



REPUBLIC OF KENYA



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**Soni v Shabbir & 2 others; Ophthalmological Society of Kenya & another
(Interested Parties) (Petition 128 of 2019) [2024] KEHC 11739 (KLR)
(Constitutional and Human Rights) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11739 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION 128 OF 2019
LN MUGAMBI, J
OCTOBER 4, 2024**

BETWEEN

DR. SAMIRA DEDHIA SONI PETITIONER

AND

HON. SHAKEEL SHABBIR 1ST RESPONDENT

DR. MUKESH JOSHI 2ND RESPONDENT

**REGISTRAR MEDICAL PRACTITIONERS & DENTISTS BOARD 3RD
RESPONDENT**

AND

OPHTHALMOLOGICAL SOCIETY OF KENYA INTERESTED PARTY

NATIONAL ASSEMBLY INTERESTED PARTY

RULING

Introduction

1. By a Chamber Summons application dated 31st January 2024, the Applicant challenges the decision of the Taxing Officer, Hon. Esther Mburu’s Ruling dated 30th November, 2023 on the Petitioner’s Party and Party Bill of Costs dated 7th August 2023.
2. The Applicant seeks the relief that:
 - i. Spent.



- ii. Pending the hearing and determination of this reference, this Court be pleased to stay any execution of the decree for costs emanating from the taxation of party and party bill of costs done on the 30th November 2023.
- iii. This Court be pleased to accept the Applicant's reference to this court sought to challenge the Taxing Officer's decision on the taxation done on 30th November 2023 despite the Taxing Officer's failure to respond to the 2nd Interested Party's Notice of Objection.
- iv. This Court be pleased to set aside the decision on taxation delivered on the 30th November 2023 on the Petitioner's bill of costs dated 7th August 2023.
- v. This Court be pleased to remit the bill or costs dated 7th August 2023 for taxation before a different Taxing Officer.
- vi. The costs of this application be borne by the Petitioner.

2nd Interested Party/Applicant's case

3. The Application is premised on the grounds set out in the face of the application and deposition in Leo Masore Nyang'au' of Masore Nyang'au and Company Advocates supporting affidavit of even date. He depones the impugned Bill of Costs arose from the instant Petition in which his law firm represented the 2nd Interested Party.
4. The Petition was on alleged violation of the Petitioner's rights under Articles 27, 47 and 50 of the Constitution by the Respondents. Hon. Justice Makau determined the Petition in the Petitioner's favour in a judgment dated 10th March 2022.
5. Upon conclusion of the matter, the Petitioner filed her Party and Party Bill of Costs seeking Kshs 839,290. The Taxing officer taxed the Bill of costs at Kshs 313,865. This was against the 1st and 2nd Respondent and the Interested Parties jointly, as had been directed by the Court in its Judgment dated 10th March 2022.
6. Aggrieved by the decision, Counsel filed a Notice of Objection dated 5th December 2023 but the Taxing Officer did not respond to the Notice.
7. According to Counsel, the Taxing officer erred in principle in the manner she taxed the Bill of Costs. First the Bill of Costs is said to be dated 7th April 2023 instead of 7th August 2023. Further that she taxed Item 1, the Instructions Fees at Kshs 100,000 yet the issues in the Petition were not complex. Moreover, he alleges that since the 2nd Interested Party was not sued as a party from the onset, instruction fees with reference to this party ought to have been charged under 'other matters' or 'matters arising during the proceedings. As such she was in erred in principle by applying the instruction fees uniformly.
8. That further, the Taxing Officer erred in taxing service of pleadings at Kshs 4,200/- yet the same was served electronically. Equally that on Item 21, the Taxing Officer was in an error by taxing a sum of Kshs 7.000 for attendances on the 5th and 12th at Kshs 3.000 despite concluding that the parties had been in Court only once for half a day. Likewise, that the Taxing Officer did not apportion the costs payable by all the Respondents as provided by the Advocates (Remuneration) Order. In essence that the parties were taxed uniformly and jointly yet the proceedings against each party was not simultaneous.



