**Kinuthia v Joreth Limited & another (Environment & Land Case 461 of 2012) [2025] KEELC 4380 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4380 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT & LAND CASE 461 OF 2012**

**AA OMOLLO, J**

**JUNE 12, 2025**

**BETWEEN**

**HENRY NDUNGU KINUTHIA ..... PLAINTIFF**

**AND**

**JORETH LIMITED ..... 1ST DEFENDANT**

**ACCO LIMITED ..... 2ND DEFENDANT**

**RULING**

1. There are two applications coming up for determination. The first is by the 2nd Defendant who filed Chamber summons dated 8th November 2024 supported by an affidavit sworn by John Peter Mbue Mwangi on the same date seeking for the following orders;
    1. Spent
    2. That there be a stay of execution of the Taxing Officer's Ruling dated 31st October 2024 pending the hearing and determination of this Application interparties.
    3. That this Honourable Court be pleased to set aside the Taxing Officer's Ruling delivered on 31st October,2024.
    4. That this Honourable Court be pleased to refer the matter for fresh taxation by another Taxing Officer.
    5. That the cost of this Application be provided for.
2. The application is brought on the grounds inter alia, that on 31st October 2024, the Deputy Registrar delivered a ruling on the Plaintiff's Bill of Costs dated 14th March 2024, taxing the total amount at Kenya Shillings 800,130/=. Central to the ruling was the instruction fee, which was taxed at Kenya

Shillings 650,000/= and which forms the primary reason of objecting to the ruling. It is stated to be excessive in light of the value of the subject matter, set at Kenya Shillings 1,800,000/=.

3. The 2nd Defendant avers that according to Schedule 6 of the Advocates Remuneration Order, a more reasonable instruction fee would have been approximately Kenya Shillings 136,000/=. He asserts that the Deputy Registrar failed to adequately consider relevant factors, including the conduct of the parties and the specific circumstances that led to the legal proceedings. That the 2nd Defendant bore no fault warranting a costs award against it, and that responsibility for costs should have rested solely with the 1st Defendant.

4. Further, that a written notice of objection, detailing the contested items in the Bill of Costs, was issued on 5th November 2024 and no sufficient justification has been provided to support the ruling noting that the taxation decision is unjust and prejudicial to the 2nd Defendant.

5. In response to the filed application, the Plaintiff filed a replying affidavit sworn by Henry Ndungu Kinuthia on 14th February 2025 agreeing to the grant of an order to setting aside of the Taxing Officer's ruling dated 31/10/2024 but on different grounds. He disagrees with the 2nd Defendant's objection to the taxed instruction fee, particularly the claim that the subject property's value should be taken as Kshs. 1,800,000/=.

6. The Plaintiff stated that the figure proposed by the 2nd Defendant in their submissions dated 16th October 2024 was based on the transfer document, which reflected the transaction price as Ksh.1,800,000 that was grossly undervalued, fraudulent and which a position supported by the judgment of Justice S. Okong'o. The Plaintiff highlighted that a valuation report dated 25th September 2013, filed in court, which valued the property at Kshs. 50,500,000/=. This is the figure he adopted when preparing the party & party bill of costs.

7. The second application filed by the Plaintiff is dated 17th January 2025 and supported by his affidavit sworn on the same date seeking for the following orders;

    1. That this Honourable Court be pleased to set aside the Taxing Officer's Ruling delivered on 31st October, 2024.

    2. That this Honourable Court be pleased to refer the matter for fresh taxation by another Taxing Officer on the Amended Party & Party Bill of Costs dated 18th October, 2024.

    3. That the cost of this Application be provided for.

8. The chamber summons was based on the grounds that on 22nd October 2024 the Plaintiff had filed a Notice of Motion Application dated 18/10/2024 seeking to amend his Party & Party Bill of Costs. Despite the said Notice of Motion having been filed prior to the Ruling; the Taxing Officer failed to consider the said application.

9. That further in the Ruling of the Taxing Officer delivered on 31st October 2024, she failed to give reasons as to why the said application was not considered despite being alive to the pending application. The Plaintiff/Applicant stated that failure to consider his application to amend his Party & Party Bill of Costs deprived him costs rightfully due to him thus causing him to suffer loss and damage.

10. In response, the 2nd Defendant filed a preliminary objection dated 14th February 2025 on the grounds that upon delivering its' Ruling on Taxation of the Plaintiff's Bill of Costs dated 14th March, 2024, it became functus officio. Therefore, this court ought not to entertain the Plaintiff's attempt to introduce a new Bill of Costs for Taxation. It avers the application is incurably defective and would be a travesty of Justice if this Court entertains it.

**Submissions.**

11. The 2nd Defendant filed submissions dated 16th February 2025 in opposition to the Taxing Officer's Ruling dated 31st October, 2024 and in support of their Preliminary Objection dated 14th February, 2025. They argue that the instruction fee of Ksh.650,000/= is excessive and inconsistent with the ascertainable value of the subject matter, which they assert is Kshs. 1,800,000/=, based on the purchase price paid by them as reflected in the court judgment.

