



REPUBLIC OF KENYA



KENYA LAW
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**Seii v LVCT Health (Cause 1452 of 2017)
[2025] KEELRC 2465 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2465 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1452 OF 2017
JW KELI, J
SEPTEMBER 18, 2025**

BETWEEN

MERCY JEBET SEII APPLICANT

AND

LVCT HEALTH RESPONDENT

RULING

1. The Claimant/Applicant herein filed a Chamber Summons Application under Certificate of Urgency dated 13th May 2025 seeking the following Orders:-
 - a. That the Honourable Court be pleased to review and/or set aside the decision of the Taxing Officer delivered on the 6th May 2025 Taxing and/or certifying costs due payable to the Claimant/Applicant by the Respondents at Kshs. 297,740/-
 - b. That the cost of this application be in the cause.
2. The application was based on the grounds stated in the application, and the annexed affidavit of Judith A. Guserwa Advocate, for the claimant, stating as follows:-
 - a. That judgment in the matter was delivered on 30th day of July, 2024 in favour of the Claimant/Applicant in the sum of Kshs. 4,218,615/= with costs of the suit.
 - b. That the Judgment sum of Kshs. 4,218,615/= was later reviewed by Hon. Lady Justice Jemimah Wanza Keli through the ruling dated 5th February, 2025 directing that the total decretal amount due to the Claimant/Applicant was the sum of Kshs. 3,704,155.10/= together with costs of the suit and interest from date of filing the suit until payment in full.
 - c. That the Taxing officer delivered her Ruling on the 6th May, 2025 and taxed the Party and Party Bill of Costs dated 7th October, 2024 in the sum of Kshs. 297,740/= in respect of the judgment sum of Kshs. 3,704,155.10/-.



- d. That the Claimant/Applicant being aggrieved by the ruling of the Taxing Officer objects the decision and moves the Honourable Court to review the ruling of the Taxing Officer.
 - d. That it is in the interest of justice that the prayers sought are granted.
3. Counsel Judith Guserwa in the sworn affidavit dated 13th May 2025 in support of the application annexed the judgment of the Court by Judge Ocharo Kebira dated 30th July 2024 for the sum of Kshs, 4218615, Ruling of the Court dated 5th February 2025 where the judgment sum was reviewed to Kshs. 3,704,155.10, the impugned ruling of the taxing master dated 6th May 2025 and a copy of the letter by the advocate for the claimant dated 13th May 2025 to the taxing master seeking reasons for the taxed costs.
4. The application was opposed by the respondent, who filed a replying affidavit sworn by Sheila Obiayo on 11th June 2025, stating that the application was without merit as the taxing master had provided reasons for every item of the award made and considered all the issues raised by the applicant in the ruling of 6th May 2025. There was no error demonstrated by the applicant in the ruling for the court to interfere.
5. The application was canvassed by way of written submissions.
6. The following emerges as the issue for determination before the Honourable Court arising from the application.
 - i. Whether the Claimant/Applicant's application is merited?
7. Justice Odunga (as he then was in *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* [2014] eKLR) set out the following relevant jurisprudence on the role of the judgment in reference on taxed costs which is adopt in the ruling. ‘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 vs. Shah and Others* [2002] 1 EA 64. 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.

8. Further guidance may be obtained in the case of *Joreth Limited vs. Kigano & Associates* Civil Appeal No. 66 of 1999 [2002] 1 EA 92 where the Court of Appeal held that the value of the subject matter for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement 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 matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances. It is not really in the province of a Judge to re-tax the bill. If the Judge comes to the conclusion that the taxing officer has erred in principle he should refer the bill back for taxation by the same or another taxing officer with appropriate directions on how it should be done. The Judge ought not to interfere with the assessment of costs by the Taxing Officer unless the officer has misdirected himself on a matter of principle.
9. The new taxing master was Hon Rebecca Thyaka who taxed the costs for Kshs. 292,740 vide ruling dated 6th May 2025 which ruling is the subject of this decision. The court discerned from the supporting affidavit of Judith Guserwa that the law firm of the applicant had written a letter dated 28th November 2024 to the taxing master seeking for the reasons for what the advocate called, low amount, and had not received a response.
10. The court on perusal of the impugned ruling found the taxing master had given reasons for the taxed amount.
11. In submissions the applicant stated as - The Advocates Remuneration Order under the 6th Schedule, Paragraph 1(b) provides for instruction fees as follows:"1. Instruction fees- Subject as hereinafter provided, the fees for instructions shall be as follows-
 - b. 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-^o That in ELRC No. 198 of 2019 between Lucy Rimanto Molonket vs East African Portland Cement Limited, the Claimant filed a reference citing that the Taxing Officer had erred in principle in calculating the instruction fees and the Honourable Court in its Ruling dated 24th October, 2024 allowed the Claimant/Applicant's Reference Application and the Learned Judge in his ratio decidendi as follows;"7. Paragraph 1(b) of Schedule 6 of the Advocates Remuneration Order sets out the scales of fees applicable. The fees are computed on a graduated basis at



