



REPUBLIC OF KENYA



**KENYA LAW**  
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**Limited v Musimbi (Appeal E018"B" of 2024)  
[2025] KEELRC 2627 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2627 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E018"B" OF 2024  
JK GAKERI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**UNITED MILLERS LIMITED ..... APPELLANT**

**AND**

**LILIAN MANDU MUSIMBI ..... RESPONDENT**

**RULING**

- 1 Before the court for determination is the applicant's Chamber Summons dated 8<sup>th</sup> May, 2025 filed on 9<sup>th</sup> May, 2025 seeking Orders that:
  1. The Honourable Court do set aside the decision of the Taxing Master delivered on 29<sup>th</sup> April, 2025 awarding the applicant Kshs.129,480.00 as taxed costs.
  2. The court be pleased to review, set aside and/or vary the decision of the Taxing Officer made on 29<sup>th</sup> April, 2025 in respect of items 1 and 2 of the Party and Party bill of Costs dated 11<sup>th</sup> March, 2025.
  3. In the alternative, the court be pleased to order that the applicants Bill of costs with respect to items 1 and 2 of the Party and Party Bill of Costs be taxed a fresh by another taxing officer.
  4. Costs of this application be provided for.
- 2 The Chamber Summons is expressed under Rule 11 of the Advocates Remuneration Order 2014, Sections 14, 3A, 3B and 95 of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules and is based on the grounds set forth on its face and the supporting Affidavit sworn by Christopher Ochieng Onyango Advocate on 8<sup>th</sup> May, 2025.
- 3 The applicant avers that the taxing master erred in principle by awarding Kshs.50,000 as instruction fees thus reducing the amount claimed of Kshs.149,591.20 and equally erred by failing to award getting up fees by applying Schedule 6 in lieu of Schedule 6(1)(b) in determining item I of the Bill of Costs.



- 4 That the Taxing Officer equally misapprehended the subject matter of the suit and ignored the Judgment of Kshs.1,479,560.00 and considered undisputed issues.

### **Respondent's case**

- 5 By a Replying Affidavit sworn by Samal Narshi Shah on 3<sup>rd</sup> July, 2025, the affiant deponed that the respondent opposed the Bill of Costs dated 11<sup>th</sup> March, 2025 and the assessment of instruction fees at Kshs.50,000.00 by the taxing master was correct as was the getting up fees and the matter was not complex.

### **Applicant's submissions**

- 6 As to whether the judgment was ascertainable, counsel submitted that it was as the court had awarded Kshs.1,479,560 and the Judgment was before the court.
- 7 Concerning the remuneration schedule, counsel contended that the taxing officer erred by relying on a Schedule applicable to instances in which the Judgment was unknown where the minimum instruction fees is Kshs.25,000 while in this case the Judgment sum was known and the applicable schedule was Schedule 6(1)(b) of the Advocates Remuneration Order and instruction fees would have been Kshs.149,591.20
- 8 Reliance was placed on the decisions in Catholic Medical Mission Board V Mombasa Maize Millers Kisumu Ltd [2023] KEHC 23525 (KLR), to urge that the taxing officer ought to have applied Schedule 6(1)(b) of the Advocates (Remuneration) Amendment Order, 2014.
- 9 Sentiments of the court in Peter Muthoka & another [2021] eKLR were also cited to reinforce the submission and urge that the taxing officer erred in principle in the awarding of instruction fees.
- 10 As regards getting up fees, counsel submitted that the taxing officer failed to appreciate the fact that the appeal was contested and the appellant did not contest Getting up fees under the Bill of costs.
- 11 Reliance was placed on the provisions of paragraph 2 of the Schedule 6A of the Remuneration Order as were the sentiments of the Court in ShamShudin Khosia as Chairman, Abdul Gatur Pasta as Honorary Secretary & Mohamed Bayusuf as Treasurer (on their own behalf and on behalf of) the members of Kenya Transport Association V Kenya Revenue Authority, Nguruman Ltd V Kenya Civil Aviation Authority & 3 Others [2014] eKLR, Republic V Egerton University Ex Parte Patel Maulik Prasum [2020] eKLR and Republic V Kenya Medical Supplies Authority & another; Medox Pharmaceuticals Ltd (Interested Party); Ex Parte Nairobi Enterprises Ltd [2019] eKLR to submit that Bill of costs in this case fell within paragraph 2 of schedule 6A of the Advocates (Remuneration) Order 2014 and was thus entitled to Getting up fees which taxing officer did not award.
- 12 Finally, counsel urged the court that items 1 and 2 be taxed at Kshs.149,591.20 and Kshs.49,863.75 respectively and the respondent be condemned to pay costs of the instant application.

