



**Patel v Njoroge Regeru & Co Advocates (Miscellaneous Application E732 of 2024)
[2025] KEHC 8716 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E732 OF 2024**

JWW MONG'ARE, J

JUNE 13, 2025

BETWEEN

PURBAI GOPAL RAMJI PATEL APPLICANT

AND

NJOROGE REGERU & CO ADVOCATES RESPONDENT

RULING

1. Before the court for determination is the Applicant's reference dated 10th September 2024 filed by way of a Chamber Summons ("the Reference") seeking to set aside the decision of the Taxing Officer/Deputy Registrar dated 27th August 2024 ("the Ruling") in respect of the Respondent's ("the Advocate") Party and Party Bill of Costs dated 26th April 2023 ("the Bill of Costs"). The Bill of Costs arose out of the ruling of the court (Mabeya J.,) dated 29th March 2023 in HCCOMM Case No. E088 of 2021 where the claim against the Advocate was struck out. In the Ruling by the Deputy Registrar, she certified the sum of Kshs.8,377,265.96 as due to the Advocate.
2. The Applicant supports the Reference through the grounds set out on its face and her supporting affidavit sworn on 10th September 2024. The Advocate opposes the same through his replying affidavit sworn on 29th November 2024. The parties canvassed the Reference 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 in my analysis and determination below.

Analysis and Determination

3. As stated above, the Applicant seeks to set aside the Ruling of the Deputy Registrar and have the Bill of Costs taxed afresh by a different Taxing Officer. However, I note that the Advocate has raised technical objections to the Reference; that contrary to Para. 11 of the Advocates Remuneration Order



the Applicant failed to issue a Notice to the Deputy Registrar specifying the particular items of taxation to which she objects and that she failed to seek reasons thereof. In response, the Applicant submits that the Ruling already provides the reasons for the taxation of the various items in the Bill of Costs and that the same further provides the principles underpinning the decision taken by the Deputy Registrar. She relies on the court's decision in *National Oil Corporation Limited v Real Energy Limited & Business Premises Rent Tribunal* [2016] KEHC 7679 (KLR) where Odunga J.,(as he was then) held as follows:

“In my view there is no magic in requiring the Taxing Officer to furnish reasons before making a reference. Where reasons are contained in the decision a party ought not to seek the same simply because it is fashionable to do so. Accordingly, nothing turns on the issue that the applicant did not seek the reasons for the decision before filing the reference.”

4. I am persuaded by the above holding and also restate that once the reasons are indicated in a ruling, it is not necessary for a party to seek further reasons. Going through the Ruling, I am inclined to agree with the Applicant that the reasons are well indicated therein and the parties are able to deduce why the Deputy Registrar arrived at her decision on the various items in the Bill of Costs. Further, I find that no prejudice has been occasioned on the Advocate for this failure by the Applicant to issue a Notice and seek reasons from the Deputy Registrar. This objection by the Advocate therefore fails.
5. The Advocate has also stated that the Reference is defective for having been filed in a Miscellaneous Cause as opposed to the same cause which the Ruling that is sought to be challenged arose. Whereas I agree that this court has found it undesirable for a party to file a separate suit, more so a miscellaneous cause, separate from the file where the costs were awarded, the court has also noted that it would be self-defeating to strike out an application and subject the parties to unnecessary expenses and costs in line with the overriding objective under section 1A of the *Civil Procedure Act*(Chapter 21 of the Laws of Kenya) that enjoins courts to ensure expeditious and affordable disposal of civil matters (See *Samnakay v Aga Khan Hospital* [2022] KEHC 15815 (KLR)). Further, as no prejudice has been occasioned on the Advocate considering that it has argued out the merits of the Reference, I find that it would not be prudent to strike out the Reference solely for the reason that it was filed in a miscellaneous cause rather than the suit in which the costs were awarded. This objection by the Advocate also fails.
6. Turning to the substance of the Reference, the Applicant states that the Deputy Registrar erred in principle and law by finding that the Applicant had not opposed the Bill of Costs and that this factual finding consequently occasioned a miscarriage of justice. The Applicant also faults the Deputy Registrar for not considering her Written Submissions dated 3rd July 2024 and duly filed in court via the CTS system on the same date and that she erred in principle and law by failing to properly appreciate and apply the correct value of the subject matter of the suit and improperly applied the figure of Kshs.534,446,410.25. The Applicant urges that the claim against the Advocate was unliquidated and that the same was withdrawn at the interlocutory stage by way of consent between the parties and that the Deputy Registrar erred in principle and law by failing to properly appreciate the stage at which the claim against the Advocate was withdrawn.
7. The Applicant contends that the claim against the Advocate was withdrawn at the pretrial stage before the matter was confirmed ready for hearing and therefore the Advocate was not entitled to getting up fees and that the Deputy Registrar erred by failing to properly appreciate that the claim against the Advocate did not involve any complex issues of law and the same was not even pleaded by the Advocate. As such, the Applicant holds that the Deputy Registrar erred in principle and law by failing to properly analyze the evidence and case laws submitted in opposition to the Bill of Costs and that these errors cumulatively constitute unfair and unjust exploitation of the Applicant's rights to access the seat of justice. For these reasons, the Applicant urges the court to allow the orders sought in her application.