the levels of Kshs. 500,000/-, Kshs. 750,000/-, Kshs. 1,000,000/- and ultimately 2% of the balance decretal sum." That in this matter the Taxing Officer erred in principle in awarding instruction fees at Kshs. 443,949,992/- and did not consider the graduated levels as provided in the Advocates Remuneration Order and that under the scale, the fees of Kshs. 748,948.86/- may be allowed as instruction fees since the Taxing Officer erred as follows;

- a. The decretal sum stands at Kshs. 17,197,443/-
- b. The fees payable as per the scale on the first level of between Kshs. 0 and Kshs. 500,000/- amounts to Kshs. 75,000/= which is due as costs on this first level.
- e. After the first level, we ought to deduct the fees of Kshs. 500,000/- from the decretal amount before calculating the costs payable at the second level and to further determine whether the balance falls within the second graduated level
- d. 17,197,443-500,000 16,697,443/- (being the balance after deduction of Kshs. 500,000/- from the decretal amount at the first level)
- e. It is evident that Kshs. 16,697,443/ falls within the second graduated level under the ARO of between Kshs. 500,000-750,000 and therefore Kshs. 90,000/ is also due as costs at the second graduated level.
- f. After the second graduated level, we ought to deduct the cost cap of Kshs. 250,000/= (which is the amount between kshs. 500,000/- and 750,000/- at the 2 level) from the balance of the decretal amount before calculating the costs payable on the third graduated level in order to check whether the balance fills within the third graduated level.
- g. 16,697,443-250,000 16,447,443/- (being the balance after deduction of Kshs. 250,000/- from the balance of the decretal amount at the second level)
- h. That Kshs. 16,447,443/- falls within the third graduated level under the ARO of Kshs. 750,000 1,000,000 and therefore the 120,000/ is also due as costs at the third graduated level. After the third graduated level, we ought to deduct the cost cap of Kshs. 250,000/- (which is the amount between kshs. 750,000/- and 1,000,000/- at the 3rd level) from the balance of the decretal amount before calculating the costs payable at the found graduated level in order to check whether the balance falls within the third graduated level. 16,447,443-250,000-16,197,443/- (being the balance after deduction of Kshs. 250,000/- from the balance of the decretal amount at the third level). After the 3 graduated level, the balance of the decretal amount is KShs. 16,197,443/- falls within the 4^e graduated level of between KShs.1,000,000 to Kshs, 20,000,000/-. The costs payable at the 4 graduated level as indicated under Schedule 6 of the ARO are fees as for Kshs. 1,000,000 plus an additional 2%. The fees payable for Kshs, 1,000,000 is Kshs. 120,000. 2% of the decretal amount of Kshs. 17,197,443 amounts to KShs. 343,948.86/. The fees payable in the 4 graduated level is calculated as follows, 120,000.343,948.86463.948.86. The total instruction fees is the sum total of the fees payable on the 1st, 2nd 3rd and 4th levels. 75,000 90,000 120,000+463,948.86 thus Kshs. 748,948.86/-. That the fees payable as instruction fees is KShs. 748,948.86/- and therefore the Taxing Officer erred in awarding instruction fees at Kshs. 443,949.92.

Item No. 17-Getting up fees- The fees chargeable as getting up fees is calculated as of the instruction fees. That since the instruction fees are Kshs. 748,948.86, 1/3 of the instruction fees amounts to Kshs. 249,649.62-

Other items- the Taxing Officer properly taxed all the other items in the Bill.



12. The applicant relied on the cited authority and submitted that the Honourable court allows the application and the parties were directed to appear before a different Taxing Officer for purposes of re-taxing the instructions fees and getting up fees.

