



Gichuki (Suing as one of the Administrators of the Estate of Jaidus Gichuki Peter) v Gichuki & 4 others (Environment & Land Miscellaneous Case E073 of 2025) [2025] KEELC 4486 (KLR) (16 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4486 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E073 OF 2025**

CG MBOGO, J

JUNE 16, 2025

BETWEEN

**MONICA WANJIKU GICHUKI APPLICANT
SUING AS ONE OF THE ADMINISTRATORS OF THE ESTATE OF JAIDUS
GICHUKI PETER**

AND

PETER WAMBUGU GICHUKI DEFENDANT

AND

**MWANANCHI CREDIT LIMITED 1ST RESPONDENT
ABDIRASHID ISMAEL DAUD 2ND RESPONDENT
THE DISTRICT LAND REGISTRAR NAIROBI 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. Before this court for determination is the chamber summons dated 28th March, 2025 filed by the applicant, and it is expressed to be brought pursuant to Paragraphs 11(2) and 13A of the Advocates (Remuneration) Order, 2014 seeking the following orders: -
 1. Spent.
 2. Spent.



3. That the decision of the taxing master dated 19th March delivered by Hon Judith Omollo (DR) with respect to item 1 of the 3rd defendant's bill of costs dated 4th November 2024 be set aside and the same be taxed afresh by this honourable court.
 4. That in the alternative, the honourable court be pleased to order that the applicant's bill of costs dated 4th November, 2024 with respect to items 1 and 2 be taxed afresh by another taxing officer.
 5. Spent.
 6. That the honourable court be pleased to issue an order that the determination of this reference shall apply mutatis mutandis to the taxation of the 2nd defendant's bill of costs dated 22nd January 2025 with respect to the Instruction fees, to ensure judicial consistency and prevent duplicative references.
 7. That the costs of this application to be provided for.
2. The application is premised on the grounds inter alia that a ruling on the taxation of the 3rd defendant's party to party bill of costs dated 4th November, 2024 was delivered on 19th March, 2025 which emanated from a ruling delivered by Justice Oguttu Mboya on 17th October, 2024.
 3. The applicant contended that the taxing officer erred in law and fact as follows: -
 - a. Misinterpretation of the court's ruling-Justice Oguttu Mboya did not award costs of the entire suit. The costs awarded were strictly limited to the application and the preliminary objections, and any taxation ought to have been confined to those aspects alone.
 - b. Erroneous categorization of the matter as a defended cause-In the absence of a filed defence, the taxing master could not, as a matter of law, assess instruction fees on the premise that the matter was defended cause. The taxation should have been commensurate with an interlocutory application rather than a full suit.
 - c. Misplaced consideration of complexity-The taxing master misconceived the nature of a preliminary objection, stating, "I keep in mind the labour employed in filing and arguing the preliminary objection."
 4. The application is supported by the affidavit of the applicant sworn on even date. The applicant deposed that in the ruling delivered on 17th October, 2024, the court struck out the plaint as well as the plaintiff's notice of motion dated 6th June, 2024 and awarded costs solely in respect of the application and the preliminary objection which were to be borne by the plaintiff. That in taxing, the taxing officer misinterpreted the ruling by Justice Oguttu Mboya by purporting to award costs which were manifestly excessive for the entire suit as opposed to costs limited to the application and the preliminary objection.
 5. The applicant further deposed that the 2nd respondent's bill of costs dated 22nd January, 2025 also emanates from the same ruling, and that if this taxation proceeds, there is high likelihood of a similar erroneous and excessive taxation thereby occasioning substantial justice and prejudice to the applicant. It was deposed that this court has jurisdiction to grant stay of taxation proceedings, and further, that the principle of judicial economy dictates that since the outcome of this reference will directly impact the taxation of the 2nd respondent's bill of costs, it is in the interest of justice and efficiency to stay the taxation proceedings to determine this reference.