Petitioner's Case

9. The Petitioner opposing the Applicant's Reference filed her replying affidavit sworn by its Advocate, Prof. Kiama Wangai of Prof. Kiama Wangai and Company Advocates sworn on 9th February 2024.
10. Counsel avers that the Applicant filed an application to be joined in this suit on 27th May 2019 and supported the case for dismissal of the Petition. As a result, the Petitioner was compelled to make a response to the case it made out. He stresses that in its finding, the Court found in favour of the Petitioner and ordered that the costs of the Petition be borne by the 1st and 2nd Respondents and Interested Parties together.
11. He opposes the Applicant's case and terms it untruthful. This is because the Applicant willingly sought to be joined in the suit to provide useful information and was present from the onset. He asserts that the Applicant cannot now turn back and claim it was only a bystander.
12. In agreement with the 2nd Respondent's response to the Applicant's application, Counsel echoed that it is trite law that Party and Party costs compensate the winning party the costs incurred while prosecuting the suit. Consequently, the Applicant's argument is incorrect.
13. Counsel however opposed the 2nd Respondent's averments that the costs should not have been awarded to him. Counsel stressed that the 2nd Respondent had not filed a reference as required by law in view of this. In conclusion, Counsel argued that the Application ought to be dismissed with costs to the Petitioner.

1st and 3rd Respondent's Case

14. These parties' responses and submissions to this Application are not in the Court file or the Court online platform (CTS).

2nd Respondent's Case

15. The 2nd Respondent filed a replying affidavit sworn on 20th February 2024. In support of the Application, he avers that the Taxing Officer erred in awarding Instruction Fees. He states that the Petitioner did not state the particulars of services charged for under Item 1 as required under Rule 69(1) (c) of the Advocates (Remuneration Order, 1962).
16. Equally, he points out that the Petitioner did not title Item 1 as instruction fees yet the Taxing Officer went ahead to christen it as so. He asserts that parties are bound by their pleadings and so the Court ought to limit itself to pleaded matters only.
17. Counsel as well argues that the issues raised in the Petition were not complex and so the awarded sum ought to have been Kshs 45,000 as the minimum scale fees in line with Schedule 6 A (1) (j)(i) of the Order. Accordingly, the awarded sum of Kshs 200,000/- is deemed to have been excessive and in error.
18. He however opposes the Applicant's claim that the costs ought not to be apportioned to it as an interested Party. This is because this Court in its Judgment was clear that the costs would be shared between the 1st and 2nd Respondent's and the Interested Parties. He also points out that the costs of the suit in a party and party costs is not based on instructions issued at the commencement of the suit as alleged but is compensation for the winning party for prosecuting the suit.
19. He further asserts that Hon. Justice Makau at Paragraph 66 of the Judgment observed that he was neither the complainant nor a participant in the impugned parliamentary proceedings. He argues thus that the costs ought not to have been awarded against him.



20. It is additionally argued that that the Taxing Officer erred in assessing the fees applicable for attendances under Item 21 for both days. As the Taxing Officer correctly observed, during mentions the matter was in court for 1 hour save for highlighting of submissions which took half a day. Considering this, he argues that the Taxing Officer ought to have assessed the matter using the ordinary scale under Schedule 6(A) (7) of the [Advocates \(Remuneration\) Order, 2014](#) which provides for Kshs 2300 for 1 hour and Kshs 5000 for half a day.

1st Interested Party's Case

21. In reply and support, the 1st Interested Party, through its Clerk, Samuel Njoroge, filed a replying affidavit sworn on 29th February 2024.
22. Concurring with the Applicant, he asserted that the Petition did not raise any complex or novel matters to justify the awarded sum of Kshs 200,000 for Instruction fees. He states that the Advocates Remuneration Order provides under Schedule 6, Paragraph 1(j) that instruction fees should be taxed at a reasonable amount not less than Kshs 100,000.
23. In view of this he contends that the instruction fee awarded was unreasonable and exaggerated. Equally that the Taxing Officer failed to issue any reasons for awarding this amount.

