



**JM Njenga & Company Advocates LLP v Kimuri Housing Company
Limited (Environment and Land Miscellaneous Application
E123 of 2023) [2025] KEELC 4017 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4017 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E123 OF 2023**

TW MURIGI, J

MAY 16, 2025

BETWEEN

JM NJENGA & COMPANY ADVOCATES LLP APPLICANT

AND

KIMURI HOUSING COMPANY LIMITED RESPONDENT

JUDGMENT

1. Before me for determination is a Chamber Summons dated 8th October 2024 in which the Applicant seeks the following orders:
 - a. The taxation orders made on 23rd September 2024 be reviewed and/or set aside and the matter referred back to a Taxing Officer for re-taxation of items 1, 4, 8, 10, 15, 21, 49, 52, 54 and 78.
 - b. The 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 is aggrieved with part of the ruling of the Taxing Officer on the following grounds:
 - i. That Items 1 and 21 were based on the estimated value of the suit property being Kshs. 200,000,000.
 - ii. That a valuation report placing the value at Kshs. 280,000,000 had been filed.



- iii. The Taxing Officer combined the instruction fees under Items 1 and 21 while they related to different matters.
- iv. The Taxing Officer ignored the valuation report and relied on the purchase price for the suit property (Kshs. 1,840,000) made in September 1993 despite the case having been filed in 2021.
- v. That Items 4, 8, 10 and 15 relating to correspondences were disallowed despite being supported by evidence.
- vi. That Item 49 was disallowed despite there being evidence that the Applicant appeared before Justice Eboso.
- vii. That Item 52 was disallowed despite the Applicant appearing before Justice Omollo when the hearing of the main suit was fixed.
- viii. That Item 54 was erroneously struck out as perusal of the parent file would show that the matter was set down for hearing.
- ix. That under Item 78 the Taxing Officer failed to state her reasons for not granting interest.

The Respondent's Case

4. The Respondent filed grounds of opposition dated 27th November 2024 whose gravamen was that the bill of costs was correctly taxed.
5. The Reference was canvassed by way of written submissions.

The Advocate/Applicant's Submissions

6. The Applicant filed its submissions dated 3rd February 2025. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:-
 - a. Whether there exists any valid grounds for setting aside of the objected Items pursuant to the taxation orders made on 23/9/24?
 - b) Who bears the costs of this application?
7. Counsel submitted that Item 1 related to the advocate representing the client in a suit where the client was the 4th Defendant while Item 21 related to the advocate representing the client in a counterclaim. Counsel argued that the two Items should not be charged as the same item. To buttress this argument, Counsel relied on the case of *Kagwiri Kangethe & Co. Advocates v Nairobi Mamba Village Ltd (2015) eKLR* where the court held that:-

“For the purpose of taxation, the claim and counterclaim must be treated as independent action; that the costs of the counterclaim followed by the ordinary rule as to costs and that the plaintiff was entitled to have the costs of his defence to counterclaim taxed on the High court scale.”

8. Counsel relied on the case 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)* and *Kamunyori & Company Advocates v Development Bank Of Kenya Limited [2015] KECA 595 (KLR)* to submit that the Taxing Officer did not consider the valuation report on record despite being bound to consider the same.



9. It was further submitted that had the Taxing Officer taken into account the valuation report, Items 1 and 21 would have been taxed at Kshs. 4,400,000/= for each of the Items. The cases of 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.
10. Counsel reiterated the contents of the affidavit in support of the Reference with regards to Items 4, 8, 10, 15, 49, 52, 54 and 78. To buttress its submissions, Counsel relied on the case 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) .
11. In conclusion, Counsel urged the court to allow the application with costs to the Applicant.