6. The chamber summons was opposed vide the replying affidavit of Saleh Jackline, the legal officer of the 2nd respondent sworn on 7th April, 2025. The 2nd respondent deposed that it has been improperly joined in these proceedings as the ruling was solely in respect of the 3rd respondent's bill of costs dated 4th November, 2024 which it has no stake. Further, that in as much as the instant application seeks orders for stay of its party and party bill of costs, this application is extremely misguided and ought to be struck out since taxation of costs where the same has been awarded cannot be stayed.
7. The 2nd respondent deposed that the prayer for stay of execution is premised on mere speculation as no taxation has occurred or crystallized to warrant consideration by this court. Further, that a court of law cannot act in vain, and it is erroneous for the applicant to speculate the outcome and use the same as a basis to deny the 2nd respondent the just and expeditious determination of justice.
8. The application was further opposed by the affidavit of Lilly Umazi, the learned counsel for the 3rd respondent. The learned counsel deposed that the applicant is misguided in as far as she alleges misinterpretation of the court's ruling, erroneous categorization of this matter as a defended cause and misplaced consideration of complexity. While highlighting the facts leading to the filing of this application, the learned counsel deposed that the court in its ruling awarded the costs of the suit, the application and the two preliminary objections to the 2nd and 3rd respondents. She deposed that the taxing officer in her ruling noted that the value of the subject matter was unascertainable from the pleadings and proceeded to tax the same in the sum of KES. 75,000/-, and it is thus not true that the same was categorized as a defended cause. Further, that the argument that the sum of KES. 300,000/- is manifestly excessive and cannot be sustained in the face of a proper application of the principles of taxation.
9. The learned counsel further deposed that the court should interfere with the decision of the taxing officer where it has been shown that there was an error of principle, but should not do so in questions solely of quantum. Further, that an error of principle would only happen if the taxing officer took into consideration irrelevant factors, and omitted relevant factors. It was deposed that the applicant has not demonstrated any sufficient grounds to impugn the exercise of judicial discretion on the part of the taxing master.
10. The Chamber Summons was canvassed by way of written submissions. The applicant filed her written submissions dated 8th May, 2025 where she raised the following issues for determination:-
 - a. Whether the taxing master erred in law and fact by awarding instruction fees in respect of the entire suit, contrary to the specific orders of the court limiting costs to the application and preliminary objection.
 - b. Whether the amount awarded as instruction fees was manifestly excessive and unreasonable in the circumstances.
 - c. Whether the taxing master misapprehended the scope and tenor of the court's ruling delivered by Hon. Justice Oguttu Mboya on 17th October 2024 which awarded costs limited only to the application and preliminary objection.
 - d. Whether in the interest of justice and judicial consistency, the taxation of the 2nd defendant's bill of costs dated 22nd January 2025 should be stayed pending the outcome of this reference, and whether the decision of this court should apply mutatis mutandis to the 2nd defendant's bill.



- e. Whether the honourable court should set aside the decision of the taxing master and order a fresh taxation either before this court or another taxing officer.
 - f. Whether the applicant is entitled to the costs of this application.
11. On the first issue, the applicant submitted that the ruling delivered on 17th October, 2024 unequivocally struck out the plaint and application dated 6th June, 2024 and awarded costs limited to those proceedings. Further, that the court acted in excess of jurisdiction in assessing instruction fees as if the costs covered the entire suit. While relying on the cases of Kipkorir Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR, Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] EA 162 and Mugambi & Co. Advocates v John Okal Ogwayo & another [2013] eKLR, the applicant submitted that the taxing officer misapprehended the court's directive and assessed costs outside the awarded parameters.
 12. On the second issue, the applicant submitted that the sum of KES. 300,000/- was excessive considering the matter was disposed at the preliminary stage, and no substantive proceedings took place. To buttress on this submission, the applicant relied on the cases of Outa v Odoto & 3 Others [2023] KESC 75 (KLR), and Republic v Competition Authority Ex Parte Ukwala Supermarket Ltd & Another [2017] eKLR. Further, it was submitted that none of the factors in the Ukwala Supermarkets case (supra) was considered in this instance, and that the ruling was devoid of any judicial reasoning. While further relying on the cases of Kenya Airports Authority v Otieno Ragot & Co. Advocates SCoK Petition E011 of 2023, Mugumya t/a Mugumya & Co. Advocates v Salat (Environment and Land Misc. Application E018 of 2023) [2023] KEELC 21962 (KLR) and Republic v Minister for Agriculture & 2 Others Ex parte Samuel Muchiri W'Njuguna & 6 Others [2006] eKLR, the applicant submitted that the sum awarded for merely canvassing a preliminary objection amounts to unjust enrichment, and offends the proportionality principle embedded in the Advocates Remuneration Order. Further, that the proceedings were neither complex or novel, and that the court had not ordered full costs of the suit but only costs of the application and the preliminary objections. Further reliance was placed in the cases of Paul Nderitu Ndung'u & 20 Others v PZ Cussons East Africa Ltd [2015] eKLR, First American Bank of Kenya v Shah & Others [2002] 1 EA 64, and Machira & Co. Advocates v Arthur K. Magugu & Another [2012] eKLR.
 13. On the third issue, the applicant submitted that the taxing officer awarded instruction fees under the guise of a defended matter despite the fact that no defence had been filed, and that the matter was struck out at the interlocutory stage. The applicant relied on the case of Evans Thiga Gaturu, Advocates v Kenya Commercial Bank Ltd [2012] eKLR.
 14. On the fourth issue, the applicant submitted that the 2nd defendant's bill of costs arises from the same factual matrix and legal ruling, and unless stayed, its taxation risks replicating the same errors committed in taxing the 3rd defendant's bill of costs. Reliance was placed on the cases of Republic v Public Procurement Administrative Review Board & Another Ex Parte Selex Sistemi Integrati [2008] eKLR, and Global Tours & Travel Ltd HC Misc. Appl. No. 43 of 2000.
 15. On the fifth and sixth issues, it was submitted that this court's reasoning and findings on the 1st defendant's bill of costs should apply mutatis mutandis to the 2nd defendant's bill of costs. Further, that it is a cardinal principle that similarly situated litigants should not be subjected to divergent cost determinations. To buttress on this issue, the applicant relied on the case of Tom Okello Obondo v Kenya Ports Authority [2005] eKLR. The applicant further submitted that the taxing officer committed a material error of law by misapprehending the scope of the costs awarded. It was urged