8. In response, the Advocate depones that the value of the subject could be ascertained from the Applicant's plaint where she sought to halt the sale of the suit property to recover a debt of Kshs.534,446,410.25 owed by her and that this sum formed the basis of the value of the subject matter. The Advocate avers that the value of the subject matter remained inseparable and applied uniformly to all Defendants in the case including the Defendant. The Advocate also denies that the claim against him was withdrawn by consent as alleged and that to the contrary, his advocate filed an application to strike his name off the suit, that directions were given by the court and a ruling delivered striking his name off the suit and costs were awarded. Further, that while the Applicant challenges three items in the Bill of Costs and states that her submissions were not considered, the Advocate contends that the Deputy Registrar still addressed these issues in the Ruling by considering all the relevant factors raised by the Applicant in the Reference. As such, the Advocate states that the Applicant has not provided any basis upon which the Bill of Costs should be subjected to a fresh taxation and that the Reference is bereft of merit and should be dismissed with costs and the Ruling upheld.
9. I have gone through the record and the parties' rival depositions and submissions. In the Ruling, whereas the Deputy Registrar held that the Bill of Costs was drawn to scale, she did not indicate why she opted to settle on the amount of Kshs. 8,216,696.15 pleaded by the Advocate in the Bill of Costs. As the Advocate has contended that the value of the subject matter was Kshs 534,446,410.25, I presume the Deputy Registrar proceed that this was the case. But was it, though? I have gone through the Applicant's plaint in HCCOMM No. E088 of 2021 and I am inclined to agree that the Kshs.534,446,410.25 was not sought by her but was the sum allegedly owed by her to the other defendant bank and which she disputed and formed the basis of her suit where she sought the following prayers:
- a. A declaration that the Plaintiff is not indebted to the 1st Defendant
 - b. A declaration that the Charge dated 31st March 1998 has not secured any loan accounts with the 1st Defendant and that the 1st Defendant's right of statutory power of sale pursuant to the said Charge has not crystallized.
 - c. A declaration that the purported sale of the Suit property by Public Auction/ Private Treaty scheduled to be held on 17th February 2021 for the recovery of an alleged outstanding loan of Kshs.534,446,410.25 is unlawful and nullity ab initio.
 - d. A declaration that the 1st and 3rd Defendant actions culminating in the instructions to the Auctioneer to sell the Suit property by Public Auction/ Private Treaty were unlawful, fraudulent and a nullity.
 - e. A mandatory injunction directed at the 1st Defendant to discharge the Charge and release unconditionally to the Plaintiff the original title document for the Suit property.
 - f. Failure by the 1st Defendant to comply with prayer (e) above within 30 days from the date of Judgment, the Lands Registrar be ordered to execute the Discharge documents in place of the 1st Defendant and issue a new title for the Suit property in favour of the Plaintiff.
 - g. A permanent injunction restraining the Defendants or their agents, employees, servants and/ or assigns from interfering in any way whatsoever with the Plaintiff's proprietary rights over the Suit property unless in a manner authorised by the law.
 - h. Any other orders that this Honourable Court may deem fit and just to award.
 - i. Costs of this suit.



10. From the above prayers and my reading of the Plaint, it is clear that the Applicant never sought the sum of Kshs.534,446,410.25 and that the claim was not liquidated. It appears that the Deputy Registrar did not go through the pleadings in the subject suit because if she did, she would have seen that it was not possible to determine the value of the subject matter as the Applicant had largely sought declaratory, mandatory and injunctive orders. As stated, the Deputy Registrar did not explain how she settled on the instruction fees cited by the Advocate as the appropriate fees. She did not determine the applicable value of the subject matter or how she arrived at the same. In *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others* [2006] KEHC 3504 (KLR) J.B Ojwang’ J., (as he was then) held as follows:

It is necessary to ascertain how she arrived at that figure; for although the judicial review applicants’ firm position is that it was an exercise of lawful discretion which, therefore, this Court should uphold, the correct perception of a discretion donated by law, I believe, is that such a discretion is only duly exercised when it is guided by transparent, regular, reliable and just criteria.

.....

It was necessary to specify clearly and candidly how she had exercised her discretion. Discretion, as an aspect of judicial decision-making, is to be guided by principles, the elements of which are clearly stated and which are logical and conscientiously conceived. It is not enough to set out by attributing to oneself discretion originating from legal provision, and thereafter merely cite wonted rubrics under which that discretion may be exercised, as if these by themselves could permit of assignment of mystical figures of taxed costs.

11. As the Deputy Registrar’s award of the instruction fees appears to be opaque and without justification, it follows that she was not guided by the correct principles and factors of taxation in making the said award. It was not enough for the Deputy Registrar to throw a figure at the parties and then let them engage in a reverse mathematical exercise in a bid to determine how she arrived at that figure. This was her duty for the sake of transparency, verifiability and certainty. I find this to be an error of principle by the Deputy Registrar as her award of Kshs.6,162,522.11 as instruction fees is not verifiable and is without basis. I find that her conclusion was erroneous in that she did not appreciate that the value of the subject matter was indeterminate from the pleadings.
12. In my view, this error is enough to set aside her decision on the instruction fees awarded. Since the Getting Up fees is determined by the amount of instruction fees awarded, it follows that the same cannot stand as well and the same is also set aside.

Conclusion and Disposition

13. In the foregoing, I find merit in the Applicant’s Reference dated 10th September 2024. The Ruling of the Deputy Registrar dated 27th August 2024 in respect of the Bill of Costs dated 26th April 2023 is set aside and the same is now referred back for taxation before another Taxing Officer/Deputy Registrar other than Hon. Noelle Kyanya. The Applicant is also awarded costs of the Reference assessed at Kshs. 30,000.00/=.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF JUNE 2025

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J.W.W. MONGARE

JUDGE



In The Presence Of

Mr. Omwenga holding brief for Mugambi Imanyara for the Client/Applicant.

Mr. Shana holding brief for Mr. Nganga the Advocate/ Respondent.

Amos- Court Assistant