Parties Submissions

Applicant's Submissions

24. On 8th March 2024, Masore Nyang'au and Company Advocates filed submissions for the Applicant. Counsel highlighted the issues for discussion as: which Schedule should instructions fees against a party who is joined to an existing proceeding be charged, whether the Taxing officer committed an error of principle in awarding instruction fees of Kshs 200,000.00 and apportioning the sum taxed amongst all the parties.
25. On the first issue, Counsel relying in [First American Bank of Kenya Ltd. v Gulab P. Shah & 2 others](#) [2002] eKLR noted that the Court held that:
- “The present Court of Appeal has on the other hand expressed the view that in principle the instruction fee is an independent static item, chargeable only once and is not affected or determined by the stage the suit has reached...I completely agree with the submission made on behalf of the 3rd Defendant in that respect. In my opinion, the full instruction fees to defend a suit is earned the moment a defense has been filed and the subsequent progress of the matter is irrelevant to the item of fees.”
26. Like dependence was placed in [Joreth Ltd. v Kigano & Associates](#) (2002) eKLR.
27. Counsel argued in light of this that the instruction fees ought to have been charged to the initial parties against whom the Petition was instigated against not the Applicant. Therefore, Counsel argued that the Taxing officer erred in principle by taxing the instruction fees to apply uniformly to all the parties.
28. Furthermore, Counsel argued that the Taxing Officer awarded the instruction fees at Kshs 200,000/- in error yet the issues raised were not complex and novel. It was argued that the Taxing Officer's increase of the instruction fees was in contravention to the decisions in [First American Bank of Kenya Ltd](#) (*supra*) and [Joreth Ltd](#) (*supra*).



Petitioner's Submissions

29. The Petitioner through the firm of Prof. Kiama Wangai and Company Advocates filed submissions dated 21st March 2024 which largely rehashed the averments in the Petitioner's response. Counsel maintained that the 2nd Interested Party was a party in the suit from the onset and thus liable to pay the sum awarded as taxed.
30. Counsel further argued that the 2nd Interested Party's submissions are convoluted as on one hand it challenges the instruction fees which it contends it should not pay. On the other hand, it contends that the same ought to have been charged as 'other matters' or 'matters arising during proceedings' in its regard.

2nd Respondent's Case

31. Murgor and Murgor Advocates for the 2nd Respondent filed submissions dated 2nd April 2024. The issues that were discussed were: whether the Taxing Officer erred in awarding instruction fees jointly and whether the Taxing Officer's erred in assessment of quantum in the Party and Party Bill of costs.
32. On the first issue, Counsel submitted that the Taxing officer did not err in apportioning the costs as against the 1st and 2nd Respondents and the Interested Parties. This is because the Court in its Judgment ordered under Order (c) that the costs to the Petitioner be borne by these parties.
33. Equally Counsel argued that the Applicant's assertion that it cannot be taxed the instruction fees for reason that it was joined the suit later was incorrect. Counsel using the same case (*Joreth Ltd (supra)*) submitted that since instruction fees are charged once, they are not affected by the stage upon which a party joins a suit. Like dependence was placed in *Administrators of the Estate of Simon Mokuia Gichuru v Ameli Inyangu and Partners Advocates* (2017) eKLR.
34. Counsel as well argued that since the instant suit was filed as a constitutional Petition seeking declaratory and injunctive reliefs, the instructions fees ought to have been taxed under Schedule 6A (1)(j) of the *Advocates Remuneration Order*. As such the Applicant's argument that the instruction fees ought to have been taxed under 'other matters' or 'matters arising during proceedings' would have been erroneous.
35. Furthermore, Counsel argued that party and party costs awarded to a party contrary to the Applicant's assertion are geared towards compensating the winning party for the costs incurred while prosecuting the case. Reliance was placed in *Four Farms Limited v Agricultural Finance Corporation* (2015) eKLR where it was held that:

“ the object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case.”
36. On the second issue, Counsel reiterated the 2nd Respondent's averments that the Taxing Officer ought to have taxed off Item 1 as was not pleaded and was excessively high despite the issues not being complex. Similar sentiments were shared with reference to Item 21.



