



Doshi Iron Mongers Limited v Kenya Revenue Authority & 2 others (Petition 49 of 2012 & Judicial Review 98 of 2010 (Consolidated)) [2025] KEHC 10711 (KLR) (18 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PETITION 49 OF 2012 & JUDICIAL REVIEW 98 OF 2010 (CONSOLIDATED)**

**J NGAAH, J
JULY 18, 2025**

BETWEEN

DOSHI IRON MONGERS LIMITED PETITIONER

AND

KENYA REVENUE AUTHORITY 1ST RESPONDENT

COMMISSIONER OF CUSTOMS SERVICES 2ND RESPONDENT

**COMMISSIONER OF INVESTIGATION AND ENFORCEMENT 3RD
RESPONDENT**

RULING

1. Before court is a reference, dated 12 February 2025, from a ruling on the petitioner’s party and party bill of costs delivered by the taxing master on 6 February 2025. It is expressed to be brought under paragraph 11(2) of the Advocates (Remuneration) Order, 2014. The reference is by the respondents and it seeks orders expressed as follows:

- “ 1. That the decision of the Taxing Officer, Hon. Rita Orora, in the ruling dated and delivered on 6th February 2025 on the Petitioners bill of costs filed on 8th July 2024 items No 1 & 1B be set aside and taxed afresh by this Honourable court.
2. That the Petitioners bill of Cost dated 8th July 2024 items No 1 & 1B be taxed at an amount that is reasonable and fair quantum and in accordance with the provisions of the Advocates Remuneration order.
3. That the Taxing master erred by not considering that an amount of Kshs 2, 000,000/- was awarded as damages in the Judicial Review Judgement as



such the bill of costs items No 1 & 1B was not taxed in accordance with the provisions of the Advocates Remuneration order.

4. That in the alternative, the Honourable court be pleased to order that the Petitioners bill of Cost dated 8th July 2024 items No 1 & 1B be taxed afresh by another taxing master.
 5. That there be a stay of enforcement of the Ruling of the honourable taxing master pending the hearing and determination of this reference.”
2. In the affidavit sworn by Mr. Nick Osoro, the learned counsel for the respondents/applicants, it has been sworn that indeed the petitioner filed a bill of costs dated 8 July 2004. In a ruling delivered by the taxing officer on 6 February 2025, the bill was taxed at Kshs. 38, 994,579/-.
 3. The basis of the petitioner’s bill of costs was the judgement delivered by this Honourable Court on 25 September 2020, determining the suit between the parties, and according to which, among other orders, the court awarded damages of Kshs 2,000,000 and costs of the petition to the petitioner.
 4. The taxing officer is said to have failed to consider this award of Kshs. 2,000,000/= as base figure for assessment of costs and the fact that the petitioner was seeking judicial review orders. She is also said to have failed to give reasons for allowing the bill of costs as drawn and that she applied incorrect principles in taxing instruction fees and getting up fees in the bill of costs.
 5. It is also sworn that the taxing officer failed to take into account the fact that the sum of Kshs 2, 363, 606, 424.69 was not "the sum in dispute" in this Honourable Court and Court of Appeal, where an appeal against the judgment was lodged. The dispute, according to the petitioners, was on the power of the respondents to demand the sum of Kshs 2, 363, 606, 424.69 or any other sum from the petitioner. Thus, the taxing master erred for basing instruction fees on what she thought was the value of the subject matter yet the dispute was all about judicial review remedies of certiorari and prohibition.
 6. According to the learned counsel for the applicants, the taxing officer erred by not considering the well settled principles that where a dispute has been determined and judgment rendered, determination of the real subject matter is based on the terms of the judgement, in this case the amount of Kshs 2, 000,000 awarded as damages rather than from settlement or pleadings.
 7. The petitioner opposed the reference and, to that end, filed a replying affidavit sworn by Mr. Ashok Dosid, a director in petitioner company. According to Dosid, from the pleadings and documentations filed in Court, the amount Kenya Revenue Authority was demanding from the petitioner was known and ascertainable. The consolidated matters arose out of a tax assessment and demands in excess of Kshs.2,363,606,424.69 and that this is clear from the totality of the notices issued and served upon the petitioner.
 8. The proceedings were a challenge to Kenya Revenue Authority’s tax assessments and demands including domestic taxes in the sum of Kshs.2,363,606,424.69/- and hence the taxing officer's decision on basing instruction fees on the said amount that was at stake is reasonable, fair and just in the circumstances.
 9. Further, in its judgment, in the consolidated matters, this Honourable Court gave an order prohibiting the respondents from demanding or enforcing the demands in any way and manner for income tax and VAT as set out in their demand letter for the recovery of the alleged taxes totalling to Kshs. 2,363,606,424.69/-.