Respondent's submissions

13. The main issue for determination is whether the Claimant/Applicant has met the threshold for the grant of the orders sought in the Application dated 13th May, 2025. In order to answer this question, it is important to note that the taxing master has unfettered discretion to tax bills of costs, but such discretion must be within the provisions of Advocates Remuneration Order, 2014. It is trite law that Courts will generally not interfere with the exercise of this discretion by the taxing master unless it is shown that the decision on taxation was manifestly wrong or based on an error of principle. This principle of varying or setting aside a Taxing Master's decision is set out in the cases of *First American Bank of Kenya v Shah and Others* (2002) EA 64 and *Joreth Ltd v Kigano and Associates* (2002) 1 EA 92, where the Court held that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law. These principles reiterate the position of the Court of Appeal in *Joreth Ltd v Kigano & Associates* (2002) eKLR, where the said Court held that a taxing master in assessing costs to be paid to an advocate in a bill of costs was exercising her judicial discretion and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously, and in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the taxing master is excessive to amount to an error in principle.
14. In the instant case the Claimant/Applicant objected to the ruling of the Claimant's Party and Party Bill of Costs dated 7th October, 2024 delivered on 6th May, 2025 on the ground that the taxed amount of Kshs. 297, 740/- as costs were too low and not to scale.
15. That the reason cited is not a valid reason to disturb the Taxing Masters's assessment of costs. We refer to the findings in the case of *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'njuguna* (2006) eKLR Ojwang, J (as he then was) expressed himself 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." (Emphasis added).
16. With respect to the instruction fees, the Respondent filed an application for review of the Judgment sum awarded of Kshs. 4,218,615/- The application was allowed and the Judgment sum rectified to Kshs. 3,704,155/-. This is therefore the amount to be used to assess instruction fees.
17. Contrary to the Claimant/Applicant's submissions that instruction fees are to be calculated on graduated levels, it is the Respondent's submissions that instruction fees is an independent and static item which is charged only once. We rely on the cases of *Paul Ssemogerere & Olum v Attorney General - Civil Application No.5 of 2001 (UR)* and *Lion Insurance Company Ltd v Kasekende Kyeyune & Lutaya Advocates (Miscellaneous Appeal No 358 Of 2013) [2013] UGCOMM 154 (6 September 2013)* in support of its position.



18. Further, reference is made to the Court of Appeal decision in the case of Joreth Ltd v Kigano & Associates (Supra) where the Court held as follows: By the first ground thereof the respondent states that Instruction Fee is an independent and static item, is charged once only and is not affected or determined by the stage the suit has reached. In principle that is correct. (Emphasis added)

Item 30 Getting up fees- the fees chargeable is calculated at 1/3 of the instruction fees. That the Honourable Taxing Master did not make an error in assessing fees under this head.

Decision

19. In a recent decision delivered on the 20th June 2025 ELRC Cause No. 812 of 2017 George Nyota Chikulolo Versus National Bank of Kenya Ltd this court considered a similar application by same lawfirm and held-‘The court found a misapprehension of the wording of paragraph 7 of the ruling by the applicant. The court found that if it was to accept the tabulation on graduated scale from 0 to 1,000000 and then award 120000 for the 1st one million as suggested by the applicant, that would be tantamount to double award of costs on the first 1 million shillings of the judgment sum. The court on perusal of the ruling found that the taxing master rightly applied the 6th Schedule of the Advocates Remuneration Order and gave reasons on each of the items under the bill of costs. The court found no basis to interfere with the ruling on taxation of costs dated 26th November 2024. The application is dismissed with costs to the respondent.’ I uphold my decision to apply in the instant case and find that the taxing master Hon Rebecca Thyaka, ADR, in her ruling dated 6th May 2025 gave a reasoned ruling on the award of the costs. Specifically the taxing master considered the issue of instruction fee under item 2 and explained how she arrived at the award thus, based on the reviewed judgment sum of Kshs. 3704155.10 the costs were calculated with the first 1 million for Kshs. 120,000 plus 0.02x 2704155.10 (2% of the amount above 1 Million). The court finds the alleged error is misplaced. The Court finds the taxing master correctly applied Paragraph 1(b) of Schedule 6 of the Advocates Remuneration Order in the ruling. There is no error demonstrated for the court to interfere with the discretion of the taxing master. The court was persuaded by the decision in Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W’njuguna (2006) eKLR Ojwang, J (as he then was) expressed himself 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." (Emphasis added) The court found no error of principle by the taxing master.

20. The application is dismissed with costs to the respondent.

21. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno



Applicant: Ms Okondo h/b Guserwa

Respondent: Ms. Obiayo

