



**Luis v Mwangi & another (Environment & Land Case
185 of 2016) [2025] KEELC 3655 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3655 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 185 OF 2016**

A OMBWAYO, J

MAY 9, 2025

BETWEEN

TAHIRA BEGUM LUIS PLAINTIFF

AND

PETER MUCHIRI MWANGI 1ST DEFENDANT

**THE HON. ATTORNEY GENERAL OF THE REPUBLIC OF
KENYA 2ND DEFENDANT**

RULING

1. The Plaintiff/Applicant filed the instant application dated 11th February, 2025 seeking the following orders:
 1. That the decision of the Taxing Officer to allow Kshs. 300,000/= and Kshs. 100,000/= on item 1 and item 138 of Plaintiff's Amended Party and Party Bill of Costs dated 2nd July, 2024 be set aside.
 2. That this Honorable Court do exercise its inherent jurisdiction and reassess item 1 and item 138 of the Plaintiff's Amended Party and Party Bill of Costs dated 2nd July, 2024 in such terms as are legal, just proportionate and affordable and to give effect to the provisions of the Advocates Remuneration Order and overriding objective of the legal process and proceedings.
 3. That in the alternative to prayer number 2 above, this Honourable Court be pleased to remit the matter back to re-taxation of items 1 and 138 of the Plaintiff's Amended Party and Party Bill of Costs dated 2nd July, 2024 with proper directions thereof to a Taxing Officer other than Hon. Priscah Nyotah.
 4. That the costs of this Application be provided for.



2. The Application was based on grounds set out and supported by the Affidavit of Timothy Naeku sworn on 11th February, 2025. He stated that the Taxing Officer delivered her ruling on 23rd January, 2025 for the Amended Party and Party Bill of costs dated 2nd July, 2024. That she supplied the Applicants with the reasons for the ruling on 29th January, 2025. He stated that the reasons advanced by the Taxing Officer were arbitrary, irrational and contrary to the legal principles governing taxation of costs. He further stated that the Taxing Officer failed to take into account the value of the subject matter of the suit as evidenced in the valuation report dated 6th November, 2024. He stated that the award of Kshs. 300,000/= as instruction fee and Kshs. 100,000/= as getting up fees was grossly inadequate and contrary to the provisions of Schedule 6 of the Advocates Remuneration Order, 2014. He added that the valuation report, charge sheet and a rectified certificate of grant were in the court file and were submitted to aid the Taxing Officer accurately assess the Bill of Costs. He stated that the Taxing Officer failed to consider the extensive preparation undertaken by the Plaintiff/Applicant's counsel in awarding low instruction and getting up fees. He urged the court to allow the application as prayed.

Response

3. The 1st Defendant/Respondent filed his replying affidavit sworn on 31st March, 2025 where he averred that the application is premature and procedurally flawed. He further averred that within the province of Rule 11(2) of the Advocates Remuneration Rules, the taxing master was to give reasons upon receipt of the letter seeking reasons. He added that a party cannot file a reference before the judge before the taxing master has issued her reasons for taxation. He averred that the reference before the judge amounted to filing an appeal in the court of appeal before the superior court before a magistrate has rendered her judgment in the lower court. He also averred that one cannot purport to have a competent reference before the judge if a party has not complied with the strict provisions of Rule 11 of the Advocates Remuneration Rules. He averred that from the pleadings, the value of the subject matter could not be ascertained. He added that while the bill of costs was pending taxation, the Plaintiff without leave of the court introduced and filed a valuation report. He urged the court to dismiss the application with costs.

