



Teleposta Pension Scheme Registered Trustees v Intercountries Importers and Exporters Limited & 3 others (Environment and Land Appeal E008 of 2024) [2025] KEELC 5335 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5335 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E008 OF 2024**

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

BETWEEN

TELEPOSTA PENSION SCHEME REGISTERED TRUSTEES APPELLANT

AND

**INTERCOUNTRIES IMPORTERS AND EXPORTERS LIMITED 1ST
RESPONDENT**

LE MOLOK LIMITED 2ND RESPONDENT

TOTAL SECURITY LIMITED 3RD RESPONDENT

CAR MAX LIMITED 4TH RESPONDENT

RULING

1. Before me for determination is the Chamber Summons application dated 6th February 2025 in which the Applicant seeks the following orders:-
 - i. Spent.
 - ii. Spent.
 - iii. That this Honourable court be pleased to set aside the decision of the Taxing Officer delivered on 30th January 2025 in regard to the quantum taxed on item 1 of the 1st Respondent's Party to Party Bill of costs dated 15th May 2024 and the reasoning with respect with the said award.
 - iv. That the Honourable court be pleased to re-tax item 1 of the said Bill of costs.
 - v. That in the alternative to prayer 4 above, that this Honourable Court be pleased to remit the 1st Respondent's Party to Party Bill of costs dated 15th May 2024 for re-taxation of item 1 to a different Taxing Officer with appropriate directions thereafter.



- vi. That the costs of the application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Anne Mathenge sworn on even date.

The Applicant's Case

3. The Applicant is aggrieved with the Taxing Officer's Ruling awarding the 1st Respondent Kshs 1,551,400/= for the following reasons:-
 - a. That the Learned Taxing Officer erred in law and principle by failing to exercise reasonableness in taxing item 1 of the 1st Respondent's Party to Party costs.
 - b. That the Learned Taxing Officer erred in law and principle by failing to consider relevant factors such as the nature of proceedings subject to taxation, the importance thereof, the amount involved, the interest of parties as well as the general conduct of the proceedings which in this case was limited to an application
 - c. That the proceedings that triggered the taxation was limited to an application which was not complex and the Honourable determined the same in the shortest period of time
 - d. That the Learned Taxing Officer misdirected himself by failing to appreciate that the main appeal was withdrawn with no orders as to costs and was duly captured in the CTS system
 - e. That the Learned Taxing Officer did not consider the Applicant's written submissions in opposition to item 1 on instruction fees
 - f. That figure of Kenya shillings One Million Fife Hundred and Fifty-one Thousand Four Hundred [Ksh 1,551,400/-] as instruction fees was manifestly and excessively high as it was founded on wrong principles.
 - g. That the Learned Taxing Officer erred in principle and failed to exercise his discretion judiciously
 - h. That the Learned Taxing Officer did not exercise his discretion correctly and in accordance with well established principles of law governing taxation.
 - i. That the Learned Taxing Officer failed to demonstrate how he arrived at the taxed figure without any basis on principles of law

The 1st Respondent's Case

4. In opposing the application, the 1st Respondent filed Grounds of Opposition dated 28th February 2025 raising the following grounds:-
 - a) That the Taxing Officer has full discretion under Rule 16 of the Advocates Remuneration Order, 2014 to tax bill of costs based on the nature of the subject matter.
 - b) The Appellant's application dated 25th January 2024 in particular annexure PKR-2 that is the of the subject of the 1st Respondent's the bill of costs arises from a dispute over L.R. No. 209/2397 along Ngong Road opposite Coptic Hospital within Nairobi City County.
 - c) The Taxing Officer's discretion under Rule 16 Advocates Remuneration (Amendment) Order 2014 is based on a prime parcel of land and of a very high value.