- that the court ought to exercise its discretion to set aside the impugned taxation and remit the matter for fresh taxation, either by itself or a different taxing officer.
16. The 3rd respondent filed his written submissions dated 26th May, 2025 when he raised two issues for determination as listed below:-
 - a. Whether the taxing master misinterpreted the award of costs by Justice Oguttu Mboya.
 - b. Whether this court should interfere with the decision of the taxing master.
 17. On the first issue, the 3rd respondent submitted that paragraph 94 (v) of the ruling delivered by Justice Oguttu Mboya was plain and clear in its meaning and warrants no further interpretation. Further, that the alleged paragraph in the Court of Appeal decision in Kipkorir Titoo & Kiara case (supra) is non-existent and thus misleading.
 18. On the second issue, the 3rd respondent submitted that the value of the subject matter could not be ascertained from the pleadings, and as such the taxing officer rightfully departed from the said principle. While relying on the case of Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd Miscellaneous Case 843 of 2013, the 3rd respondent submitted that the applicant has failed to demonstrate sufficient grounds for this court to interfere with the exercise of discretion by the taxing master.
 19. The 2nd respondent filed its written submissions dated 12th May, 2025 where it raised two issues for determination as follows:-
 - i. Whether the 2nd respondent has been properly joined in these proceedings and whether the court has jurisdiction to determine matters in relation to the 2nd respondent's bill of costs dated 22nd January, 2025, and;
 - ii. Whether the orders sought should issue.
 20. On the first issue, the 2nd respondent submitted that it has been improperly joined in these proceedings since its bill of costs dated 22nd January, 2025 is yet to be taxed by the taxing officer. That this being a reference application, the same must stem from a decision already rendered by the taxing officer but not otherwise. Further, it was submitted that this court lacks the requisite jurisdiction to deal in any manner with the 2nd respondent's bill of costs, simply because the bill is yet to be taxed. Further, that it is only upon there being a decision that a party dissatisfied can invoke the jurisdiction of this court. The 2nd respondent relied on the cases of Ranyanya & another v Ochieng (Miscellaneous Reference Application E003 of 2022) [2023] KEHC 20535(KLR) (21 July 2023) (Ruling), Kinyua Muyaa & Co. Advocates v Kenya Ports Authority Pension Scheme & 8 Others [2015] eKLR and Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.
 21. On the second issue, the 2nd respondent submitted that the orders as sought were designed to issue at the ex-parte stage, and since the court proceeded to set the matter for hearing and determination without granting stay, the prayers became spent and there are no viable prayers sought as against it. Further, it was submitted that the applicant has not demonstrated any sufficient grounds for grant of the orders sought affecting the 2nd respondent. The 2nd respondent submitted that the orders cannot issue since it interferes with the right of a litigant to fair hearing, and besides mere speculation, there is no concrete justifiable cause to stay the proceedings filed by the 2nd respondent. To buttress on this issue, the 2nd respondent relied on the cases of Kenya Wildlife Service v James Mutembei [2019] KEHC 10478 (KLR) and Maunge & another v Moses (Miscellaneous Application E017 of 2021) [2023] KEELC 21529 (KLR) (21 March 2023) (Ruling).