37. In support of this claim, reliance was placed in *Premchand RaiChand Ltd and another v Quarry Services of East Africa Ltd and another* (1972) E.A. 162 where it was held that:

“The court will not 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 manifestly excessive as to justify an interference that it was based on an error of principle.”

1st Interested Party’s Submissions

38. Counsel S. M. Mwendwa filed submissions dated 19th May 2024 in support of this party’s case. He outlined the issues for discussion as: whether the Taxing officer erred in charging high instruction fees and whether the instruction fees awarded should apply equally to the 1st and 2nd Respondents and the Interested Parties.

39. To commence with, Counsel submitted that the Taxing Officer taxed the instruction fees unreasonably. This is because the issues as submitted by the other parties were not complex or novel. Further this is a fact she also acknowledged in her Ruling. Counsel noted that in such cases, the Order stipulates a reasonable amount of Kshs 100,000/- under Schedule 6 (1)(j). Therefore, awarding a higher amount than this was said to be in error.

40. Reliance was placed in *Mwangi Njenga t/a Mwangi Njenga & Company Advocates v County Government of Mombasa* [2020] eKLR where it was held that:

“However, the Taxing Master, in assessing instruction fees, acknowledged that the value of the subject property was Kshs 2,000,000,000/=, but then, without giving any reason or basis for his decision, proceeded to tax Kshs 900,000/= as instruction fees. The failure to give reasons in a taxation was censured by the High Court in *Kbushbir Harjeet Singh Chadha v Wesley Maranga Robinson Gichaba* [2020] eKLR, where the court stated the following:-

“The rationale for giving reasons in a Judgment or Ruling or decision was espoused in the persuasive authority in the case of *Soulmezis v Dudley (Holdings) PTY Limited*, 1987 10 NS WLR 247,279, where MC Hugh JA held as follows: -

“The giving of reasons for a judicial decision served three purposes. First, it enables the parties to see the extent to which their arguments have been understood and accepted as well as the basis of the Judge’s decision. As Lord Macmillan has pointed, the main purpose of a reasoned Judgment is not only to do but seem to do justice. Secondly, the giving of reasons furthers judicial accountability. A requirement that Judges give reasons for the decisions, grounds of decision that can be debated, attacked and defended – serves a vital function in construing the Judiciary’s exercise of power. Thirdly, under the common law system of adjudication, courts not only resolve disputes, they formulate rules for application in future cases”.

41. On the second issue, Counsel submitted that the Applicant’s claim in this regard was baseless and based on a misinterpretation of the holding in *First American Bank of Kenya* (*supra*) and *Joreth Limited* (*supra*). Counsel pointed out that the facts of these cases are distinguishable from the instant suit and hence the holding was in view of the circumstances therein. Nonetheless it was argued that instruction fees are applied uniformly to all parties irrespective of the stage at which they joined the suit.



Analysis and Determination

42. It is my considered view that the issue that arises for determination is:

Whether the Taxing Officer erred in law and principle in taxing the impugned Items in the Ruling dated 30th November 2023.

43. The jurisdiction on taxation of costs and discretion to do so by a Taxing Officer is provided under Rule 10 and Rule 16 of the *Advocates Remuneration Order, 2009* respectively. These Rules states as follows:

Rule 10: The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.

Rule 16 : Notwithstanding anything contained in this Order, on every taxation the taxing officer may allow all such costs, charges and expenses as authorized in this Order as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons, or by other unusual expenses.’

