



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC MISC APP NO E009 OF 2020

AND

IN THE MATTER OF ADVOCATES/CLIENT BILL OF COSTS UNDER THE ADVOCATES

REMUNERATION ORDER OF THE ADVOCATES ACT(CAP 16 LAWS OF KENYA)

BETWEEN

EXPORT PROCESSING ZONES AUTHORITY.....APPLICANT/CLIENT

VERSUS

NZEI & COMPANY ADVOCATES.....RESPONDENT/ADVOCATE

RULING

Introduction

1. This Ruling is in respect to a Reference from the Taxing Officer's Ruling of 23rd September 2020 pursuant to the Applicant's Advocate-Client bill of costs dated 10th of June 2020. The reference has been brought by way of a Chamber Summons dated 12th of October 2020 filed pursuant to **Rule 11 of the Advocates Remuneration Order** & other enabling provisions of the law. The Client/Applicant is seeking for the following orders:

a. The Honourable Court be pleased to hear, determine and allow the Client/Applicant's objection dated 24th September 2020 to the Taxation of the Advocate's bill of costs.

b. This Court be pleased to wholly set aside the decision of the Taxing master delivered on the 23rd of September 2020 in the Advocate/Client Bill of costs dated 10th of June 2020.

c. That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of Henry Obino, the Acting Chief Executive Officer of the Client/Applicant herein, who deponed that immediately after receipt of the Taxing officer's decision on the 23rd of September 2020, they wrote to the Taxing officer informing her of their objection to the Ruling and that they received a copy of the Ruling on the 8th of October 2020.

3. The Acting Chief Executive Officer of the Client/Applicant deponed that the Applicant is aggrieved with the taxation on the grounds that the fees awarded are considerably high and not commiserate with the work done; that the amount awarded to the advocate by the court is too high as to constitute an error in principle on the part of the Taxing officer and that the Taxing officer erred in determining the value of the subject matter to be Kshs 700,000,000 when the judgment was in the sum of Kshs 11, 664,000 which was the value of the subject matter for purposes of taxation.

4. It was deponed by the Acting Chief Executive Officer of the Client/Applicant that the Taxing officer failed to take into account the sum of Kshs 6,021,594/= already paid to the advocates and that the Taxing officer erred in doubling the instruction fees to cover the counterclaim when the Plaintiff and Counterclaim sought different reliefs.

5. In response to the Application, the Advocate/Respondent filed a Notice of Preliminary objection dated 3rd of November 2020 seeking to

have the Application struck out on the grounds that the Application contravenes the provisions of the Advocates Act; that the Application seeks a stay of execution or enforcement of a certificate of costs which is not a decree and that the Application is pre-mature and was filed outside the cause where the taxation was done and is subsequently improper before the court.

6. The Respondent equally filed a Replying Affidavit sworn by the Advocate, Benjamin M Nzei, who deposed that vide a letter of instructions dated 25th of February 2010, the Client engaged them to represent it in Machakos ELC Case No 35 of 2010 brought against it by Kapa Oil industries and 7 others where the dispute revolved around the control of the Applicant's water & sewerage assets.

7. The Advocate deposed that vide a letter of 12th April 2010, they agreed that their professional fees would be charged according to the Advocates Remuneration order; that by the time they took over the conduct of the matter, an interim injunction had already been issued in the matter and that the suit involved weighty and complex issues, and lengthy trial involving interlocutory applications, defence and prosecution of the counterclaim.

8. Nzei Advocate deposed that that after delivery of the court's Judgment in the Applicant's favour, the Plaintiff in the suit filed a Notice of Appeal and an Application for stay of execution, which the Respondent responded to; that it was after the conclusion of the suit that the Applicant withdrew their instructions from the Respondent and that the Applicant's assertions that Kshs 6,021,594 that it paid covered the legal services was erroneous as any money paid prior to finalization of ELC Case No 35 of 2010 was in part payment of the full fees payable on finalization of the matter.

9. The Advocate deposed that instruction fees is based on the subject matter of the suit as pleaded in the pleadings; that the value of the Applicant's water and sewerage assets which was at the core of the dispute had severally been pleaded to be Kshs 700,000,000; that upon consideration of the bill of costs, the affidavits and submissions therein, the Taxing master taxed the bill of costs from Kshs 118,739,913/= to 27,410,844.

10. According to the Advocate, the amount awarded in the Counter claim was not the subject matter, but just part of what the court had to deal with; that the real issue was ownership and control of the Applicant's water and sewerage infrastructure and that the value of the said infrastructure was pleaded to be Kshs. 700,000,000.

