



REPUBLIC OF KENYA



**Kenya Power Company Ltd v M/s Fortunes Auctioneers (Civil Appeal  
E091 of 2022) [2024] KEHC 2328 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2328 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E091 OF 2022**

**KW KIARIE, J**

**MARCH 6, 2024**

**BETWEEN**

**KENYA POWER COMPANY LTD ..... APPELLANT**

**AND**

**M/S FORTUNES AUCTIONEERS ..... RESPONDENT**

**RULING**

1. The appellant filed a reference dated 19<sup>th</sup> September 2023 challenging the ruling and order of the taxing master delivered on the 8<sup>th</sup> day of September 2023. The reference was brought through Chamber Summons pursuant to sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 51 Rule 1 and Order 42 Rule 6 of the Civil Procedure Rules and Rules 11 & 50 of the Advocates Remuneration Order. The appellant is seeking the following orders:
  - a. That this honourable court does issue a stay of execution of the ruling and order of the learned Taxing Master made on 8th September 2023, pending hearing of this application inter-partes.
  - b. That this honourable court does issue a stay of execution of the ruling and order of the Learned Taxing Master made on 8th September 2023, pending full determination of this reference.
  - c. That this honourable court be pleased to set aside, review, and/or vary the ruling by the Taxing Master made on 8th September 2023 or, in the alternative, remit the respondent's bill of costs dated 14th July 2023 back to the same or another taxing officer, with appropriate directions on assessment.
  - d. The costs of this application be provided for.
2. The application was premised on the following grounds:
  - a. The Learned Taxing Officer erred in law and fact item 1 on instruction fees in the Respondent's bill of costs dated 14<sup>th</sup> July 2023 at kshs.75,000/- by erroneously assuming that this was an



ordinary appeal and thereby failed to appreciate that the fees due to the respondent having been based on a reference filed by way of a chamber summons application, should only attract instruction fees of a defended application, at kshs.5,000/- provided for under Schedule 6 of paragraph 1(iii) of the advocates remuneration Order, 2014.

- b. The learned Taxing Officer erred in law and, in fact, in allowing item 4(5) to be charged as court fees for a certificate of taxation, yet the same being in the nature of a disbursement should not have been allowed, in circumstances in which no supporting document by way of receipt was availed in court, nor could it be otherwise verified from the e-filing portal, amongst the receipts held thereon to have been paid.
  - c. The Learned Taxing Officer erred in law and, in fact, in allowing item 5(3)(5), (6)(8) and (11) at kshs.1,900/- yet on all those occasions, the matter came up for mentions, which took less than half an hour, meaning that the items ought to have been taxed at kshs.1,100/- on each occasion.
  - d. The Learned Taxing Officer failed to appreciate Rule 50 of the Advocates remuneration order, which provides that where schedule 6 provides for a higher and a lower scale, the costs shall be by the lower scale when taxing Item 5(3)(5), (6)(8) and (11).
  - e. Unless the reliefs sought in this instant application for orders of stay of execution are granted immediately to restrain the respondent from commencing execution on the taxed costs, this reference will be rendered academic, and the appellant will suffer substantial loss as it may not be able to recover the sum of kshs.89,500/-.
  - f. The reference has a high chance of success, and it would be fair to stay the execution of the ruling of the taxing master delivered on 8 September 2023, awaiting the determination of the reference.
  - g. The appellant is willing and ready to provide security in the form of a bank guarantee pending the hearing and determination of the reference. The guarantee will be released to the respondent if it is found on appeal that the respondent is entitled to the costs as taxed by the leaning taxing officer.
  - h. No prejudice will be occasioned on the respondent if the orders sought are granted.
  - i. This application has been made without any unreasonable delay.
3. The respondent opposed the application on the following grounds:
- a. The application has not satisfied the principles governing variations or setting aside the decision of the taxing master.
  - b. That the application lacks merit.
4. The applicant was not satisfied with the manner in which some items were taxed. Since he is not contesting the entire decision, I will only allow the application for status quo on the contested items. The costs to abide by the outcome of the appeal.

**DELIVERED AND SIGNED AT HOMA BAY THIS 6<sup>TH</sup> DAY OF MARCH 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

