



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**CONST. PETITION NO. 4 OF 2012**

- 1. BISHOP MARK KUBAI KARIUKI**
- 2. BISHOP J. B. MASINDE**
- 3. BISHOP WILLIAM K. TUIMISING**
- 4. REVEREND SAMUEL GAKUO**
- 5. REVEREND GEORGE MULINGE MWAULA**
- 6. REVEREND PAUL MUTUNGA *suing on behalf of***

**DELIVERANCE CHURCH OF  
KENYA.....APPLICANT/OBJECTOR**

**=VERSUS=**

- 1. JAPHET NOTI CHARO**
- 2. MUNICIPAL COUNCIL OF MALINDI**
- 3. THE ATTORNEY**

**GENERAL.....RESPONDENTS**

**R U L I N G**

1. What is before me is the Application by the Applicants dated 25<sup>th</sup> February 2015. The Application has been filed pursuant to the provisions of Regulation 11(1) and 2 of the Advocates Remuneration Order.
2. In the Application, the Applicant has objected to the taxation of the Respondents' Bill of Costs of Kshs.589,093.
3. The Application is premised on the ground that the Taxing Officer erred in so far as her decision of taxing instruction fees at Kshs.500,000 is far above the amount provided in the applicable Advocate's Remuneration Order; that the nature of the matter was not overly complex and that the 1<sup>st</sup> Respondent has commenced the execution process.

4. In his Grounds of Opposition, the 1<sup>st</sup> Respondent averred that the bill was properly taxed; that there are no reasons or grounds that have been given to challenge the reasons given by the taxing officer and that in any event the amount of which the bill was taxed was too little.

5. In his submission, the Applicant's counsel submitted that the taxing master applied the wrong formular, or no formular at all, in taxing instruction fees from Kshs.28,000 to Kshs.500,000; that the taxing master took into account irrelevant factors and that the taxing master erred on principle in failing to properly justify the increment of instruction fees by seventeen times.

6. Counsel relied on numerous decisions which I have considered.

### **Analysis and findings:**

7. On 12<sup>th</sup> July 2013, this court dismissed the Petition by the Applicant with costs.

8. In the Petition, the Petitioner/Applicant had sought for a declaration that as a citizen, he had a right to apply for allocation of any vacant public plot, a mandatory order compelling the 2<sup>nd</sup> Respondent to enforce its by-laws and demolish the structures put up by the 1<sup>st</sup> Respondent and an order of prohibition.

9. In her Ruling of 6<sup>th</sup> April 2014, the taxing officer held as follows:

**“ I have perused the file and find that this is a matter the court may use its discretion and announce the sum of Kshs.28,000/- because of the nature of the matter and preparation done in prosecuting it. However, it cannot be said to have been overly complex to deserve instruction fees of 4 million. I find a sum of 500,000/- reasonable to compensate the advocate for the work done....”.**

10. In the case of **Premachand Rainchaud Limited & Another Vs Quarry Services of of East Africa Limited (1972) EA 162**, the Court of Appeal held that in taxing a bill of cost, the court must consider the following principles: **that costs be not allowed to rise to such a level as to confine access to the court to the wealthy; that a successful litigant ought to be fairly reimbursed for the costs that has had to incur; that the general level of remuneration of advocates must be such as to attract recruits to the profession and that so far as practicable there should be consistency in the awards made.**

11. In the **First American Bank of Kenya Vs Shar & Other (2002) 1 EA 64**, the court held as follows:

**“As regards the increase of the instruction fees. I accept that this is a matter for the discretion of the taxing officer. However, the decision must be exercised rationally. Now the only reason given by the taxing officer here to increase the fees is that the Defendant had done some research on the law and they had put in well researched defences. That to my mind, is not one of the factors for taking into account in increasing instruction fees. I am of the view, if a defendant does research before filing a defence and then puts a defence informed by such research, he has done no more than expected. It is nothing extraordinary.”**

12. In the case of **Kipkorir, Titoo & Kiara Advocates Vs Deposit Protection Fund (2005) 1 KLR 528**, it was held that if the taxing officer fails to apply the formular for assessing instruction fees or costs specified in Schedule VI or fails to give consideration to all relevant circumstances of the case, that would be an error.

13. In **Denson Mutuku Muema Vs Julius Mutance & Others (2014) e KLR**, the court held that an increment of three to four times in instruction fees could be fair but not ten times.

14. The taxing officer found that the Petition herein was not overly complex but proceeded to increase instruction fees from Kshs.28,000 to Kshs.500,000, which is almost seventeen times.

15. As was observed in the case of **Danson Mutuku (supra)**, which was followed by **Onyango J in the case of Dennis Muturi Anyoka Vs KRA & Others (2014) e KLR**, an increase of instruction fees by three to four times would probably be fair but not seventeen times.

16. The award of Kshs.500,000 as instruction fees in this matter was manifestly high and was not comparable to other cases of similar nature. In the circumstances, I shall, which I hereby do, reduce the instruction fees that was awarded by the taxing master from Kshs.500,000 to Kshs.120,000 being an increase of the minimum amount by four times. All the other items shall remain as taxed

Dated and delivered in Malindi this 2<sup>nd</sup> day of **October** 2015.

**O. A. Angote**

**Judge**