11. In response to the Replying Affidavit, the Applicant, through its Chief Executive Officer, swore a Supplementary Affidavit in which he deposed that the Respondent's Replying Affidavit is substantially based on averments on legal matters which ought not be deposed to in affidavits; that as admitted by the Respondent, the present case was closely related to the matter in Tanathi Water Services Board Vs EPZA hence lessening the complexity of the matter and that the dispute revolved around the Applicant's sewer line in Mavoko, not the one in Nairobi which contributes to the total asset base of the Applicant and that the sum of Kshs 700,000,000 was with regards to the Applicants total asset base including the non-contentious sewer system in Nairobi.

12. It was deposed that the assessment of instruction fees should be based on the Judgment sum and not on Kshs 700,000,000 which was not pleaded and did not form part of the value of the subject matter; that the Respondent has not controverted the fact that the Applicant made a part-payment of Kshs 6,021,594 and that even if the Taxing master was to consider Kshs 700,000,000 as the subject matter, the counterclaim ought to have been the subject of a separate and independent assessment.

Submissions

13. The Applicant's counsel submitted that the Taxing master misinterpreted the value of the subject matter in determining instruction fees; that the reliefs sought by the Plaintiff were injunctive reliefs that were not quantifiable; that the amount of Kshs 700,000,000 was the Client's total asset estimation for not only the water & sewer lines that were subject of the suit, but other infrastructure as well and that the matter not being quantifiable, the value of the subject matter ought to have been calculated in accordance with Schedule 6 or in the alternative, the value ascertained from the final determination of the value matter made by court.

14. The Applicant's Counsel submitted that the Taxing master committed an error in principle and did not follow the principle as set out in the case of *Kirundi & Co Advocates Vs Kenya Commercial Bank Limited [2008] eKLR* where the court stated;

“The subject-matter of a defamation case is the alleged damage to the reputation and character of the plaintiff for which damages are sought. The value of that damage cannot be quantified in the pleadings; that is why unquantified damages are claimed. Should the plaintiff get judgment, the court will quantify the damages to be awarded. The quantified damages then become the value of the subject-matter.”

15. Counsel submitted that it is only the final say of the court with regards to quantification of damages that the Taxing officer should take into consideration. Counsel cited the case of *M/S Lubuleliah & Associates Advocates V N.K Brothers Limited [2014] eKLR* where the court stated thus;

“From the Applicants submissions, it is evident that it sought to have the value of the subject matter based on amounts claimed for liquidated pecuniary claim, declaration for breach of contract of the said sum and compound interest. This cannot form the basis of the subject matter as they could be allowed or disallowed. They are merely figures that a party claims in its pleadings and they can only be determined after hearing the case of merit.

16. It was submitted that the Taxing officer's disregard of the pleadings and Judgement of the court opened a panacea warned against by the court in *M/s Lubuleliah & Associates case (supra)* which stated as follows:

If the position of calculating the subject matter was to be based on sums claimed in a pleading, nothing would stop any rogue

advocate from plucking figures from the air because he would know that his instruction fees would be based on figures indicated in the pleadings, despite knowing very well that he would not succeed in such a claim at the end of the day. This would be a travesty and miscarriage of justice.

17. Counsel averred that the Taxing officer erred in doubling the instruction fees for the Plaintiff and the Counterclaim without considering the different reliefs which was a grave error. In support, counsel cited the case of *Republic vs Medical Practitioners & Dentist Board & 2 Others Ex-parte Mary A Omamo-Nyamogo [2017]eKLR* where Odunga J while relying on the holding in *Opa Pharmacy Ltd vs Howse & McGeorge Ltd Kampala HCMA No 13 of 1970(HCU)[1972]EA 233* stated as follows:

“Whereas the taxing officer is given discretion of taking into account other fees and allowances to an advocate in respect of the work to which instruction fees apply, the nature and importance of the case, the amount involved, the interest of the parties, general conduct of the proceedings and all other relevant circumstances and taking any of these into consideration, may therefore increase the instruction fees, the taxing officer, in this case gave no reason whatsoever for doubling the instruction fees. Had the taxing officer given his reasons at least there would be known the reason for the inflation. As it is, he has denied the appellant a reason for his choice of the figure, with the result that it is impossible to say what was in the taxing officer’s mind. The failure to give any reason for the choice, surely, must, therefore amount to an arbitrary determination of the figure and is not a judicial exercise of ones discretion.”