12. Relying on Beloico Holdings Ltd v Gention AG & Masai Mara Wilderness Lodge Ltd [2016] KEELC 710 and Joreth Ltd v Kigano & Associates (Civil Appeal No. 66 of 1999), the 2nd Defendant argues that the taxing officer failed to account for relevant factors such as the conduct of the parties, the circumstances leading to the suit, and the lack of fault attributed to the 2nd Defendant.

13. That given the inconsistencies in the property valuation ranging from Kshs. 1.8 million to Kshs. 70 million, they urge the court should adopt the purchase price of Kshs. 1.8 million as the value for taxation purposes justifying a lower instruction fee of Kshs. 136,000/=. Additionally, the 2nd Defendant supports their Preliminary Objection dated 14th February 2025, asserting that the court is functus officio with respect to the Plaintiff's Bill of Costs, having already ruled on it.

14. Further, they argue that the Plaintiff's subsequent Chamber Summons dated 17th January 2025, which attempts to introduce a fresh Bill of Costs, violates the principle of finality in judicial decisions. In support, they cited Telkom Kenya Ltd v John Ochanda [2014] eKLR and Raila Odinga & 2 Others v IEBC & 3 Others [2013] eKLR, to submit that once a decision has been made by a competent authority, that authority cannot revisit the matter.

15. The Plaintiff filed submissions dated 17th February 2025 and the 1st Defendant filed two submissions both dated 17th March 2025. As already pleaded, the Plaintiff submitted that he seeks to set aside the Taxing Officer's ruling dated 31st October 2024 to allow for hearing of his application dated 22.10.2024 on merits. He however opposes the 2nd Defendant's application. He cited the case of Masore Nyang'au & Co. Advocates v Kensalt Ltd [2019] Eklr, to emphasize that courts may rely on valuation reports or other documents to determine the value of the subject matter for purposes of taxation.

16. He submitted that the omission to hear his application resulted in key items like instruction and getting up fees being disregarded and in support cited the case of Diamond Trust Bank Kenya Ltd v Garex (K) Ltd & 2 others [2014] Eklr, where the court affirmed that amendments to a Bill of Costs should ordinarily be allowed unless prejudice is shown.

17. The 1st Defendant submitted on the main issues for determination being whether the applications dated 8th November 2024 and 17th January 2025 are merited. It contends that the instruction fees of Kshs. 650,000 awarded by the Taxing Officer was excessive, considering the value of the subject property was placed at Kshs. 1,800,000 as reflected in the pleadings.

18. Citing Joreth Limited v Kigano & Associates [2002] KECA 153 (KLR), the 1st Defendant submits that the value of the subject matter for purposes of taxation should be derived from pleadings, judgment, or settlement, and where this is not possible, the taxing officer may exercise discretion based on the case's complexity and conduct. Consequently, its their argument that the applicable instruction fees should be Kshs. 89,000, as provided under Schedule 6 of the Advocates (Remuneration) Order.

19. On the liability to pay costs, the 1st Defendant maintains that the court's judgment of 13th February 2020 imposed joint and several liability on both 1st and 2nd Defendants. Relying on the case of Dubai Electronics v Total Kenya & 2 Others and Africa Planning & Design Consultants v Sololo Outlets Ltd

(2018) eKLR, where courts affirmed that in joint and several liability, each party is fully responsible for the entire debt or cost unless stated otherwise. Therefore, the 2nd Defendant cannot avoid costs simply because fault was not individually attributed to them.

20. Regarding the application dated 17th January 2025, the 1st Defendant argues it should be dismissed because the Plaintiff's move to amend the bill of costs came just days before the scheduled ruling date and without sufficient explanation for the delay.

21. It stated that Rule 71 of the Advocates Remuneration Order allows amendments with court's leave, and cited the case of Diamond Trust Bank Kenya Ltd(supra) and Unilever Kenya Ltd v Commissioner of Income Tax (2003) eKLR, which emphasized timely filing and absence of prejudice. The 1st Defendant argues that the Plaintiff's delay is inexcusable and prejudicial, thus constituting abuse of court process.

22. It also cited the decision in Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR and Njuguna v Karanja [2024] KEHC 13033 (KLR), to submit that no principle of taxation was violated to justify interference with the Taxing Officer's discretion and urges the court to dismiss the application with costs to the Respondents.

**Analysis and Determination:**

23. I have read the two applications filed by the 2nd Defendant and the Plaintiff herein and the responses thereof and considered the submissions filed by the parties. The issues for determination are as framed by the 2nd Defendant; whether there is merit in the two applications with both seeking to set aside the taxing master's decision.

24. The principles upon which the court exercises jurisdiction in a reference are well settled. In the case of Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board Nairobi [2005] eKLR, the Court of Appeal held that;

> " On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs. In Arthur v Nyeri Electricity Undertaking [1961] EA 497, the predecessor of this Court said at page 492 paragraph I:
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> '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 interfere only in exceptional cases".