### **Respondents submissions**

- 13 Counsel for the respondent placed reliance on the provisions of paragraph 1 and 2 of the Advocates Remuneration Order to submit that the taxing officer applied the correct provision and did not misdirect herself or proceed on wrong principles and the sum of Kshs.50,000 awarded as instruction fees was discretionary.
- 14 Reliance was further placed on the sentiments of the court in Delmonte Kenya Ltd V Kenya National Chamber of Commerce and Industry (KNCCI) Murang'a Chapter & 2 Others [2021] eKLR on the



factors to be taken into consideration as were the sentiments of the court in Premchand Raichand Ltd & another V Quarry Services East Africa Ltd & another [1972] EA 162 and Arthur V Nyeri Electricity Undertaking [1961] EA 492, on the circumstances in which a court can interfere with the discretion of a taxing officer as set out in Joreth Ltd V Kigano & Associates [2002] eKLR to urge that in the instance case, the court should not interfere with the ward of Kshs.50,000 as instructions fees.

### **Analysis and determination**

- 15 The singular issue for determination is whether the applicant's Chamber Summons application dated 8<sup>th</sup> May, 2025 is merited.
- 16 A perusal of the typed proceedings reveals that for purposes of the appeal, the appellant was required to deposit the entire decretal sum of Kshs.1,475,560 in an interest earning account as security and parties were accorded 21 days a piece to file and exchange submissions and judgment was delivered on 22<sup>nd</sup> January, 2025 as contemplated.
- 17 The Party and Party Bill of costs dated 11<sup>th</sup> March, 2025 of Kshs.383,514.78 was subsequently filed.
- 18 It is discernible that the applicant's counsel relied on the Judgment in determining instruction fees of Kshs.149,591.20 and Getting up of Kshs.49,863.73.
- 19 In a Ruling dated 29<sup>th</sup> April, 2025 the taxing officer awarded Kshs.50,000.00 as instruction fee and no Getting up fees was awarded on account that the trial court did not certify the matter as complex or novel.

These two items precipitated the instant application.

Whether the taxing officer committed an error of principle.

- 20 In Kipkorir Tito & Kiara Advocates V Deposit Protection Fund Board [2005] eKLR, the Court of Appeal held:

The learned Judge like the taxing officer was exercising judicial discretion when he allowed the reference. This Court cannot interfere with the exercise of that discretion unless it is shown that the learned judge acted on the wrong principles of law. The appeal to this Court from the decision of a Judge on reference from a taxing officer is a kin to a second appeal and should be governed by Section 72 (1) of the *Civil Procedure Act*. In our view, such an appeal can only be allowed on any of the three grounds specified in Section 72 (1) of the *Civil Procedure Act*, that is to say, if the decision is contrary to law or some usage having the force of law; or the decision has failed to determine some issue(s) of law or usage having the force of law or where there is a substantial error or defect in the procedure provided by law which may possibly have produced error or defect in the decision on the case upon merits.

- 21 It is apparent from the grounds on which the learned judge allowed the reference that the learned judge was satisfied that the taxing officer had committed grave errors of principle in assessing the costs".

- 22 Similarly, in Republic V Ministry of Agriculture & 2 Others Ex Parte Peter Muchiri W'Njuguna & others [2006] eKLR Ojwang J as he then was) stated:

The court cannot interfere with the taxing officer's decision or taxation unless it is shown that either the decision was based on an error of principle or the effect awarded was manifestly excessive as to justify an interference, that it was based on an error of principle. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors...



23 The taxation of costs is not a mathematical exercise. It is entirely a matter of opinion based on experience. A court will not interfere with an award of a taxing officer particularly where he is an officer of great experience because it thinks the award somewhat too high or too low.

24 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...”.

(See also *Joreth Ltd V Kigano & Associates* (supra).

On instruction fees, the learned taxing officer relied on paragraph 2 which provides for a minimum of Kshs.25,000 as instruction fees but counsel for the applicant submitted that the relevant provision was Schedule 6(1)(b) of the Remuneration Order as the value of the subject matter was known.

