



REPUBLIC OF KENYA



KENYA LAW
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**Kavithi v Attorney General & 6 others (Environment & Land Case
1368 of 2013) [2025] KEELC 4081 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4081 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1368 OF 2013**

TW MURIGI, J

MAY 14, 2025

BETWEEN

DANIEL MULWA KAVITHI APPLICANT

AND

THE HONOURABLE ATTORNEY GENERAL 1ST DEFENDANT

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER
MACHAKOS 2ND DEFENDANT**

THE DISTRICT SURVEYOR MACHAKOS 3RD DEFENDANT

THE DISTRICT LAND REGISTRAR MACHAKOS 4TH DEFENDANT

NZOMO MUSAU 5TH DEFENDANT

WILLY NZOMO 6TH DEFENDANT

MUTUTKU NZOMO 7TH DEFENDANT

RULING

1. This ruling is in respect of the Notice of Objection to taxation dated 23rd February 2024 against the ruling delivered on 7th February 2024 with regards to the 5th – 7th Respondents bill of costs dated 5th July 2023.
2. The objection was canvassed by way of written submissions.

The Plaintiff/applicant's Submissions.

3. The Applicant filed his submissions dated 1st April 2025.



4. On his behalf, Counsel submitted that the main issue for determination is whether the Taxing officer erred in principle and law in taxing the 5th– 7th Defendants’ bill of costs dated 5th June 2023 at Kshs 631,637/=.
5. Counsel submitted that the taxing master erred in awarding Kshs 500,000/= as instruction fees without any legal basis. Counsel contends that the taxing officer acknowledged that the matter was dismissed for want of prosecution and awarded Kshs. 75,000/= since the matter was defended which is not disputed. It was submitted that the suit was ordinary and hence citing the nature of the case as the basis for awarding the arbitrary amount of Kshs. 500,000/= does not suffice. To buttress this argument Counsel relied on the case of *Ecobank Kenya Limited v Deftech Kenya Limited & 2 others* (2021) eKLR.
6. It was submitted that the Defendants did not demonstrate that the suit was complex in nature. To buttress this point Counsel relied on the case of *R v Minister for Agriculture Ex Parte Samuel Muchiri W Njuguna* (2006) eKLR.
7. Counsel further submitted that the taxing master erred by taxing Item 4 at Kshs 126/= without any legal basis. Counsel argued that the Item was charged as per Rule 4 (a) (1) of Schedule 6 which provides for the cost of drawing up these documents at Kshs 1100/= for documents of four folios or less. Counsel submitted that Item 4 does not specify the number of folios prepared and leaves it to speculation. To this end Counsel relied on the case of *Republic v Office of Registrar Academic Affairs Dedan Kimathi University of Technology Ex parte Agutu Wycliffe Nelly* (2019) eKLR where the court held that the Applicant must provide evidence of the number of folios perused or prepared.
8. Counsel further submitted that the taxing master erred in taxing Items 5, 6 and 18. Counsel contends that copies ought to be charged as per the prescriptions of Rules 4 and 8 of Schedule 6 of the *Advocates Remuneration Amendment Order 2014* at the rate of Kshs 25/= per folio and Kshs 50/= per folio respectively. It was submitted that the Defendants did not justify how they arrived at the figures since the number of the folios copied was not specified.
9. With regards to erroneous matters, Counsel submitted that the taxing master erred in taxing Items 49 and 50 at Kshs 2300/= and Kshs 1100/= as the two items make reference to court attendance on the same date.
10. Counsel further submitted that the taxing master erred in awarding disbursements at Kshs 2785/= as the same were supported by any evidence.
11. Concluding his submissions, Counsel submitted that the taxing master misdirected herself by overlooking the principles governing taxation of costs and urged the court to vary the decision.

The 5th, 6th And 7th Defendants Submissions.

12. The 5th – 7th Defendants filed their submissions dated 7th April 2025.
13. On their behalf, Counsel submitted that the decision of the taxing officer is legally sound and ought not to be disturbed.
14. Counsel submitted that the Defendants had sought Kshs 1,420,000/= as instruction fees. Counsel further submitted that the suit was filed in the year 2013 and involved a parcel of land measuring 5 acres at the value of Kshs 12,000,000/= per acre. That the suit abated after being in court for 7 years and the application to revive the same was dismissed in the year 2023.
15. It was submitted that the Applicant did not dispute the value of suit property indicated in the bill of costs in calculating instruction fees. To buttress this point Counsel relied on the case of *Joreth Limited*



v Kigano & Associates (2002) KECA 153 (KLR). Counsel further submitted that the taxing officer took into account the necessary factors in awarding the instructions fees. It was submitted that the Applicant's contention that the suit did not proceed to full trial is not tenable as instructions fees are not affected by the stage of the proceedings.

