



REPUBLIC OF KENYA



**Kamau & 13 others v Muga Developers Limited (Under Receivership) &
7 others (Commercial Case E052 of 2020) [2024] KEHC 13973 (KLR)
(Commercial and Tax) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E052 OF 2020
JWW MONG'ARE, J
NOVEMBER 11, 2024**

BETWEEN

LUCY WANGARI KAMAU 1ST PLAINTIFF
ELIUD NGUGI NDEGWA 2ND PLAINTIFF
LILIAN ANYANGO OWITI NDEGWA 3RD PLAINTIFF
ALICIA WANGECI NDEGWA 4TH PLAINTIFF
MARGARET WACHEKE KIANDUMA 5TH PLAINTIFF
VYONNE NJERI KIANDUMA 6TH PLAINTIFF
JAMES NGUGI NJUGUNA 7TH PLAINTIFF
NKATHA GITONGA 8TH PLAINTIFF
JACQUILYN NJOKI NYAGA 9TH PLAINTIFF
DOREEN WANJIKU KAMAU 10TH PLAINTIFF
RUTH WANJIKU KAMAU 11TH PLAINTIFF
SUSAN WANJIRU KIIRU 12TH PLAINTIFF
GLADWELL NJOROGE 13TH PLAINTIFF
WINNIE WANJIRU 14TH PLAINTIFF

AND

MUGA DEVELOPERS LIMITED (UNDER RECEIVERSHIP) ... 1ST DEFENDANT
SUSAN WACHEKE MURAYA 2ND DEFENDANT



PETER KIARIE MURAYA	3RD DEFENDANT
TRANSNATIONAL BANK LIMITED	4TH DEFENDANT
SURAYA SALES LIMITED	5TH DEFENDANT
SURAYA PROPERTY GROUP LIMITED	6TH DEFENDANT
EQUITY BANK LIMITED	7TH DEFENDANT
THE CLASSIX AT FOURWAYS LIMITED	8TH DEFENDANT

RULING

1. Pursuant to this court ruling of 26th February, 2024 which allowed the 7th Defendant application for enlargement of time to file a Notice of Objection of the Taxing master ruling delivered on 14th January 2022, Equity Bank Limited herein the 7th Defendant filed the Chamber summons application dated 4th March 2024 seeking the following orders:-
 - i. The court be pleased to review and/or set aside the assessment of the taxing officer on instruction fees (item number 1) with respect to the 7th Defendant's bill of costs dated 15th December, 2020.
 - ii. The court be pleased to assess instruction fees due to the 7th Defendant at Kshs 750,000/= or at such sum as it deems reasonable and just.
 - iii. in alternative to prayer number 2 above, this court be pleased to remit the 7th Defendant's bill of costs dated 15th December 2020 to the Taxing Officer for instruction fees to be taxed a fresh.
 - iv. The costs of this application be provided for.
2. The Chamber Summons is supported by the annexed affidavit of Kariuki Kingori sworn on 4th March 2024. He faults the assessment of the taxing officer on instruction fees at Kshs.75,000/= and taxed of Kshs.675,000/=. He states the Taxing officer failed to consider the time spent on the matter, the interest of the parties, the nature of the case and the general level of remuneration of advocates. He avers the assessment is unjust and goes against the principle that a successful litigant is entitled to reasonable costs.
3. The application was canvassed through written submissions which only the 7th Defendant filed. In its submissions counsel submits the award of Kshs.75,000/= on instructions fees is too low to amount to an error on the principle. The 7th Defendant submits the taxing officer failed to consider key considerations in assessment of instruction fees as laid down in the case of Premchand Raichand Limited & Anor vs Quarry Services of East Africa Limited and Others (1972) EA 162.
4. I have considered carefully the application herein and the submissions by the Applicant, it is important to note that the application is unopposed.
5. The Applicant urges this court to find that the taxing officer erred in principle in assessing the instructions fees. It is trite law that this court will only interfere with the decision of a taxing officer where it has been shown her decision was based on an error in principle or the fee awarded was manifestly excessive or inadequate to justify an inference that it was based on error of principle. this



position was stated in the case of Republic –vs- Ministry of Agriculture & 20 Others Ex-Parte Muchiri W’ Njuguna [2006] eKLR, where the court stated as follows:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other...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.”

6. The Court of Appeal also reiterated the above position in Kipkorir, Tito & Kiara Advocates -vs- Deposit Protection Fund Board [2005] eKLR where the court observed that:-

“On 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.”

7. Therefore, in determining the application the question before the court is whether the taxing officer erred in principle and arrived at an erroneous assessment of instructions fees. To begin with I start by analysing the ruling of the taxing master and I note that in her assessment of the Bill of costs dated 15th December 2020 she mentioned the issue of costs arises out of the ruling delivered by Justice Majanja on 13th August 2021 striking out the 7th Defendant as a party to the suit with costs. she proceeded to find the Bill will be taxed under Schedule 6 of the Advocates Remuneration 2014. she cited the various authorities on instruction fees and found that since the value of the subject matter could not be ascertained from the pleadings or judgment as the suit was yet to be determined she taxed the bill under schedule 6 on “other matter” and awarded the applicant instructions fees of Kshs.75,000/=.

8. From the record it is clear the taxing master justified her decision to award Kshs.75,000/=. She took into consideration the nature of the dispute contrary to the assertion by the Applicant. The taxing master also evaluated herself on the complexity of the matter in the assessment of the instruction fees.

9. In my view, the taxing master in her decision balanced the relationship between the subject matter and the instructions fees awarded. I say so because the taxing officer is not permitted to use discretion to asses instructions fees where the value of the subject matter is discernible and determined from the pleadings, it is only when 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/her discretion to assess instructions fees in accordance with what he/she considers just bearing in mind the various elements of assessment. See Peter Muthoka & another -vs- Ochieng & 3 others [2019] eKLR.

10. I find that the taxing master considered all the key tenements in taxation before rendering her ruling. I am therefore not persuaded that the taxing master committed an error in principle in the decision on the taxation to warrant this court to invoke its discretion and interfere with the taxing master’s ruling dated 14th January 2022.

11. Consequently, the reference herein dated 4th March, 2024 is dismissed for want of merit. Since this matter was not opposed, I will not award costs as the Plaintiffs did not participate on the proceedings.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF NOVEMBER 2024



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J.W.W. MONG'ARE
JUDGE

In the Presence of:-

1. Mr. Ndambiri for the Plaintiffs.
2. Mrs. Mwangi holding brief for Mr. Kiragu Kimani for the 7th Defendant/Applicant.
3. Mr. Ouma for the 1st, 2nd, 3rd, 5th, 6th&8th Defendants.
4. Amos - Court Assistant