25. The Plaintiff sought the Taxing Officer's ruling be set aside on the ground that the Taxing officer failed to consider his application to amend the Bill of Cost while the 2nd Defendant objected to said ruling on three grounds; that the instruction fee set at Kenya Shillings 650,000/= is excessive because the value of the subject matter is Kenya Shillings 1,800,000/= thus as per Schedule 6 of the Advocates Remuneration Order, a more reasonable instruction fee would be Kenya Shillings 136,000/=, that the Deputy Registrar failed to adequately consider relevant factors, including the conduct of the parties and the specific circumstances that led to the legal proceedings, that the 2nd Defendant bore no fault warranting a costs award against it and no sufficient justification was provided to support the ruling delivered.

26. On the ground that no sufficient justification was provided by the Taxing Officer to support the ruling delivered, courts have held that where the ruling contains reasons, it does not make sense for a party to

seek for reasons simply to appear to comply with Paragraph 11 (1) of the Advocates (Remuneration) Order.

27. In the case of Evans Thiga Gaturu Advocate v Kenya Commercial Bank Limited [2012] eKLR, the G.V. Odunga (as he was then), had this to say: -

> "In most cases the court is aware that the taxing officers in their decisions on taxation do deliver comprehensive ruling which are self-contained thus obviating the necessity to furnish fresh reasons thereafter. In such circumstances, it would be foolhardy to expect the taxing officer to redraft another "ruling" containing reasons ...however, where there are reasons on the face of the decision, it would be futile to expect the taxing to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring the reference. Otherwise, mere adherence to the procedure may lead to absurd results if the advocate was to continue waiting for the reasons ...I do not see the reason why the taxing officer at the time of making his decision do so with reasons therefore."

28. On the issue that the instruction fee awarded is excessive, Judicial pronouncements including the Court of Appeal decision in Joreth Limited V Kigano & Associates, [2002] eKLR and Peter Muthoka & Another V Ochieng & 3 others, [2019] eKLR, emphasize the fact that instruction fees are principally based on the value of the subject matter. The value of the subject matter should be ascertained from the pleadings, judgment or any settlement, depending on the stage at which the fees are being taxed.

29. I have looked at paragraph 5,6,7,8,9 and 10 of the ruling by the taxing master where she addresses herself to the proper way to determine the value of the subject matter for purposes of taxation. The Learned taxing master has explained that the pleadings did not provide for a subject value however the Plaintiff provided a valuation report for the suit property returning a value at for Kshs.50,500,000/-. In the court record, the valuer gave evidence as PW2 and this evidence is captured in the body of the judgement.

30. Therefore, the value could be ascertained from the judgement. I find no fault on the part of the taxing master adopting the sum of Kshs 50,500,000 as the value of the subject matter.

31. The second limb challenging the taxation was whether the taxing master considered the complexity and history of the matter in awarding the impugned sum of the instructions fee. I have perused ruling and find that she indeed considered these factors as set out in paragraphs 5 and 9 of the ruling. For instance, the taxing master stated that the plaintiff had to prosecute his suit and also defend the counter-claim. The 2nd Defendant does not particularise what was left out and its argument sounds general making the challenge meritless.

32. Lastly, the 2nd Defendant argues that it was not supposed to be ordered to pay costs. This was not a question for the taxing master to consider as the order for payment of costs was made in the judgement. If the 2nd Defendant was unhappy with that decision, its recourse lie elsewhere not before the taxing master.

33. The Plaintiff wants the ruling set aside because it closed him from amending his bill which application the Defendants oppose on the grounds that upon delivering its' Ruling on Taxation, the court became functus officio. Going by the date of the Plaintiff's motion seeking for amendment of the Bill of Costs, it was filed after the date set for Ruling but before the determination was made.

34. In accordance with Rule 71 of the Advocates (Remuneration) Order and by analogy of a suit, which includes a Bill of Costs within the meaning of the word suit under section 2 of the Civil Procedure

Rules as held in Kirimi & another v Standard Digital & another (Civil Case 9 of 2019) [2023] KEHC 25070 (KLR) (3 November 2023), no statutory limitation period is imposed, provided the application is made before taxation is concluded. Hence the argument by the Respondents that the taxing master was functus officio when the application was filed is not correct.

35. The 1st Defendant submitted that the application for setting aside was filed after undue delay and it is my finding that such argument should be presented to the court hearing the impugned application not the one seeking to set aside the taxation. The Plaintiff was within the law to seek to heard on the merit of his application to amend the bill before the conclusion on the taxation. This can only be achieved if the Ruling of 31.10.2024 is set aside.

36. In conclusion, this court makes a finding that the taxation dated 31.10.2024 is set aside not on the basis of the award of excessive instructions fee but to make room for determination of the application dated 22.10.24. In the end the following orders are made:

    a. The 2nd Defendant's application dated 8.11. 2024 is dismissed with costs to the Plaintiff.

    b. The Plaintiff's application dated 17.01.2025 is allowed with an order that each party bears their costs.

**DATED, SIGNED & DELIVERED AT NAIROBI THIS 12TH DAY OF JUNE, 2025**

**A. OMOLLO**

**JUDGE**