



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MERU

MISCELLANEOUS CIVIL APPLICATION NO. 112 OF 2019

THILANGE MUNJURI ACQUILINO.....

.....APPLICANT

VERSUS

BAIMURU INVESTMENTS LIMITED.....1ST

RESPONDENT

MUTUAH CHARLES MUTHURI.....2ND

RESPONDENT

JOEL KINYUA IMITIRA.....3RD

RESPONDENT

MERU EQUATORIAL NUTS LIMITED.....4TH

RESPONDENT

RULING

1. For determination is the Chamber Summons dated 24/4/2025 under paragraph 11 Advocates Remuneration

Order (2014) and schedule 7 of the Advocates Remuneration Order (2014), seeking that:

a) Spent

b) This Honorable court be pleased to enlarge time to allow the applicant to file the reference herein out of time.

c) Spent

d) The ruling delivered on 4th February, 2025 on the respondent's party and party Bill of Costs dated 15/3/2024 and the certificate of taxation assessed at Kshs. 2,851,388 and issued on 11th April 2025 be set aside and taxed afresh by this Honorable Court or in the alternative, the Honorable Court be pleased to remit the Bill of Costs for re-taxation before a different Taxing Officer other than Hon. Susan Ndegwa - SPM.

e) Costs of this application be provided for.

2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of the Applicant, sworn on even date. He averred that this matter was commenced by an application

seeking an injunction to restrain the Respondents from holding an extraordinary meeting for his removal as a director of the 4th Respondent. On 27/4/2020, the court dismissed the application with costs to the Respondents, and the 1st, 2nd and 3rd Respondents filed a party and party bill of costs dated 15/3/2024 for the sum of Ksh. 4,887,929, which he objected to. On 4/2/2025, the taxing officer taxed the bill at Ksh. 2,851,388, and pursuant to paragraph 11 of the Advocates Remuneration Order, he wrote a letter seeking to be supplied with a copy of the ruling together with the reasons for the decision. He subsequently discovered that the ruling had been uploaded on the CTS, save for the reasons, and he wrote another letter on 24/4/2025 asking for the same. He notified the taxing officer of his objection to items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 17 of the bill of costs, and unless the orders sought herein are granted, the Respondents will commence execution thereby occasioning him irreparable damage, thus rendering the reference nugatory.

3. The Respondents opposed the application through a replying affidavit sworn by Mutuah Charles Muthuri, the 2nd Respondent herein and the 4th Respondent's Director on 21/7/2025. He accused the Applicant of approaching the court with unclean hands by unreasonably delaying the filing of the reference, and lauded the taxing master for properly exercising her discretion.
4. The application was canvassed by way of written submissions, which were only filed by counsel for the Applicant. Counsel for the Respondents intimated to the court that they would be entirely relying on their replying affidavit.

Determination

5. Having considered the application, the response and the submissions on record together with the authorities relied on, I find the issue for determination to be whether the taxing officer properly exercised her discretion in taxing the Respondents' Bill of Costs dated 15/3/2024.
6. Paragraph 11 of the Advocates Remuneration Order provides that; ***“(1) Should any party object to the decision of the taxing officer, he may within***

fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection. (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal. (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that

the time sought to be enlarged may have already expired.”

7. The taxation ruling was delivered on 4/2/2025, while the instant application was filed on 24/4/2025. The delay in filing the reference in time is attributable to the taxing officer’s failure to furnish the Applicant with the certified copy of the impugning ruling together with the reasons thereof, as evidence by the letters dated 6/2/2025 and 11/4/2025. In exercise of the unfettered discretion under Paragraph 11 (4) of the Advocates Remuneration Order, I deem it fit to enlarge the time for filing the reference.
8. The basis for interfering with the taxing officer’s discretion was laid down in ***First American Bank of Kenya v Shah and others [2002] 1 E.A***, where the Court (Ringera J) held that; ***“The High Court was not entitled to upset a taxation merely because, in its opinion, the amount awarded was high and it would not interfere with a Taxing Officer’s decision unless the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an interference that it was based on an error***

of principle...Under the Advocates (Remuneration) Order, some of the relevant factors to be considered were the nature and importance of the 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.”

9. In ***Joreth Ltd v Kigano & Associates [2002] 1 E.A. 93***, the Court of Appeal held that; ***“Where the value of the subject matter of a suit could not be determined from the pleadings, judgment or settlement, a taxing master was entitled to use his discretion in assessing the instruction fee and in doing so the factors to be taken into account included the nature and importance of the cause, the interest of the parties, the general conduct of the proceedings, any directions of the trial Judge and all other relevant circumstances. In this instance, the taxing master had followed this course and had not erred in doing so.”***

10. The crux of this matter is the dismissal with costs of the application dated 10/10/2019 brought under the provisions of the Companies Act, seeking inter alia an injunction to restrain the removal of the Applicant as the 4th Respondent's director. The taxing officer awarded instruction fees of Ksh. 1,000,000 without any justification, which was manifestly excessive and erroneous. The getting-up fees of Ksh. 333,333 were conversely erroneous, having been predicated upon wrongly assessed instruction fees.

11. I am satisfied that the taxing officer erred in law and principle in assessing the costs, and there is justification for this court's interference.

12. The upshot from the foregoing analysis is that the chamber summons dated 24/4/2025 is allowed in the following terms:

- i. The ruling on taxation by the taxing officer dated 4th February, 2025, and the resultant certificate of costs are hereby set aside

- ii. The Respondents' Bill of Costs dated 15th March 2024 shall be re-taxed by a taxing officer other than Hon. Susan Ndegwa.
- iii. Costs of the application in the cause.

DATED AND DELIVERED AT MERU THIS 2ND OCTOBER, 2025

S.M. GITHINJI

JUDGE

APPEARANCES:-

Mr. Musesya for the Applicant.

Mr. Mbithi for the Respondent. s