10. When the applicants appealed to the Court of Appeal against the decision of this Honourable Court, the Court of Appeal did not uphold the Kenya Revenue Authority's assessment.
11. According to the petitioner, had the petitioner failed or lost its bid to challenge the assessment, the sum of Kshs. 2,363,606,424.69/- could have become due and payable to the respondent and enforcement processes for its recovery could have been put in motion against the petitioner. Accordingly, Kshs. 2,363,606,424.69/ reasonably and rightfully formed the basis of assessing instruction fees and not the punitive general damages of Kshs.2,000,000/- awarded for the violations or infringements of the petitioner's constitutional rights.
12. Having considered the reference, the response thereto and the submissions by the learned counsel for the respective parties, I find the dispute to be rather straight forward; it is, by and large, centred on the assessment of instructions and getting up fees and the figure to be adopted for this purpose as the value of the subject matter of the suit. In her ruling, the taxing officer adopted the figure of Kshs. 2,363,606, 424.69 as the base figure and explained her reasons for doing so as follows:

“I have assessed the judgement that gave rise to this bill. prayer (d) gave an order prohibiting the respondents from demanding or enforcing demands in any way and manner including arrest of the petitioner directors for income tax and VAT as set out in their letter dated 18/8/2010 for the recovery of the alleged taxes totalling to Ksh2,363,606/= unless the order of mandamus herein shall be complied with. In my view, the orders were to stop the respondents from claiming such amount if their documents and belongings were not released. Therefore, that amount ought to base the value of the instruction fees.”

13. This question of assessment of instruction fees is a question that has been addressed from time to time by this Honourable Court, the Court of Appeal and, recently, by the Supreme Court. Without belabouring the point, I only need state here what the court of Appeal and the Apex Court have said on this question. In *Peter Muthoka & Another vs. Ochieng & 3 Others*, Civil Appeal No. 328 of 2017; (2019) eKLR, the Court of Appeal addressed this question as follows:

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.

Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.”

14. In *Kenya Airports Authority v Otieno Ragot and Company Advocates* [2024] KESC 44 (KLR) the Supreme Court cited this decision and endorsed the reasoning of the Court of Appeal. At paragraph 56 of its judgment, the Supreme Court held as follows:

“We concur and approve of the foregoing findings by the Court of Appeal on the factors to take into consideration when determining the value of the subject matter.”



15. Before coming to this conclusion, the Supreme Court considered Schedule VIA of the Remuneration Order which provides for assessment of party-party costs. The need for these costs, according to the court, is to ensure that a successful litigant or party receives a fair reimbursement or recompense for the costs or expenses incurred on account of a suit. In this regard, the court cited its own decision in *Outa v Odoyo & 3 Others*, SC Petition No 6 of 2014; [2023] KESC 75 (KLR). The court noted further:

“54. With regard to Schedule VIA, Paragraph 1 thereof commences with the assessment of instruction fees based on the value of the subject matter, the said paragraph provides in part as follows:

“

Instruction fees

Subject as hereinafter provided, the fees for instructions shall be as follows—

...

The fees for instructions in suits shall be as follows, unless the Taxing Officer in his discretion shall increase or (unless otherwise provided) reduce it:

a. To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defense or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties and –

...

b. To sue in any proceedings described in paragraph a. where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties and – ...”

16. The court reiterated that in assessment of costs, the subject matter of the suit in issue should be identified first, and then the value thereof determined. As to how the value of the subject matter should be determined, the court referred to Paragraph 1 of Schedule VIA of the Advocates Remuneration Order which begins by stating “... where the value of the subject matter can be determined from the pleading, judgment or settlement of the parties”, thereby implying that the value of the subject matter can be determined from the pleadings or judgment or settlement of the parties.

17. The court then cited with approval the Court of Appeal in *Joreth Ltd v Kigano & Associates* (2002) 1 EA 92 it stated that-

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a Bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) ...”