44. The principles upon which a Court can interfere with the Taxing Officer’s decision are now settled. In *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* [2014] eKLR the Court stated:

- “ 19. The circumstances under which a Judge of the High Court interferes with the taxing officer’s exercise of discretion are now well known. These principles are,
- (1) that the 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 manifestly excessive as to justify an inference that it was based on an error of principle;
 - (2) it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge;
 - (3) if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practise is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;



- (4) it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;
- (5) the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
- (6) the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;
- (7) the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of *First American Bank of Kenya v Shah and others* [2002] 1 EA 64.

20. Further it has been held that the Court should interfere with the decision of the Taxing Officer where there has been an error in principle but should not do so in questions solely of quantum as that is an area where the Taxing Officer is more experienced and therefore more apt to the job; the court will intervene only in exceptional cases and multiplication factors should not be considered when assessing costs by the Taxing Officer or even the Judge on appeal; the costs should not be allowed to rise to such level as to confine access to court to the wealthy; a successful litigant ought to be fairly reimbursed for the costs he had to incur in the case; the general level of remuneration of Advocates must be such as to attract recruits to the profession; so far as practicable there should be consistency in the awards made; every case must be decided on its own merit and in every variable degree, the value of the suit property may be taken into account; the instructions fees ought to take into account the amount of work done by the advocate, and where relevant, the subject matter of the suit as well as the prevailing economic conditions; one must envisage a hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particular high fee sometimes demanded by counsel of pre-eminent reputation; then one must know that what fee this hypothetical character would be content to take on the brief; clearly it is important that advocates should be well motivated but it is also in the public interest that cost be kept to a reasonable level so that justice is not put beyond the reach of poor litigants.”

45. That said, in making a taxation decision, the Taxing Officer ought to be guided by the principles of taxation as laid out in *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (supra)*. The Court outlined the principles of taxation 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 cost he has had to incur.
- (c) That the general level of remuneration of Advocates must be such as to attract recruits to the profession.
- (d) So far as practicable there should be consistency in the award made and
- (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.”

46. Furthermore, in assessing whether the Taxing Officer exercised her discretion properly, the Court of Appeal in the case of *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR citing the case of *Joreth Ltd v Kigano & Associates* [2002] 1 E.A. 92 with approval observed as follows:

“The beginning point is whether the taxing officer properly exercised her discretion to determine the Advocate and client bill of costs.

In the case of *Joreth Ltd v Kigano & Associates* [2002] 1 E.A. 92, this Court addressed the issue thus;

“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 the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

47. Correspondingly, the Taxing Officer in taxing a Bill of Costs is required to be guided by the relevant Schedule in the *Advocates (Remuneration) Order* to make a determination. The Court of Appeal of Uganda in *Makula International v Cardinal Nsubuga & another* [1982] HCB 11 as cited with approval in *Truth Justice & Reconciliation Commission v Chief Justice of the Republic of Kenya & another* [2014] eKLR pronounced itself as follows:

“The taxing officer should, in taxing a bill, first find the appropriate scale fee in schedule VI, and then consider whether the basic fee should be increased or reduced. He must give reasons for deciding that the basic fee should be increased or decreased. When he has decided that the scale should be exceeded, he does not arrive at a figure which he awards by multiplying the scale fee by a multiplication factor, but places what he considers a fair value upon the work or responsibility involved. Lastly, he taxes the instruction fee, either by awarding the basic fee or by increasing or decreasing it.”

48. Congruently, the Court in *Republic v Minister of Agriculture & 2 others ex parte Samuel Muchiri W’njuguna* [2006] eKLR discussing the issue of instruction fees outlined the following principles to be applied:

- “... the taxation of advocates’ instruction fees is to seek no more and no less than
- (ii) reasonable compensation for professional work done;
- (iii) the taxation of advocates’ instruction fees should avoid any prospect of unjust enrichment, for any particular party or parties;



- (iv) so far as apposite, comparability should be applied in the assessment of advocate's instruction fees..."

