



Abdullahi Gitari & Odhiambo Advocates LLP v County Government of Wajir (Environment & Land Miscellaneous Case E028 of 2025) [2025] KEELC 4800 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4800 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E028 OF 2025**

**TW MURIGI, J
JUNE 20, 2025**

BETWEEN

ABDULLAHI GITARI & ODHIAMBO ADVOCATES LLP ADVOCATE

AND

THE COUNTY GOVERNMENT OF WAJIR CLIENT

RULING

1. Before this Court for determination is the Chamber Summons dated 7th February 2025 in which the Applicant seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That this Honourable Court be pleased to review, vary and/or set aside the taxing officer's decision and ruling delivered by Hon. Emmanuel Mumia (Chairperson) on 31st January 2025.
 - d. That this Honourable Court be pleased to issue an order directing that the Bill of Costs dated 17th December 2024 and filed on 19th December 2024 be remitted to a different taxing officer for fresh taxation.
 - e. That this Honourable Court be pleased to make such orders as it deems fit and just.
 - f. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Naema Ibrahim Somow, the Applicant's County Attorney sworn on even date.



The Applicant's Case

3. The deponent averred that the Applicant is aggrieved by the decision of the Taxing Officer awarding the Respondent bill of costs at Kshs. 10,015,500 hence the instant reference.
4. She further averred that the Taxing Officer's award is erroneous and manifestly excessive despite the fact that instruction fees were ascertainable from the pleadings. The deponent averred that the Taxing Master misdirected himself and taxed the bill costs contrary to the established principles of taxation. The Applicant is apprehensive that the Respondent will execute the bill if the orders sought are not granted.

The Respondent's Case

5. The Respondent opposed the application through the replying affidavit of Mohamed Abdullahi Hassan dated 26th February 2025.
6. The deponent averred that the application is an abuse of the court process as the taxed costs were assessed in accordance with the established principles of taxation. He further averred that the Respondent diligently represented the Applicant's interests before the National Environment Tribunal. That after the Applicant failed to settle the Respondent's legal fees, the Respondent filed a bill of costs which was properly taxed.
7. He further averred that the value of subject matter was not ascertainable from the pleadings hence the instruction fees was calculated in accordance with Paragraph 3 Schedule 11 of the Advocates Remuneration Order. According to the Respondent, the Applicant is trying to evade paying the legal fees for services that have been rendered as they had not demonstrated that the fees as taxed was inordinately high.
8. The application was canvassed by way of written submissions.

The Applicant's Submissions

9. The Applicant filed its submissions dated 10th March 2025. On behalf of the Applicant, Counsel submitted that the issue for determination is whether the taxing master erred in law and principle in assessing the bill of costs. Counsel submitted that the taxing officer's holding that the value of the subject matter could not be ascertained from the pleadings was erroneous as the Respondent was instructed to defend a suit relating to non-compliance with restoration orders which is an offence covered by Section 143 of the Environmental Management and Coordination Act. To buttress this argument, Counsel relied on the cases of Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No 3) [1972] E A 162, First American Bank of Kenya Ltd v Gulab P. Shah & 2 others [2002] KEHC 1277 (KLR) and Joreth Limited v Kigano & Associates [2002] KECA 153 (KLR).
10. Counsel further submitted that the risk that was being litigated against was based on 'a fine of not less than two million shillings and not more than four million shillings.' Counsel contends the value of the subject matter should have been calculated based on Schedule 11(8)(a) of the Advocates Remuneration Order.
11. Counsel submitted that the appeal before the tribunal was a straight forward appeal relating to non-compliance with a restoration order which did not require any extensive research and technical expertise. From the foregoing, Counsel submitted that the award of Kshs. 10,000,000 as instruction fees was not only manifestly excessive but was also an impediment to justice.



12. Counsel further submitted that the taxing officer did not sufficiently specify the expertise and time involved to warrant the impugned award. Concluding his submissions, Counsel submitted that the fees were not commensurate to professional work done as the appeal involved a simple matter of non-compliance with the environmental restoration order. To buttress his submissions, Counsel relied on the following authorities:-
- a) Republic v Minister For Agriculture & 2 Others Ex-Parte Samuel Muchiri W'Njuguna & 6 Others [2006] eKLR
 - b) DK Law Advocates v Zhong Gang Building Material Co. Ltd & another [2021] KEHC 3173 (KLR).
 - c) Karen & Associates Advocates v Caroline Wangari Njoroge [2019] KEHC 5456 (KLR).
 - d) Ratemo Oira & Company Advocates v Magereza Sacco Ltd [2015] KEHC 582 (KLR).