22. In a ruling delivered by my brother, Oguttu J, on 17th October 2024, the applicant's suit i.e. plaint dated 6th June, 2024 and the amended plaint dated 31st July, 2024 were struck out. Paragraph 93 v. of the same ruling granted costs as follows, "Costs of the suit; the application and the two preliminary objections shall be borne by the plaintiff herein." As a result of this ruling, the 2nd and 3rd respondents herein proceeded to file their respective party and party bill of costs. The 3rd respondent filed his party and party bill of costs dated 4th November, 2024 which culminated in a ruling delivered on 19th March, 2025. Further to this, the 2nd respondent filed its party and party bill of costs dated 22nd January, 2025 that is pending before the taxing officer. It is on this basis that the applicant has moved the court with the instant application.
23. I have carefully analysed and considered the application, responses, and the respective written submissions as well as the authorities cited. In my view, the issues for determination are as follows: -
- i. Whether the taxing officer erred in taxing the bill of costs dated 4th November, 2024.
 - ii. Whether the orders of this court ought to apply mutatis mutandis to the 2nd respondent's bill of costs.
24. With regards to the first issue, the circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case of Premchand Raichand Ltd Another -vs- Quarry services of East Africa Ltd and Another No. 3 (1972) EA 162. The principles laid out are:-
- i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.
 - ii. The taxing master was expected to tax each bill on its merits;
 - iii. The value of the subject matter had to be taken into account;
 - iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;
 - v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy.
 - vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference."
25. In advancing her claim, the applicant argued that the taxing officer misinterpreted the court's ruling by awarding costs of the entire suit while the same was only limited to the application and the preliminary objections. She argued that the taxing master treated the case as a defended cause, and there was misplaced consideration of complexity. As I have understood the applicant, the sums awarded were manifestly excessive taking into consideration that the suit was struck out at the preliminary stages and, therefore, the same ought not to have been treated as one which proceeded to full hearing. While I have considered these claims, I have had a chance to carefully examine the ruling delivered by the taxing officer on 19th March, 2025. In arriving at her decision, the taxing officer noted that the defendants had not filed their defence, and that the value of the suit property was not ascertainable from the pleadings



amongst other issues. Bearing in mind the issues before her, she elaborated the consideration leading to the final award of the sum of KES. 300,000/- which she considered reasonable for instruction fees.

26. In the case of Joreth Ltd vs Kigano & Associates [2002] 1 E.A. 92, the Court of Appeal stated as follows:-

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment 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 the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

27. In arriving at the sum of KES. 300,000/-, the taxing officer rightfully confined herself to the ruling of the court delivered on 17th October, 2024 in making her decision. While I am guided by the above decision, and in my view, the sum awarded as instruction fees was reasonable. The argument that the court did not award the costs of the suit is hopeless for lack of a better word for the reason that the intention of the court was clear in awarding costs to the 2nd and 3rd respondents. As pointed out in paragraph 22 above, this court awarded costs of the suit, the application and the two preliminary objections. The use of a semi colon in that order shows that the sentences while much independent, are related. It is my finding that the sums awarded are (in my view) reasonable and I see no justifiable cause to disturb the ruling by the taxing officer.

28. On the second issue, it is quite clear that this court did not stay proceedings regarding the 2nd respondent’s bill of costs dated 22nd January, 2025 when this reference was filed. However, the applicant urged the court to find that the orders issued herein ought to apply to the bill of costs that is actively before the taxing officer. Rules of procedure exist not only to aid in fairness but to also ensure that justice is served. The jurisdiction assumed by this court only kicks in when the taxing officer has pronounced himself or herself on a bill of costs. Any attempt to overlook this process would result to great injustice. This court has no business to interfere with the jurisdiction bestowed on another court especially so when there is speculation that a similar fate would befall the pending bill of costs. In other words, the applicant is inviting this court to presume that the taxing officer has a predetermined position in the matter which ought to be prevented before the same is put on paper. On this issue, such an order cannot be granted as there exists a forum to dispense with the pending bill of costs.

29. Arising from the above, this court finds no reason to fault the ruling by the taxing officer delivered on 19th March, 2025. This court also has no business anticipating the likely outcome of a pending bill of costs. The chamber summons dated 28th March, 2025 has no merit, and the same is dismissed with costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 16TH DAY OF JUNE, 2025.

HON. MBOGO C.G.

JUDGE

16/06/2025.

In the presence of:

Benson Agunga - Court assistant



Ms. Umazi for the 3rd Respondent

No appearance for the Applicant

No appearance for the 2nd Respondent