18. Counsel submitted that the taxed costs were exorbitant, excessive and unreasonable; that despite the Respondent’s allegations that the matter was complex, they did not explain the complexity and that the Taxing master nonetheless approved the instructions fees on the basis of the said complexity contrary to settled law. Counsel cited the case of *Republic vs Minister of Agriculture & 2 others, Ex parte Samuel Muchiri Njuguna & others (2006) eKLR* where the court held:

“The complex elements in the proceedings which guide the exercise of the taxing officer’s discretion must be specified cogently & with conviction. The nature of forensic responsibility placed upon counsel, when they prosecute the substantial proceedings must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry, and was inordinately time consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be clarified, assessed and simplified, the details of such initiative by counsel must be specifically indicated apart of course from the need to show if such works have not already been provided for under a different head of costs.”

19. It was counsel’s contention that the claim for disbursements was not proved as required by law and that the Respondent did not provide receipts to support their claim for disbursements. Counsel cited the case of *Maina Murage & Company Advocates vs Mae properties Limited [2018] eKLR* where the court declined a claim for disbursements for lack of receipts and the case of *Hezron Odhiambo Abok vs Prajapat Pravinbha Jivabhai t/a Mitra Enterprises(K)LTD [2019] eKLR* where the court stated;

“It is my finding that it was incumbent upon the applicant to prove the disbursements he claimed. There was no evidence by way of receipts as to how he came to the same... That being the case, there was an error in principle committed by the tax master which mistake goes to the substance of the impugned ruling on assessment of taxes.”

20. Counsel contends that the Respondent in representing them was not dealing with a novel issue; that the matter was closely related to *Tanathi Water Services Board Vs EPZ* case, a matter that was already being handled by the Respondent and that the Taxing master committed an error in principle when she did not consider that the Respondent was not dealing with novel issues. Counsel cited the case of *Nyangito & Co Advocates vs Doiny lessos Creameries Ltd [2014]eKLR* where Odunga J stated;

“.....The mere fact that the defendant does research before filing a defence and then puts a defence informed of that research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocates unfamiliarity with basic principles of law and such unfamiliarity should not be turns into an advantage against the adversary...”

21. Counsel submitted that even though a certificate of taxation is not a decree in *strictor sensu*, the courts have been clear that they can be executed upon. In support, counsel cited the case of *Re Estate of Alice Njoka* (supra) which relied on the case of *Edward Mwangi Macharia vs Registrar General [2009] eKLR* that recited the case of *Kassam Khimji Ltd vs Meridian Properties Ltd Nairobi High Court Civil case No 757 of 1994* wherein the court stated;

“In my considered opinion, a decree cannot strictor sensu arise out of the taxation. That which arises out of a process of taxation is a certificate of taxation. However, the court does recognize that execution can issue in respect of a certificate of Taxation. Therefore, if the Application were to satisfy the requirements for the grant of an order for stay of execution the court would grant it.

22. In conclusion counsel urged the court to dismiss the preliminary objection for failing the test of being a proper preliminary objection as espoused in the case of *Mukisa Biscuit Co Ltd vs West End Distributors Ltd (1969) EA 696* and in *Ahmed Noorani & Another vs Rajendra Ratilal Sanghani[2020]eKLR*.

23. The Respondent’s counsel submitted that pursuant to **Schedule 6** of the **Advocates Remuneration Order**, calculation of instructions fees is based on the value of the subject matter which is to be ascertained from the pleadings; that the pleadings indicate the value of the subject matter to be Kshs 700,000,000; that contrary to the Applicant’s assertions, the issues involved in the suit were weighty, complex and intricate and that the dispute involved the Applicant’s control of its assets.

24. Counsel submitted that before the matter proceeded for trial, several interlocutory Applications were filed by the Respondent on the Applicant's behalf; that the Respondent spent countless hours interviewing and recording the Applicant's witnesses; that the Taxing master was correct in his valuation of the instruction fees based on both the suit and the counterclaim as both went to full trial and that the suit was in court for approximately 10 years before the Applicant withdrew their instructions from the Respondent after conclusion of the matter.

25. Counsel submitted that with regards to disbursements, all receipts for payment of court fees are in the court file; that they had written to the Deputy registrar requesting that the file to be placed before her for perusal of the receipts; that returns of service were filed in court and their amounts were undisputed and that all documents, pleadings, receipts and perusal of documents were drawn to scale.

26. Counsel submitted that the Respondent presented its bill for the sum of Kshs 16, 252, 860 to the Applicant on the 27th of November 2019; that the Applicant made a payment of Kshs 1, 470,000 on the 29th of April 2020 and 1,473,000 on the 30th of July 2020 after the bill of costs had been filed and that the said amount was paid as part payment of the legal fees and should be deducted from the taxed amount.