The Respondent's Submissions

12. The Respondent filed its submissions dated 27th February 2025. On behalf of the Respondent, Counsel submitted that the only issue for determination is whether the ruling of the taxing master dated 30th August 2024 should be reviewed, set aside and/or referred back for re-taxation.
13. Counsel submitted that the Taxing Officer rightfully relied on Kshs 1,840,000/= as the value of the subject matter stated in the pleadings. 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. To buttress this argument, Counsel relied on the cases of S.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), Mwangi Njenga t/a Mwangi Njenga & Company Advocates v County Government of Mombasa [2020] KEHC 830 (KLR).
14. Counsel further relied on the case of Haithar Haji Abdi & another v Southdowns Developers Limited [2022] KEELC 1385 (KLR) to submit that the taxing officer correctly applied the principles of taxation in arriving at the award.
15. With regards to Items 4, 8, 10, 15 and 52, Counsel submitted that the Items were disallowed as no evidence was produced in support of the same.
16. As regards Item 78, Counsel relied on the case of Otieno Ragot & Company Advocates v Kenya Airports Authority (2021) eKLR to submit that an award of interest is at the discretion of the court..
17. In conclusion, Counsel urged the Court to dismiss the application with costs.

Analysis and Determination

18. Having considered the Reference, the grounds of opposition and the rival submissions the issue that arises for determination is whether the decision of the Taxing Officer should be set aside.
19. The Applicant faulted the decision of the taxing master on the grounds that some items were erroneously taxed. The Respondent argued that the decision of the taxing officer should be upheld as she properly applied the principles of taxation in taxing the bill of costs.



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

“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.”

21. With regards to Items 1 and 21, the Applicant contends that there was an error of principle as the Taxing Officer failed to consider the correct value of the subject matter. The Respondent stated that the Taxing Officer had rightfully applied Kshs. 1,840,000/= being the purchase price stated in the pleadings. 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. The taxing officer therefore relied on a sale agreement dated 17th September 1993 that placed the cost of the suit property at Kshs. 1,840,000/=.
22. I have perused the Bill of Costs dated 20th November 2023 which shows that the Applicant was instructed on 27th July 2022, a matter that was also noted by the Taxing Officer. It is also worth noting that the fact the prices of land increases with time is a matter of public knowledge. As to how much the price of the suit property increased between 1993 and 2022 is up to debate. The Applicant claimed that it was valued at 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 the Kshs. 1,840,000/= being the purchase price.
23. 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 the taxing officer 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 helped her ascertain the current value of the suit property.
24. Paragraph 13A of the Advocates Remuneration Order gives a taxing officer power to call for such evidence and provides as follows:

“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.”



25. 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 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.”

26. The import of the foregoing is that the price of the suit property cannot be what it was in the year 1993. From the foregoing it is clear that the Taxing Officer was not bound by the purchase price stated in the pleadings. The taxing officer would have requested for other documents so as to ascertain the value of the suit property in the year 2022. From the foregoing, I 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. In the circumstances, the taxing officer's decision on instruction fees under items 1 and 21 is hereby set aside.
27. The Applicant also faulted the Taxing Officer for erroneously lumping together items 1 and 21 for the purposes of coming up with the instruction fees. It was argued that the two items were distinct as Item 1 related to filing a defence on behalf of the 4th Defendant (Respondent herein) while Item 21 related to filing a counter-claim on behalf of the 4th Defendant (Respondent herein). 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.”

28. From the foregoing it is clear that the Taxing Officer erred in consolidating the instruction fees listed under Items 1 and 21 as the same item. Since the counter-claim constitutes a separate suit, the instruction fees thereon should have been taxed separately.
29. The Applicant faulted the taxing officer for disallowing Items 4, 8, 10, 15, 49, 52 and 54 despite being supported by evidence. I have perused the virtual Court record and have found no such evidence and therefore the Applicant’s claim fails. The Applicant also argued that the ruling was silent on Item 78 which relates to interest. The Respondent argued that the awarding of interest is discretionary.
30. 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.”

31. Having established that the awarding of interest is discretionary, 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 under Item 78 therefore fails.
32. In the end, I find that the reference partially succeeds in the following terms:-
 - a. Items 1 and 21 are remitted 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