25 Rule 6(1)(b) of Schedule 6 to the Advocates Remuneration Order 2014 provides:

|                          |   |   |
|--------------------------|---|---|
| (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 interpleader 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— |   |
| That value exceeds Kshs. | But does not exceed Kshs.   | Kshs.   |
| -                        | 500,000   | 75,000  |
| 500,000                  | 750,000   | 90,000  |
| 750,000                  | 1,000,000   | 120,000   |
| 1,000,000                |   | 20,000,000 fees as for Kshs. 1,000,000 plus an additional 2%. |
| Over 20,000,000          |   | Fees as for 20,000,000 plus an additional 1.5%.               |

26 Since the instant suit was an appeal and the applicants counsel was opposing the same and the value of subject matter was as per the judgment, the provisions of Rule 6(1)(b) of the 6<sup>th</sup> Schedule were the relevant provisions in this instance.

27 The foregoing is fortified by the sentiments of the Court of Appeal in *Peter Muthoka & another V Ocheing & 3 others* supra cited by the applicant’s counsel as follows:

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”.

28 The foregoing sentiments were cited with approval by Olga Sewe J in *Mohansons Food Distributors Ltd & another V Kenya Commercial Bank & another* [2021] eKLR, where the taxing officer had used the award as the basis for determining instruction fees. The court held that there was no error of principle.

29 See also in this regard *Joreth Ltd V Kigano & Associates* (supra) as well as *Ochieng, Onyango, Kibet and Ohaga Advocates V Adopt Light Ltd HC Misc. 729 of 2006*.

30 Granted that the taxing officer did not rely on the Judgment in determining the instruction fees, and relied on an incorrect provision of the *Advocates Remuneration Order, 2014*, it is the finding of the court that an error of principle was committed which vitiated the award of instruction fees to the applicant’s counsel, thus necessitating interference by the court.

31 As regards Getting Up fees of Kshs.49,863.73, it is clear that it was not contested but the taxing officer did not award the same on the premise that the trial judge did not certify the matter as complex or novel.

32 Counsel for the applicant submitted that the appeal was highly contested and was thus entitled to Getting Up fees.

33 From the record, it is clear that nothing much took place from 10<sup>th</sup> June, 2024 when the matter was mentioned by Radido J until 26<sup>th</sup> September, 2024, when the learned Judge gave the parties 21 days a piece to file and exchange submissions, after the Record of Appeal was filed.

34 The applicant’s counsel relied on paragraph 2 of the 6<sup>th</sup> Schedule to the *Remuneration Order* as the basis of the claim for Getting Up fees or preparing for trial yet paragraph 3 addresses appeals and the instant suit was an appeal from the magistrate’s court.

35 Paragraph (3) of the 6<sup>th</sup> Schedule to the *Advocates Remuneration Order 2014*:

Fees for getting Up and appeal provides:

In any appeal to the High Court in which a respondent appears at the hearing of the appeal and which the court at the conclusion of the hearing has certified that in view of the extent or difficulty of the work required to be done subsequent to the lodging of the appeal the case is a proper one for consideration of a Getting Up fee the taxing officer may allow such a fee in addition to the instruction fee and such a fee shall not be less than one-third of the instruction fees.

36 From the taxing officer’s ruling delivered on 29<sup>th</sup> April, 2025, it is discernible that the taxing officer relied on paragraph 3 of the 6<sup>th</sup> Schedule which requires the respondent’s appearance at the hearing and the court certifies the extent or difficult of the work required after the filing of the appeal.

37 From the record, there is no indication that the court gave any certification.

38 In the court’s view, the finding of the taxing officer on the Getting Up fees cannot be faulted and it is affirmed.

39 In conclusion, having found that the taxing officer failed to consider the judgment in determining the subject matter value in the award of instruction fees and relied on an incorrect paragraph of the *Remuneration Order*, the court is justified in interference with the assessment of the applicant’s Party and Party Bill of costs dated 11<sup>th</sup> March, 2025 as regards instruction fees.



- 40 The upshot of the foregoing is that the applicant's Chamber Summons dated 8<sup>th</sup> May, 2025 is partially successful and;
- a. The taxing officer's Ruling dated 29<sup>th</sup> April, 2025 be and is hereby set aside as regards the assessment of instruction fees.
  - b. The Party and Party Bill of Costs dated 11<sup>th</sup> March, 2025 be and is hereby remitted for assessment of the instruction fees by a different taxing officer.
  - c. Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