18. Turning back to the bill of costs at hand, the primary suit before court was, of course, a petition. The petition was successful but the respondents appealed to the Court of Appeal in *Kenya Revenue*



Authority & 2 others v Doshi Iron Mongers Limited (Civil Appeal 66 of 2021) [2024] KECA 640 (KLR) (7 June 2024). While partly allowing the appeal, the Court of Appeal held as follows:

“In the premises, pursuant to the section 3(2) of the *Appellate jurisdiction Act*, and in order to clarify the orders that ought to have been made, we hereby set aside the orders given by the learned Judge and substitute therefor the following:

“a. A declaration that the respondent's right to fair administrative action as guaranteed by Article 47, the right to a fair hearing guaranteed by Article 50[1], the right to information guaranteed by Article 48 as read with 50 of *the Constitution*, have been and will continue to be violated and infringed by any audit/ test compliance by the appellants unless all the material seized from the respondent's premises and subject to the litigation in JR 89 of 2010 are released.

b. A declaration that the Tax Demand Subject of Notices Ref: KRNCUS/MIB/INV/2/2007 dated 30th May 2007, 26th June 2007 and Ref:KRA/1006/14 dated 8th November 2007, 10th and 16th July 2008, 18th August 2010 and the Notices under Section 42 of the Tax Procedure's Act, 2015 dated April 28 2016 cannot be legally enforced against the respondent, unless and until all the all records, documents, files, computers, software and everything the 1st appellant seized and detained from the respondent's premises between march 2003 and 26^h March 2007 are released.

c. By way of Judicial Review, an Order of Prohibition to issue to prohibit the appellants their officers, agents, servants, authority and/or any other body appointed for that purpose from executing, pursuing, considering, issuing, action upon and/or in any other manner whatsoever or howsoever from demanding and or enforcing any demand, in anyway and manner including arrest of the petitioner's directors for Income Tax and Value Added Tax as set out in their letter dated 18th August 2010 for the recovery of the alleged taxes totalling the alleged sum of Kshs. 2,363,606,424.69 or any part thereof, unless and until all the records, documents, files, computers, software and everything the 1st appellant seized and detained from the respondent's premises between March 2003 and 26th March 2007 are released.

d.Kshs 2,000,000 being damages for the violation/infringement of the respondent's constitutional rights.

e. The costs of the petition awarded to the respondent.

As the appellants have partly succeeded in the appeal, we make no order as to the costs of this appeal. Orders accordingly.”

19. This judgment reveals that in the petition, the petitioner sought for and was granted declaratory orders as well as prerogative orders, as varied by the Court of Appeal.

20. The introductory paragraphs of the judgment also shed some light on the background and history of the petition which is equally pertinent to the determination of this reference. In those paragraphs, the Court of Appeal captured the petitioner's case as follows:

“1. This appeal arises from the decision in Mombasa High Court Petition No. 49 of 2012, which was consolidated with Mombasa JR No. 98 of 2010 (the



Judicial Review Application). The Judicial Review Application was initially commenced for purposes of having the documents seized from the respondent by the 1st appellant returned. Following the return of some of the seized documents, the character of the litigation changed as a result of which the respondent filed the petition. Subsequently, the respondent sought leave to amend the petition in order to incorporate the subject matter of the judicial review application into the petition, and leave was granted on 4th October 2017. Accordingly, an amended petition was filed on 27th October 2017. The amended petition therefore subsumed the judicial review application by incorporating the only substantive prayer in the judicial review application as part of the petition.

2. That petition was founded on sections 75 to 80 of the retired Constitution of Kenya, the Kenya Revenue Authority Act, 1995, the "[Value Added Tax Act](#), East Africa Community Customs Management Act, [Tax Procedures Act](#) No. 29 of 2015, as well as the [Access to Information Act](#) 2016. It sought the following orders..."

21. Against this background, applicable paragraphs in the remuneration order for assessment of party and party costs is paragraph 1(j) under schedule VI which provides as follows:

- 1(j) Constitutional petitions and prerogative orders To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—
 - (i) where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000
 - (ii) where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000
 - (iii) to present or oppose application for setting aside arbitral award 50,000

22. It is not clear from the learned taxing officer's ruling which part of the Advocates Remuneration order she applied but her calculations of the costs due to the petitioner suggest that she applied paragraph 1(a) which reads as follows:

“To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defense or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties and...” (Emphasis added).

23. According to this scale in paragraph 1(a), where the value of the subject matter is over Kshs. 20,000,000/= the fees payable is as fees for Kshs. 20,000,000/= which is 1.75% of the value of the subject matter plus an additional 1.5%. This is the formula which the taxing officer adopted, going by her own calculations which yielded the figure of Kshs. 29,657,080.30.

24. Considering that the scale of fees chargeable on constitutional petitions and judicial review applications has been expressly provided under paragraph 1(j) of the Advocates Remuneration Order, by necessary implication, the petitions and notices of motion referred to in paragraph 1(a) must be



petitions and motions other than constitutional petitions and judicial review motions or applications. It therefore follows that the learned taxing officer fell into error when she applied the scale of fees applicable to the ordinary petitions and motions to constitutional petitions and judicial review motions or applications for judicial review reliefs whose scale of fees has been reserved in paragraph 1(j).

