co. Advocates –vs- Doinyo Lessos Creameries Ltd [2014] eKLR, where the Court in discussing the guiding principles when considering a reference from taxation stated: -

“(1) That 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 manifested excessive as to justify an inference that it was based on an error of principle;

(2) It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration order itself. Some of the relevant factors to be taken into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved; the interests of the parties, the general conduct of the proceedings and any direction by the trial judge;



- (3) 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 reassessment unless the judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset a taxation because in its opinion, the amount was high.
- (4) It is within the discretion of the taxing officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary.”

28. The applicant objected the amounts taxed in the items 7, 13, 16, 23 & 24, but failed to address the items in both their supporting affidavit and their submissions dated 30th January 2025. This court arrives at a conclusion that the Applicant has not made out a case for the grant of the second prayer.

Disposition;

29. It is this court’s holding that the fee awarded by the taxing master was manifestly excessive as to justify an inference in that it was based on an error of principle.

Order;

1. The amount awarded in costs to the interested party as instructions fees is hereby reviewed downwards from Kshs.600,000 to Kshs.300,000.
2. The second prayer is disallowed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JUNE, 2025.

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J.M. CHIGITI (SC)

JUDGE