49. In the instant case, the Taxing Officer found that the Bill of Costs was governed by the *Advocates (Remuneration) (Amendment) Order, 2014* considering this Petition was filed in 2019. She indicated that in her assessment of the Bill of Costs she took cognizance of the principles enunciated in *Premchand Raichand Ltd (supra)* and *Republic v Minister for Agriculture & 2 others Ex parte Smauel Muchiri W'Nguguna & 6 others* (2006) eKLR.

Item 1

50. The Taxing Officer in Item 1 which she referred to as Instruction Fees determined that the Petitioner had not established the claim for Kshs 500,000/-. She reasoned therefore that since the suit had not raised any complex issues she would increase the amount prescribed under Schedule 6 (1) (j) by Kshs 100,000/- thus totaling to Kshs 200,000/- for the instruction fees. She indicated that the justification for the increase was because the parties had prepared for the hearing and were in Court for highlighting of the submissions.

51. On Party and Party Costs, Schedule 6 on Instruction fees under (1) (j) provides as follows:

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 be reasonable but not less than 100,000.
- iii. to present or oppose application for setting aside arbitral award 50,000.

52. This figure was opposed by the Applicant, 2nd Respondent and 1st Interested Party on the basis that it was excessive. The Parties were aggrieved that no substantive reason had been supplied for increasing the said amount whilst the Taxing Officer had clearly stated no complex issues had been raised in the suit.

53. In *Republic v Minister for Agriculture & 2 others Ex-Parte Samuel Muchiri W'njuguna & 6 others (supra)* it was held that:

"...It is necessary to ascertain how she arrived at that figure; for although the judicial review applicant's firm position is that it was an exercise of lawful discretion which therefore, this court should uphold, the correct perception of the discretion donated by law, I believe, is that such a discretion is only duly exercised when it is guided by transparent, regular, reliable and just criteria.....it was necessary to specify clearly and candidly how she exercised her discretion... it is not enough to set by attributing to oneself discretion originating from legal provision and thereafter merely cite wonted rubrics under which that discretion may be exercised, as if these by themselves could permit of assignment of mystical figures of taxed



costs...complex elements in the proceedings which guide the exercise of the taxing officer's discretion must be specified cogently and with conviction...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..."

54. Guided by the authority above and Truth Justice & Reconciliation Commission (supra), it is clear that a Taxing Officer albeit vested with the discretion to increase or decrease instruction fees, the same must be anchored on principle. In my opinion, the Taxing Officer did not specify the detailed reasons that she considered in increasing the instruction fees other than simply stating that the Parties had prepared and attended the hearing, yet attendance to a hearing is charged separately.
55. Considering that the Taxing Officer noted that the Petitioner had not proved the amount of Kshs 500,000/- which he had claimed; and that the matter was not complex, it apparent that the justification to increase of the instruction fees is not well grounded. In *Khusbbir Harjeet Singh Chadha v Wesley Maranga Robinson Gichaba*[2020] eKLR the Court held thus:

"The rationale for giving reasons in a Judgment or Ruling or decision was espoused in the persuasive authority in the case of *Soulmezis v Dudley (Holdings) PTY Limited*, 1987 10 NS WLR 247,279, where MC Hugh JA held as follows:-

"The giving of reasons for a judicial decision served three purposes. First, it enables the parties to see the extent to which their arguments have been understood and accepted as well as the basis of the Judge's decision. As Lord Macmillan has pointed, the main purpose of a reasoned Judgment is not only to do but seem to do justice. Secondly, the giving of reasons furthers judicial accountability. A requirement that Judges give reasons for the decisions, grounds of decision that can be debated, attacked and defended – serves a vital function in construing the Judiciary's exercise of power. Thirdly, under the common law system of adjudication, courts not only resolve disputes, they formulate rules for application in future cases".