16. Counsel further submitted that under Schedule 6 Part A of the *Advocates Remuneration Order* the taxing officer has discretion to increase instruction fees based on various factors taken into account. To buttress this point Counsel relied on the case of *Kenyariri & Associates Advocates v Salama Beach Hotel Ltd & 4 others* (2014) eKLR.
17. Counsel submitted that Item 4 was allowed at Kshs 1100/= in accordance with Schedule 6 paragraph 4 of the Advocates Remuneration Order 2014. Counsel argued that the contention over the number of folios would have arisen if the item was awarded a higher amount.
18. With regards to making copies and perusal of documents, Counsel submitted that Item 5 ought to be allowed at 175/= and not 147 as stated by the Plaintiff.
19. With regards to Item 6 which is for receiving and perusal of the plaint, notice of motion and accompanying documents, Counsel submitted that the Defendants clearly indicated the number of folios as 81 which the taxing officer applied in arriving at the award.
20. It was submitted that the taxing officer did not require the production of the said copies since the court file was available and the folios could easily be ascertained. Counsel further submitted that the award of Kshs 3000/= for making copies was proper as the folios were clearly indicated.

Analysis And Determination.

21. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Taxing Officer properly exercised her discretion in taxing the bill of costs in the manner that she did.
22. The principles which ought to be applied in the assessment of costs were outlined in the case of *Premchand Raichand Limited v Quarry Services of East Africa Limited (No. 3)* [1972] 1 EA 162 as follows: -
 - a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy;
 - b) That a successful litigant ought to be fairly reimbursed for the costs he has had to incur;
 - c) That the general level of remuneration of advocates must be such as to attract recruits to the profession; and
 - d) That so far as practicable there should be consistency in the awards made;
 - e) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.
23. The Applicant faulted the taxing master for taxing instruction fees at Kshs. 500,000/= without any legal basis. The Applicant contended that the Respondents did not demonstrate that the suit was complex in nature.
24. The Respondents on the other hand relied on the ruling of the taxing master in awarding instruction fees.



25. In the case of *Joreth Ltd v Kigano and Associates* [2002] 1 EA 92 (CAK) the court set out various factors that are to be considered in determining instruction fees namely:- the importance of the matter, general conduct of the case, time taken for its dispatch and the impact of the case on the parties.
26. A taxing master is under a duty to consider the instruction fee which should cover the advocates work including taking instructions and preparing the case for trial or appeal and the subject matter. The taxing master discretion must be exercised judicially and not whimsically or capriciously.
27. In the matter at hand, it is not in dispute that the Applicant's suit was instituted in the year 2013. It is also not in dispute that the suit abated and efforts to revive the same was dismissed .
28. The taxing master had discretion to consider the value of the subject matter, when the suit was instituted, the period of abatement and when the suit was dismissed for want of prosecution as well as other factors.
29. In the case of *Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board* (2005) 1 KLR 528 the Court of Appeal held that:-
- “On a reference to a judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer erred in principle in assessing the costs- an example of an error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles.”
30. The taxing officer exercised her discretion to weigh the nature of the claim and its importance, the value of the subject matter, the duration it was in in court and the nature of the orders sought by the Plaintiff.
31. There is no evidence that the taxing master exercised her discretion capriciously or whimsically to warrant this court to interfere with the award on instruction fees.
32. The Applicant contested the manner in which Items 4, 5, 6 and 18 were taxed as the same was not expounded. With regards to 49 and 50 the Applicant contended that the hearing of the notice to show cause and the court attendance were taxed separately even though both items happened on the same date. The Applicant contended that the award on Items 97- 104 was not supported by any evidence. From the foregoing, I find that the objection raised by the Applicant is merited.
33. In the end, I find that the objection herein partially succeeds in the following terms: _
- a) The objection on Item No. 1 is dismissed.
 - b) Item Nos. 4, 5, 6, 18, 49, 50 and 97-104 are remitted to the taxing officer for re-taxation.
 - c) Costs to await the outcome of the taxation.

RULING DELIVERED DATED AND SIGNED VIA MICROSOFT TEAMS THIS 14TH DAY OF MAY 2025.

T. MURIGI

JUDGE

In The Presence Of:

Munyasya for the Respondent

Christine Kithinji for the Applicant.



