IN THE COURT OF APPEAL

AT NAKURU

(CORAM: WARSAME, J.A. IN CHAMBERS) CIVIL APPLICATION NO. NAK 66 OF 2019 BETWEEN

SAMUEL WAINAINA NJUGUNA.....APPLICANT

AND

THE ATTORNEY GENERAL & 11 OTHERS.....RESPONDENTS

(A taxation reference from the ruling of Hon. Lina Akoth dated 26th June 2025)

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RULING

1. I have before me a reference under Rule 117(1) and (3) of the Court of Appeal Rules, 2022 challenging the decision of the learned Taxing Master delivered on 26th June, 2025, wherein the 5th and 6th Respondents' party and party bill of costs dated 16th March, 2025 was taxed and allowed at Kshs. 547,500/=.
2. The reference, brought by Chamber Summons dated 2nd July, 2025, raises two limbs of challenge: first, that the taxation involves matters of principle; and second, that the bill as taxed is manifestly excessive in the circumstances.
3. The genesis of this matter lies in a constitutional petition

filed at the Environment and Land Court concerning family land

rights. The subject matter involved a parcel of land known as Nyandarua/Passenga/461 measuring approximately 34 acres, sub-divided into portions Nyandarua/Passenga/226 and Nyandarua/Passenga/227.

4. Following the trial court's judgment, the Applicant and other family members filed seven separate appeals; being Civil Appeals No. 234 (NAK 66/2019), 235 (NAK 69/19), 236 (NAK 70/19), 237 (NAK 71/19), 238 (NAK 72/19), 240 (NAK 67/19), 241, and 256 (NAK 65/19) of 2019. These were subsequently consolidated.

5. The consolidated appeals were dismissed with costs to the 5th and 6th Respondents vide judgment dated 9th May, 2024. The successful respondents filed their bill of costs, which the Taxing Master allowed as drawn at Kshs. 547,500/

6. The Applicants, through written submissions dated 21st June, 2025 and supplemented on 28th July, 2025, contend that the Taxing Master failed to properly evaluate their objections to instruction fees and court attendances, that no reasons were given for allowing the bill as drawn contrary to judicial principles, that the matter arose from a constitutional

petition involving family

rights not monetary claims and Instruction fees should be determined under paragraph 1(j) of Schedule VI of the Advocates (Remuneration) Order, with Kshs. 50,000/= being reasonable. They further submit that Court attendance charges for each file before consolidation are unreasonable, Item q (attendance for judgment delivery) should be disallowed as judgment was delivered electronically and that the hefty sum will only enhance bitterness among family members.

7. The Applicants rely on **Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR)** for the proposition that taxing officers must properly exercise discretion and not merely apply mathematical formulas mechanically.

8. The Respondents, in submissions dated 26th July, 2025, have opposed the reference and counter that the standard for interference is high - costs must be "manifestly excessive" as per **Gathuru v Nyamboki [2025] eKLR,** that Seven separate appeals with bulky records were filed, each requiring instructions and perusal and that he consolidation came later and does not in any way negate work done on individual

appeals. They maintained that: the Kshs. 500,000/= instruction fee is reasonable given the

complexity and multiple appeals, all disbursements are verifiable on the e-filing portal and time was spent attending court and waiting for judgment delivery.

9. Rule 117(3) of the Court of Appeal Rules, 2022 provides:

> "*A person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a judge and the judge shall have power to make such deduction or addition as will render the bill reasonable and except as provided in this subrule, there shall be no reference on a question of quantum only.*"

10. The principles governing taxation were well articulated in **Premchad & Another v Quarry Services of East Africa Limited [1972] EA 162**:

> "*It is settled law that on a reference, this Court will not interfere with the decision of the registrar on a taxation except in exceptional cases where it appears that the sum allowed is manifestly excessive or low, having regard to the nature of the suit or proceedings, so as to lead the Court to the conclusion that the taxing officer must have acted on a wrong principle in assessing the costs.*"

11. I have considered the reference, the applicants' replying affidavit and the submissions by both parties. The jurisdiction of this court is clear, a judge will not interfere with the discretion of a taxing

officer unless it is shown that there was an error in principle in assessing the costs. This is because it is generally accepted that questions on quantum of costs are matters which a taxing officer is well versed with and is most competent to address (see **Kipkorir, Tito & Kiara Advocates vs Deposit Protection Fund Board [2005] eKLR**).

12. The fact that seven separate appeals were initially filed cannot be ignored. As correctly submitted by the Respondents, each appeal required separate instructions, perusal of individual records, and preparation of responses before consolidation. The Applicants chose to file multiple appeals, creating additional work for the Respondents. They cannot now benefit from their own litigation strategy by arguing costs should be assessed as if only one appeal existed from the outset.

13. The Applicants' reliance on Kenya Airports Authority(supra) is noted. However, that case emphasizes that taxing officers must exercise discretion guided by prescribed scales, not that they must award minimum fees. Here, the Taxing Master referenced the Premchad principles and stated the items were "drawn to scale and/or are reasonable." While

the reasoning could have

been more elaborate, the absence of elaborate reasons does not, ipso facto, vitiate the award where, as here, the record demonstrates that the taxing officer applied the correct legal principles. The record indicates consideration of relevant factors under the Third Schedule, paragraph 9(2) including the amount involved (family land of 34 acres), nature, importance and difficulty (constitutional issues, family rights), interest of parties (multiple family members) and General conduct (being seven appeals filed and full hearing)

14. Applying this stringent test to the facts before me, I am not persuaded that the instruction fees of Kshs. 500,000/= for defending seven appeals involving constitutional issues, though later consolidated, can be characterized as manifestly excessive. The Applicants suggest Kshs. 50,000/= would suffice, but this ignores the multiplicity of proceedings and complexity involved.

15. Regarding item m (case management at Kshs. 3,000/=) and item n (hearing applications at Kshs. 7,000/=), these were charged for appearances before consolidation. The consolidation order did not retroactively eliminate work

done. On item q (attendance for judgment delivery), while the

Applicants assert judgment was delivered electronically after an adjournment notice, the Respondents maintain time was spent waiting. The fee is not manifestly excessive even if attendance was virtual.

16. On Disbursements, the Applicants have not demonstrated which specific disbursements are disputed. The Respondents assert all receipts are available on the e-filing portal. Without specific challenges to particular disbursements, this ground fails.

17. While I am cognizant that this litigation involves family members and the costs burden may affect family relations, this consideration alone cannot justify reducing properly incurred costs. The Applicants chose to pursue seven separate appeals. Legal costs follow the event, and successful parties are entitled to reasonable reimbursement.

18. The Test for Intervention as stated in Joreth Limited v Kigano & Associates [2002] eKLR and Arthur v Nyeri Electricity Undertaking [1961] EA 497:

> "*Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters with which the*

Taxing Officers

are particularly fitted to deal and the court will intervene only in exceptional cases."

19. Having carefully considered the reference, the submissions by both parties, and the applicable law, I find that the applicants have failed to demonstrate any error in principle or manifest excess in the taxation that would warrant this Court's intervention. The taxing officer properly exercised her discretion in accordance with established principles and the applicable rules.

20. Consequently, this reference is entirely without merit and is hereby dismissed with no orders as to costs.

Dated and delivered at Nakuru this 21st day of October, 2025

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original
Signed
DEPUTY REGISTRAR