25. On the question of the value of the subject matter, the first port of call is to establish what “subject matter” entails. “Subject-matter” is defined in Black’s Law Dictionary, 11th Edition as:

“The issue presented for consideration: the thing in which a right or duty has been asserted; the thing in dispute.”

26. Going by this definition, the question is what was the issue presented for consideration in the petition? What is the thing in which a right or duty that was asserted or, finally, what was the thing in dispute? In answer to these questions, I go back to the judgment of the Court of Appeal on the issues identified for determination in petition. The Court quoted Otieno, J. on the issues for determination and noted as follows:

“12. In his judgement, the learned Judge (P. J. O. Otieno, J.) identified the following issues his determination:

- “a. Whether a constitutional question has been established.
- b. Whether the respondent was entitled to an order for the release of all the documents, files, computer hard and software.
- c. Whether the seizure of the items was in compliance with the tax statutes the 1st appellant is mandated to administer and enforce.
- d. Whether the respondent’s constitutional rights were infringed or violated by the respondent.
- e. Is the petitioner entitled to the declarations and judicial review orders sought or any of them.
- f. Whether the respondent was entitled to any damages.
- g. What orders should be made as to costs.

13. Appreciating that the prayers in the petition were intertwined and interrelated, the learned Judge adopted a global analysis of the evidence in answer to all the issues.”

27. It is apparent from these issues that none of the respondents in the petition had made a claim for Kshs. 2,363,606,424.69 and, I doubt they could have raised such a claim in this petition or even in a counter petition. Neither can it be said that the petitioner was defending itself against a claim for this sum. No doubt, a question of whether the petitioner owes or the respondents or any of them could claim the sum of Kshs. 2,363,606,424.69 or any other tax or taxes, for that matter, can only be resolved in a suit or proceedings instituted for that purpose. The petitioner’s petition was not one such a suit or proceeding. If it was, it would have been identified as one of the issues for determination.



28. It is apparent that the petitioner must have been alive to these truths because in paragraph 11 of the affidavit of Ashok Doshi, it was sworn as follows:

“That I aver to be clear from the foregoing that had the petitioner herein failed and or lost her challenge in the amended petition as consolidated with JR No. 98 of 2010 before the High Court and Civil Appeal number E066 of 2021, the domestic taxes in the sum of Kshs. 2,363,606,424.69/- could have become due and payable to the respondent and enforcement processes for its recovery could have been put in motion against the petitioner...”. (Emphasis added)

29. On its part, the Court of Appeal did not rule out the possibility that the respondents could, in future, set in motion the proceedings for recovery of the amount of Kshs. 2,363, 606,424.69. This is clear from order no. (c) in the court’s judgment according to which the court ordered:

“By way of Judicial Review, an order of prohibition to issue to prohibit the appellants... from demanding and or enforcing any demand...of the alleged taxes totalling the alleged sum of Kshs. 2,363,606,424.69...unless and until all the records...the 1st appellant seized and detained from the respondent’s premises between March 2003 and 26th March 2007 are released”. (Emphasis added).

30. But at least one issue singled out for determination would, for purposes of assessment of costs, be acknowledged as the subject matter of the suit, the value of which is instructive on the base figure for assessment of instruction fees and getting up fees. Whether the petitioner was entitled to damages was an issue for determination. Both this Honourable Court and the Court of Appeal held that the petitioner was entitled to general damages which was assessed at Kshs. 2,000,000/=.

31. In the spirit of the Court of Appeal decisions in Peter Muthoka & Another vs. Ochieng & 3 Others (supra) and Joreth Ltd v Kigano & Associates (supra) which decisions have been endorsed by the Supreme Court in Kenya Airports Authority v Otieno Ragot and Company Advocates, that “once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court”, the sum of Kshs. 2,000, 000/= stands to the test of the value to be attached to the subject matter of the petitioner’s petition for purposes of taxation of the bill of costs.

32. One final thing I need to say about the learned taxing officer’s taxation is that she fell into a further error when she taxed the petition as two separate and distinct suits. I need not say anything more on this infraction except to emphasise that once the court consolidated the two suits and determined them as a single suit, it was not open to the taxing officer to go behind the consolidation order and effectively treat the petition and the judicial review application as two distinct suits is assessment of costs.

33. For the reasons I have given, I hereby allow the reference and remit the bill of costs for taxation afresh by a different taxing officer other than the taxing officer whose taxation is the subject of this reference. The respondents/applicants will have the costs of the reference. Orders accordingly.

SIGNED, DATED AND DELIVERED ON 18 JULY 2025

NGAAH JAIRUS

JUDGE