56. Be that as it may, it was argued that the Taxing Officer in doubling Item 1 as instruction fees pleaded on behalf of the Petitioner went against the rule that parties are bound by their pleadings.
57. The form of a Bill of Costs is provided for under Rule 69(1) of the *Advocates (Remuneration) Order, 1962* as follows:
1. Bills of costs for taxation shall be prepared in five columns in manner following—
 - a. the first or left-hand column for dates, showing year, month and day;
 - b. the second column for the items, which shall be serially numbered;
 - c. the third column for the particulars of the services charged for;
 - d. the fourth column for the professional charges claimed; and
 - e. the fifth column for the taxing officer's deductions.
58. A perusal of the Petitioner's Party and Party Bill of Costs under Item 1 shows the particulars of the 3rd column as follows:



- i. A declaration that the conduct of the Respondents threatens to violate the Petitioner’s fundamental rights and freedom guaranteed under Article 27,47 and 50 of the Constitution.
 - ii. A permanent injunction restraining the 3rd Respondent from cancelling the license of the Petitioner pursuant to recommendations/direction of Parliament.
 - iii. Costs of the Petition to be borne by the respondents in any events.
59. This is a reiteration of the reliefs that were sought in the suit. Rule 69 of the Order above indicates that the particulars column in a Bill of Costs should enumerate the services charged for or rendered. With due respect to the Petitioner, setting out the prayers pleaded in the Petition is not the description of the services rendered. This item is thus vaguely drawn as it does not articulately define service that was offered and charged under this Item. The Taxing Officer erroneously interpreted the same to mean as instruction fees yet the Petitioner did not specify it as such.

Item 21 – Attending Court

60. The Taxing Officer noted that the matter had been in Court during mentions for 1 hour on 5th October 2021 and during the highlighting of submissions half a day on 12th October 2021. Both days were taxed at Kshs 7000 and other items at Kshs 3000.
61. Schedule 6 (7) (d) on court attendances provides as follows:
At court or in chambers before judge not otherwise provided for—

Ordinary Scale	Higher Scale	
Half an hour or less	1,100	1900
One hour	2,300	3000
Half day	5,000	7,100
Whole day	10,000	15,000

62. Evidently, from the Scale above, the Taxing Officer’s taxation was way beyond the prescribed scale. The reasons for departing from the ordinary or higher scale were not given. It is my opinion thus that the Taxing Officer erred in principle in taxing the attendance in Court beyond the prescribed Scale fees.

Other issues

63. The Applicant submitted that the Taxing Officer erred in apportioning the Bill of Costs to the 1st and 2nd Respondent and itself as an Interested Party. This submission holds no water as the Taxing Officer in her Ruling explained that it was borne out of the Court’s Judgment. Consequently, the Taxing Officer did not err in principle as she was required to consider the directions pronounced by the Court in its Judgment. (See: Nyangito & Co. Advocates (supra)).
64. To the 2nd Respondent’s submission that the costs ought to have been awarded to him, is also outside the scope of the Taxing Officer’s decision as her role was limited to taxing the awarded costs. Award of costs was the responsibility of the trial Court and not that of the Taxing Officer.



65. As regards the correct date of the Petitioner's Bill of Costs, I do observe that although the title of the Taxing Officer's Ruling is 7th April 2023, the contents of the taxed Bill of Costs are those of the 7th August 2023. It is my finding that date of 7th April, 2023 is a mere typographical error that does not effect the substance.
66. Having regard to the foregoing, I am of the firm view that the Taxing Officer erroneously applied the taxation principles on Items singled out by this Court. Accordingly, it is my finding that the Taxing Officer erred in law and principle in arriving at the Taxed Party and Party Bill of Costs.
67. I thus set aside the decision of the Taxing Master delivered on 30th November, 2023 on the Petitioner's Bill of Costs dated 7th August, 2023 and direct that the Taxed Bill of Costs dated 7th August, 2023 be placed before any other Taxing Master, other than the Hon. Esther Mburu for taxation. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF OCTOBER, 2024.

.....

L N MUGAMBI

JUDGE