The Respondent's Submissions

13. The Respondent filed its submissions dated 24th March 2025. On behalf of the Respondent, Counsel submitted that the issue for determination is whether the Taxing Officer erred in awarding Kshs 10,000,000/= as instruction fees. Counsel submitted that Courts do not interfere with the taxing officer's decision unless it is shown that the decision was based on an error of principle. To buttress this argument, Counsel relied on the case of Peter Muthoka & another v Ochieng & 3 others [2019] KECA 597 (KLR) and on the case of Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] KECA 325 (KLR).
14. Counsel relied on Paragraph 3 of Schedule 11 of the Advocates Remuneration Order 2014 and on the case of Joreth v Kigano Case (Supra), to submit that where like in the instant case the value of the subject matter is not ascertainable from the pleadings, the taxing officer should use his discretion to consider factors such as importance of the matter, interest of the parties and general conduct of proceedings to come up with an award of instruction fees.
15. Counsel further submitted that the taxing officer exercised his discretion judiciously and considered the complexity of the matter, the time and resources expended by the Respondent in defending the Applicant in awarding the impugned instruction fees.
16. It was submitted that the case before the Tribunal involved the interpretation and enforcement of restoration orders issued by the National Environment Management Authority which involved legal and technical issues that require extensive research. It was further submitted that the matter was of great importance to the Applicant as the orders sought included the potential relocation of a dump site, which decision had far reaching legal and practical implications. Counsel submitted that the case raised substantial legal questions which required its Counsel to review voluminous documentation so to represent the Applicant effectively.
17. Concluding his submissions, Counsel submitted that the taxing officer properly exercised his discretion in assessing the instruction fees payable to the Respondent. In conclusion, the deponent urged the court to uphold the decision.

Analysis and Determination

18. Having considered the application, the respective affidavits and the rival submissions, the issue that arises for determination is whether the taxing officer erred in taxing the bill of costs in the manner that he did.



19. The Principles of taxation were aptly stated in *Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others* (1972) EA 162 where the court noted as follows:

- “(a) successful litigant ought to be fairly reimbursed for costs he has had to incur
- (b) That costs be, not allowed to rise to such level as to confine access to justice to the wealthy.
- (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and
- (d) that as far as practicable there should be consistency in the awards made.
- (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances
- (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically
- (g) 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.”

20. In the case of *Kipkorir Titoo & Kiari 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.”

21. It is not in dispute that the Applicant engaged the services of the Respondent’s law firm to represent it in a suit before NEMA.

22. The Applicant averred that the instruction fee as taxed was manifestly excessive. The Applicant further averred that the value of the subject matter was ascertainable from the pleadings and should have formed the basis of evaluating the instruction fees.

23. The Respondent on the other hand averred that the value of the subject matter was not ascertainable from the pleadings and the taxing officer had therefore rightfully exercised his discretion in basing the instruction fees on the complexity of the matter and the time expended in preparation of the same.

24. Schedule 11 Paragraph 3 of the Advocates Remuneration Order provides:

When taxing the costs consideration shall be given by the taxing officer to either the value of the subject-matter or, where the value of the subject matter cannot be determined, to the following criteria.

- a. the nature and importance of the proceedings;
- (b) the complexity of the matter and the difficulty or novelty of the question raised;
- (c) the amount or value of the subject matter;



- (d) the time expended by the advocate(s);
 - (e) The number and importance of the documents prepared or perused, without regard to length.
11. In the case of Joreth vs Kigano Associates (2002) EA 92 the Court of Appeal set out the various factors to be considered in determining the instruction fees which include the importance of the matter, general conduct of the case the nature of the case time taken for dispatch and the impact of the case on parties.
- 22.
25. In the case of Ratemo Oira & Co Advocates vs Magereza Sacco Society Ltd (2019) the court held that:-
- “Indeed it is trite that an Advocate is entitled to his fees once he is instructed, retained or employed by a client.”
26. Having engaged the Respondent law firm to represent it, it is the finding of this court that the Respondent is entitled to its fees.
27. The Applicant contends that the award on instruction fees is manifestly excessive as to justify the inference that there was an error of principle. The Applicant further contends that the taxing officer misdirected himself in holding that the value of the subject matter was not ascertainable from the pleadings while it actually was. Despite putting forward this claim both in its affidavit and submissions, the Applicant did not adduce any evidence of the said pleadings. There are no pleadings before this Court that can aid it in ascertaining the value of the subject matter as alleged by the Applicant.
28. In view of the foregoing, I find no sufficient reason to interfere with the decision of the taxing officer. The upshot of the foregoing is that the application dated 7th February 2025 is devoid of merit and the same is hereby dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF JUNE 2025.

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HON. T. MURIGI

JUDGE

In the presence of: -

Court assistant – Ahmed