27. Counsel reiterated that there was no agreed fees and that where a client fails to settle a fee note, the advocate is not bound by the amount initially stated in the agreement.

28. In response to the Application, the Respondent filed a Replying Affidavit together with a Notice of preliminary objection. The court however notes that the Respondent did not submit in support of its Preliminary Objection. As it is not the business of the court to argue cases for the parties, the court opines that the same has been abandoned.

Analysis & Determination

29. In light of the foregoing, the sole issue for determination is;

i. Whether the decision of the Taxing Master delivered on the 23rd of September 2020 in the Advocate/Client Bill of costs dated 10th of June 2020 should be set aside.

30. The procedure for the challenge of a taxation decision is provided for under **Paragraph 11 of the Advocates (Remuneration) Order** which provides that:

“(1) Should any party object to the decision of the Taxing officer, he may within fourteen days after the decision give notice in writing to the Taxing Officer of the items of Taxation to which he objects.

(2) The Taxing Officer shall forthwith record and forward to the Objector the reasons for his decision on those items and the Objector may within fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”

31. The legal parameters within which the Court can interfere with the Taxing master's decision are well settled. The Court of Appeal in ***Joreth Ltd vs Kigano & Associates. Civil Appeal No. 66 of 1999 [2002] eKLR*** was categorical that a Judge sitting on a reference against the Taxing officer ought not to interfere with the assessment of costs unless the Taxing officer had misdirected himself or herself on a matter of principle.

32. Similarly, the Ugandan Supreme Court in ***Bank of Uganda vs. Banco Arabe Espanol SC Civil Application No. 23 of 1999 (Mulenga JSC)*** held as follows:

"Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently, a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.

Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. In this regard, Application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.

Thirdly, even if it is shown that the taxing officer erred on principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties."

33. The foregoing principles will be considered in the examination of the instant reference.

34. The Applicant's case is that the Taxing Master erred in determining the value of the subject matter to be Kshs 700,000,000 and calculating the instruction fees thereon; that the same is the value of the Applicant's total asset base including structures not subject to the suit; that as the reliefs sought in the suit were not quantified, the applicable proviso was Schedule 6 under "other matters" and that in the alternative, the Taxing officer ought to have predicated the subject matter on the final orders of the court, which in this instance was the awarded sum of Kshs 11,664,000.

35. The Respondent on their part contends that the subject matter is clearly ascertainable from the pleadings being Kshs 700,000,000; that

this figure was mentioned in the Judgment of the court and that the Taxing officer was correct in calculating the instruction fees on the afore-stated amount.

36. In her Ruling, the Taxing officer agreed with the Respondent's submission that the value of the Applicant's sewerage system of Kshs. 700,000,000 is the one applicable in the assessment of the instructions fees. The Taxing officer held as follows:

"I have perused the Judgment of the court and it is clear the applicant had been instructed to defend the Respondent's interests that were valued at Kshs. 700,000,000. Therefore, we shall base the instruction fee under item 1 and 2 at the value of the subject matter of Kshs. 700,000,000..."

37. The 6th Schedule, Part A, of the Advocates Remuneration Order 2009 provides as follows;

"1. Instruction fees

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-

....

(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"

38. This principle was restated by the Court of Appeal in the case of *Joreth Limited vs Kigano & Associates* (*supra*) as follows:

"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) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances."

39. In a more recent in *Peter Muthoka & another v Ochieng & 3 others [2019] eKLR*, the Court of Appeal held 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.

It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive. What we have said is in direct harmony with what this Court stated in *JORETH LIMITED -vs- KIGANO & ASSOCIATES* (*Supra*)."

40. The initial subject matter in the primary suit being Machakos ELC case number 35 of 2010 was a claim for a permanent injunction and declaratory orders. In the said suit, the Plaintiffs, who are not parties herein, sought for an injunction to prevent the Applicant (the 1st Defendant herein) from suspending sewerage services offered to them and further sought for a declaration from the court as to who between the three defendants was entitled to receive the fees for the sewerage services.

41. Although in the Plaintiff, the Plaintiffs, who are private companies, did not seek for ownership or control of the Applicant's sewerage pipeline (assets), they sought for a clarification by the court on the body (amongst the three Defendants) that was mandated to provide sewerage services to them. Indeed, the Plaintiffs' contention was that under the Water Act of 2002, it is the 2nd and 3rd Defendants that were entitled to collect the sewerage charges from them and not the 1st Defendant (the Applicant).