- d) It is in the best interests of the 1st Respondent that the application is dismissed with costs.
5. The Reference was canvassed by way of written submissions

The Applicant's Submissions

6. The Applicant filed its submissions dated 2nd April 2025.
- On behalf of the Applicant, Counsel submitted that the taxing officer held that the subject matter was undetermined and proceeded to exercise her discretion in awarding instruction fees.
- Counsel submitted that the taxing officer ignored the Applicants submissions dated 11th November 2024 in arriving at his decision.
7. Counsel further submitted that it is not in dispute that the Appeal did not proceed for hearing as the Appellant withdrew the same with no orders as to costs. It was submitted that the Respondent did not file any response to the appeal and added that the pleadings exchanged were in regards to the application dated 25th January 2024 which was later dismissed.
8. Counsel further submitted that the Taxing Master did not give any reason as to how he arrived at the figure of Kshs 1,500,000/=
9. From the foregoing, Counsel urged the Court to allow the application as prayed

The 1st Respondent's Submissions

10. The 1st Respondent filed its submissions dated 23rd April 2025. On behalf of the 1st Respondent Counsel admitted that the appeal was withdraw with no orders as to costs. Counsel further submitted that the Applicant's application dated 25th January 2024 was dismissed with costs.
11. Counsel submitted that the rent payment vouchers of Kshs. 2,080,000/= lays a basis of the income derived by the Applicant.
12. Counsel urged the court to take judicial notice of the fact that the suit property is located within a prime area. From the foregoing, Counsel submitted that the award on instruction fees was reasonable. To buttress his submissions, Counsel relied on the case of Machakos County Government versus Kabaka T/A Kabaka & Associates Advocates [ELC Misc. Application No. 66 of 2019] [2024] KEELC 151 (KLR) (24th January 2024) (Ruling).
13. Concluding his submissions, Counsel urged the court to dismiss the application with costs.

Analysis And Determination

14. Having considered the application, the grounds of opposition and the rival submissions the issue that arises for determination is whether the taxing officer erred in awarding instruction fees in the manner that he did.
15. 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.”

16. 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 s to justify an inference that the taxing officer acted on erroneous principles.”

- 17. The Applicant faulted the taxing officer’s award on instruction fees for being manifestly excessive. It was averred that the taxing officer did not give any reason in arriving at the award on instruction fees.
- 18. The Respondents on the other hand averred that the taxing officer exercised his discretion in arriving at the award.

Schedule 6 Paragraph (1) (b) and (d) of the Advocates Remuneration Order provides as follows:

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—

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...

To defend any other proceedings; an instruction fee calculated under subparagraph 1(b).

- 19. From the foregoing it is crystal clear that the value of the subject matter can be determined from the pleadings or from the judgement. In the case of *Peter Muthoka & another v Ochieng & 3 others* [2019] KECA 597 (KLR) the Court of Appeal held that:

“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.”

21. 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 instruction fees which include the importance of the matter, the general conduct of the case, the nature of the case, the time taken for dispatch and the impact of the case on parties.
22. The taxing officer in his ruling held that the value of the suit property was undetermined. He further stated that that the 1st Respondent had not attached evidentiary proof to justify the claim of Kshs. 3,000,000/=.
23. The onus was on the Taxing officer to determine the instructions fee based on the nature of the case, the importance of the matter and all other factors in order to come up with an appropriate figure.
24. The Taxing Master noted that that the value of the subject matter was undetermined and applied his discretion based on the decision in *Republic versus Minister of Agriculture & 2 others* [2016] eKLR. to award Kshs 1,500,000/= as instruction fees.
25. The taxing officer did not give any reason or explain how he arrived at the award on instruction fees. It is important that reasons on how items presented for taxation are taxed are given. I find that the taxing officer erred in principle for failing to give any reasons for his decision.
26. In the end I find that the application dated 6th February 2025 is merited and the same is hereby allowed in the following terms:-
 - a) The decision of the Taxing Officer delivered on 30th January 2025 in regards to item No. 1 of the 1st Respondent’s Party to Party Bill of Costs be and is hereby set aside.
 - b) The 1st Respondent’s Party to Party Bill of Costs dated 15th May 2024 is remitted to another taxing for re taxation of Item 1.
 - c) Costs to abide with the outcome of the taxation.

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

Kisiguwa for the 1st Respondent