Submissions

4. Counsel for the Plaintiff/Applicant filed his submissions dated 10th April, 2025 where he identified one issue for determination, whether the ruling of 23rd January, 2025 was arbitrary and contrary to principles of justice in assessing instruction and getting up fees. Counsel submits in the affirmative and argues that the valuation report dated 6th November, 2024 and the charge sheet in Nakuru CMCC No. E490 of 2024 were filed to assist the Taxing Officer determine the value of the subject matter. He further submits that at the time of filing the said documents, the 1st
5. Defendant/Respondent still had an opportunity to respond and was thus not prejudiced in any manner. He submits that filing of the valuation report and charge sheet without the leave of court was an inadvertent error on the part of the counsel and the Plaintiff/Applicant ought not be penalized for the same. He relied on the case of *Belinda Muras & 6 Others V Amos Wainaina* [1978] KLR and the case of *Raila Odinga V Independent Electoral and Boundaries Commission & 4 Others* [2013] eKLR.
6. It was his submission that had the Taxing Officer considered either or both documents, she would have arrived at a more accurate and just assessment of instruction and getting up fees. He cited the case of *Republic V Minister for Agriculture & 2 Others ex parte Samuel Muchiri W' Njuguna & 6 Others* [2006] eKLR. He submits that the assessment of the instruction and getting up fees was inordinately low. He added that the assessment neither reflects the complexity of the matter.



Analysis and Determination

7. This court has considered the application, the responses thereto and the submissions and the sole issue for determination is whether there are sufficient grounds to interfere with the taxing officer's ruling dated 23rd January, 2025.
8. The Applicant is challenging the taxation of item No. 1 on instruction fees which was taxed at Kshs. 300,000/= and Item 138 taxed at Kshs. 100,000/=. He submits that the same was taxed at a manifestly low figure. He argues that the valuation report dated 6th November, 2024 and the charge sheet in Nakuru CMCC No. E490 of 2024 were filed to assist the Taxing Officer determine the value of the subject matter which she failed to take into consideration.
9. The taxing officer in her ruling found that the valuation report and charge sheet was filed by the Applicant without her express instructions and after the matter had already been concluded. It was her finding that the value of the subject matter could not be ascertained from the pleadings where she proceeded to exercise her discretion and determined the reasonable charge for the work done.
10. In the case of *Kipkorir, Titoo & Kiara Advocates V Deposit Protection Fund Board* [2006] KEHC 1796 (KLR) the court 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.”
11. This was also the holding in the case of *First American Bank of Kenya V Shah and Others* [2002] 1 E.A. 64 at 69 by Ringera J. (as he then was) where it was stated as follows:

“First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle”.
12. I have keenly perused the Taxing Officer's ruling and the pleadings and it is not in dispute that the Amended Plaint dated 9th December, 2019 formed the basis of the Party and Party Bill of Costs dated 2nd July, 2024. It is a fact that the claim revolved around ownership of the suit property which the court in its judgment delivered on 8th February, 2024 allowed the Plaintiff's claim on ownership. It is this court's view while in agreement with the Taxing Officer that the value of the suit property could not be ascertained from the filed pleadings. It is also a fact that the valuation document and charge sheet which the Applicant wanted the Taxing Officer to base her ruling on was filed on 12th November, 2024 after judgment had already been delivered. It is noteworthy that the Taxing Officer in her ruling found that the said documents were filed without her leave and therefore it was not properly in record.
13. In the circumstance, it is this court's view that the Taxing Officer took into account the relevant considerations in the taxation of instruction fees while also giving her reasons. It is also this court's opinion that the taxing of instruction fees at Ksh. 300,000/= was not based on any error of principle, neither were the said fees as awarded so excessive as to justify interference by the Court.
14. With regard to Item No. 138 being the getting up fees, the applicable provision of law was provided for under Paragraph 2 of Schedule 6A of the Advocates (Remuneration) Order 2014 where getting up fees is one-third of the instruction fees. In this case the Taxing Officer having awarded instruction fees of Ksh. 300,000/=: the getting up fees would be 1/3 of it amounting to Ksh.100,000/= which was the amount rightly taxed.



15. The upshot of the above is that the application dated 11th February, 2025 lacks merit and it is hereby dismissed. Each party shall bear their own costs of the reference. It is so ordered.

HON. JUSTICE ANTONY O. OMBWAYO

DATE: 2025-05-09.