42. Due to the question raised by the Plaintiffs as to who amongst the three Defendants, including the 1st Defendant herein, was supposed to offer sewerage services to the residents of Mavoko, the Applicant herein (the 1st Defendant) filed, not only a Defence, but also a Counter Claim. In the Defence and Counter Claim, the Applicant averred as follows:

“6...These water supply and sewerage facilities (whose value exceeds Kshs. 700,000,000) were duly constructed and installed by the first defendant and they form the first defendant’s asset base.

27. The 1st Defendant avers that its aforesaid sewerage and sewerage treatment infrastructure and facilities have NEVER been taken over by any other statutory body, either under the Water Act-2002 or the Rules made thereunder, and that the 1st defendant is the lawful owner of the same.”

43. While making a case to the effect that it owns the sewerage infrastructure, the Applicant (the 1st Defendant) claimed for general damages as against the co Defendants. In its Judgment in respect to the question of ownership of the sewerage facility, this court held as follows:

“131. Such a scenario, to say the least is not what was intended when the Government spent over Kshs. 700,000,000 in the early 1990’s to put up the water and sewerage infrastructure for the attainment of its industrial and manufacturing goals. The 2nd and 3rd Defendants cannot therefore convince me that they can take over the operations of such a facility in the name of providing sewerage services to all and sundry. The 2nd and 3rd Defendants should, as contemplated under section 57 of the Water Act, 2002, put up an infrastructure of their own and offer sewerage services to the public at own rates.”

44. Indeed, the suit as between the Plaintiffs and the Defendants revolved around the issue of ownership of the sewerage infrastructure as between the Defendants, for the purpose of enabling the Plaintiffs ascertain the institution that should receive the requisite payments. The Applicant’s agents testified at great lengths on how the sewerage infrastructure was built at a cost of Kshs. 700,000,000 by the Applicant, which figure was pleaded in the Defence.

45. In its Judgment, this court found as a fact that the asset in contention was put in place by the Applicant at the cost of Kshs. 700,000,000, a figure that was not rebutted or contested by the Plaintiff and the co-Defendants.

46. It is clear that the value of the subject matter of Kshs. 700,000,000 was ascertainable from the Judgment and the pleadings. This court therefore finds that the Taxing officer did not commit any error of principle in determining the value of the subject matter, both in the Plaintiff and the Counter claim, to be Kshs. 700,000,000.

47. As regards the taxation of item 2 on getting up fees, **Schedule 6B (a) of the Advocates (Remuneration) Order 2009** provides that the fees prescribed in schedule 6 A shall be increased by 50%. The Taxing officer was therefore entitled to increase the instruction fees awarded on the main claim and the counter claim by 50%.

48. With regards to disbursements, the Applicant claims that the Respondent did not provide receipts to support their claim under items 195 to 225. The Respondent on their part contends that all receipts of payment of court fees are in the court file which the Taxing officer had access to and was obligated to peruse. The Taxing officer stated that disbursements were drawn to scale, and awarded them as drawn.

49. **Section 74** provide as follows;

“Subject to section 74A, receipts or vouchers for all disbursements charged in a Bill of Costs shall be produced if required by the Taxing Master.”

50. It is apparent from this provision that if the Taxing officer requires prove of the items under disbursement, then he would ask the party concerned to avail them. There is no evidence to show that the Taxing officer requested for proof of receipts. However, the Respondent adduced a letter written to the Taxing officer informing her that all the necessary receipts were in the court file.

51. There is no reason to believe that the Taxing officer did not peruse the court file to ascertain that indeed the receipts were in the file. Indeed, the Applicant was entitled to peruse the file to ascertain if the said disbursements were supported by the official receipts, which he seems not to have done. In the circumstances, this court finds it difficult to state that an error on principle was committed in this regard.

52. Whereas the parties have submitted extensively on the aspect of complexity or lack thereof of the matter, there is no basis on which the court can determine the exercise of the Taxing officer’s discretion with regards to the same. In the instant case, the Taxing officer did not indicate if she considered the nature, interest, conduct and length of the proceedings and the importance of the cause to the parties, neither did she describe how she related these factors to the facts of the case. All that she did, which she was entitled to do, was to base the instruction fees on the value of the suit property.

53. There was no dispute about the payment of Kshs 6,021,593 as legal fees which the Taxing officer correctly found that it ought to be deducted from the final awarded costs. The upshot of the foregoing is that the court finds that the Taxing officer did not disregard factors or principles which were proper for her to consider.

54. For those reasons, I dismiss the Chamber Summons dated 12th of October 2020 but with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 29TH DAY OF OCTOBER, 2021

O. A. ANGOTE

JUDGE

In the presence of:

Ms Ngei for Otieno for the Applicant/Client

Ms. Wanjiku for Nzei for the Respondent/Advocate

Court Assistant – John Okumu