



**Mwangi (Sued in her capacity as the personal representative of the Estate of Japheth Arthur Mwangi Kiurire) v Tapasian (Environment and Land Miscellaneous Case E217 of 2024) [2025] KEELC 7102 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7102 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND MISCELLANEOUS CASE E217 OF 2024**  
**CG MBOGO, J**  
**OCTOBER 21, 2025**

**BETWEEN**

**BEATRICE WACUKA MWANGI (SUED IN HER CAPACITY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF JAPHETH ARTHUR MWANGI KIURIRE) ..... APPLICANT**

**AND**

**SALAASH MOKOPE OLE TAPASIAN ..... RESPONDENT**

**RULING**

1. Before this court for determination is the chamber summons dated 15<sup>th</sup> October, 2024 filed by the applicant, seeking the following orders:-
  1. That the honourable court be pleased to vacate and set aside the ruling of the Honourable Tessy Marienga Deputy Registrar dated and delivered on 20<sup>th</sup> September, 2024 and the resultant certificate of taxation dated 15<sup>th</sup> October, 2024 in so far as the same relates to the reasoning and determination pertaining taxation of the bill of costs dated 21.3.2024 and the taxation of items 1,2,32,55,56,57,58,59 of the applicant's bill of costs dated 21.3.2024.
  2. That the decision of the taxing officer as evidenced in the ruling delivered on 20<sup>th</sup> September 2024 and the certificate of taxation dated 15<sup>th</sup> October 2024 with respect to items numbers 1,2,32,55,56,57,58,59 in the bill of costs dated 21.3.2024 be taxed afresh by this honourable court.
  3. That in the alternative, the honourable court be pleased to order that the respondent's bill of costs with respect to items numbers 1,2,32,55,56,57,58 and 59 be remitted back for taxation afresh by another taxing master.
  4. That the costs of this application be provided for.



2. The application is premised on the grounds on its face. It is further supported by the affidavit of Julius Mwangi Mugo, the learned counsel on record for the applicant sworn on even date. The learned counsel deposed that the taxing officer erred on the following grounds:-
  - a. The taxing master did not take into account the care and labour required, the number and length of the papers perused, the nature and importance of the matter and the time employed in the matter the same having been in court for over twenty years.
  - b. The taxing master did not take into account the value of the subject matter involved being prime land located in Karen, Nairobi County and measuring 26.4 acres. The taxing master ought to have taken judicial notice that half an acre of land in Karen is KShs. 30,000,000/- and an acre is between 50,000,000 to KShs. 60,000,000/-.
  - c. Despite the taxing master conceding the time taken, bulky pleadings and transfer of the file between Nairobi and Kajjado she awarded the applicant a successful litigant an inordinately low amount hence failing to fairly and justly reimburse her for the costs incurred in defending the matter for over 20 years.
  - d. The taxing master failed to take into account the amount conceded by the respondent who had submitted for the Bill to be allowed at Kshs.31,635,789 as against the applicant's 32,226,122.
  - e. The taxation in respect of items 32, 55,56,57,585,59 was not in line with the provisions of Schedule 6 Clause 7 (d) of the Advocates Remuneration (Amendment) Order, 2014.
  - f. The taxing master applied the wrong principles in taxing the applicant's Bill of costs dated 21.3.2024.
3. The application was opposed vide the replying affidavit of Beverline Alubi, the learned counsel for the respondent sworn on 4<sup>th</sup> March, 2025. The learned counsel deposed that instruction fees should not be based on a figure quoted without corresponding proof of the value of the subject of the suit. She deposed that the taxing officer exercised her discretion in line with the set principles to arrive at a reasonable sum after the respondent pleaded with the court to identify the actual market value of the subject matter which was not ascertainable.
4. The learned counsel further deposed that the suit was filed in 2003 but the hearing only commenced in the year 2022 and that the applicant cannot claim costs incurred in the matter for 20 years. Further, that item 59 of the bill was taxed at ordinary scale of 2,300/- as the hearing did not take more than an hour. That item 58 was taxed at the ordinary scale of Kshs.2,300/- as the matter was adjourned and did not proceed for proceed. She deposed that the same was to be taxed at Kshs.1,100/- and not 2,300/-. Further, that item 57 was taxed according to scale at Kshs.5,000/- as the matter did not take the whole day. The same was the case for item 32 which was taxed at Kshs.500/-.
5. The learned counsel for the applicant filed a further affidavit sworn on 10<sup>th</sup> March, 2025. The learned counsel deposed that the very least that the taxing officer could do with items 1 and 2 of the bill of costs was either adopt the amount expressly offered/conceded or admitted and address the sums which formed the difference between the two items. He deposed that the taxing officer ignored to consider their submissions, as there is no mention of the same in the ruling.
6. The learned counsel for the respondent filed a supplementary affidavit sworn on 17<sup>th</sup> March, 2025 in response thereto. The learned counsel deposed that the complexity of the matter has not been demonstrated, and that the taxing officer cannot be faulted for using her discretion in assessing the



instruction fees as she did. Further, that the applicant has not denied that the value of the subject matter is uncertain in their pleadings, and urged the court not to disturb the finding of the taxing officer.

7. The application was canvassed by way of written submissions. The applicant filed her written submissions dated 17<sup>th</sup> April, 2025 where she raised two issues for determination as follows:-
  - a. Whether the deputy registrar applied the wrong principles in taxing the applicant's bill of costs dated 21.3.2024.
  - b. Whether items number 1,2,32,55,56,57,58,59 in the bill of costs dated 21.3.2024 should be taxed afresh by this honourable court in the alternative be remitted back for taxation afresh by another taxing master.
8. On the first issue, the applicant submitted that the taxing officer failed to consider the value of the subject matter, and ought to have called for a valuation report. Reliance was placed in the cases of *Mwiti & Another (Civil Case E002 of 2022) [2023] KEHC 24906 (KLR) (8 November 2023) (Ruling)*, and *Kaira Nabasenge t/a Kutto & Kaira Nabasenge Advocates v Sum (Environment and Land Miscellaneous Application E016 of 2023 [2023] KEELC 21137 (KLR) (31 October 2023) (Ruling)*.
9. The applicant further submitted that the taxing master conceded the time taken and the subsequent transfer of the file between Nairobi and Kajiado and awarded the applicant an inordinately low amount hence failing to fairly and justly reimburse her for the costs incurred.
10. On the second issue, the applicant submitted that the respondent has not raised an issue with items 1 and 2 of the bill of costs, and urged the court to set aside the ruling of the taxing master. In conclusion, the applicant submitted that the taxing officer erred in principle by failing to consider the value of the subject matter that ought to have informed the assessment of the costs.
11. The respondent filed his written submissions dated 7<sup>th</sup> May, 2025 when he raised three issues for determination as listed below:-
  - a. Whether the Hon. Deputy Registrar applied the correct principles under the Advocate Remuneration Order in taxing the Bill of costs dated 21st March, 2024.
  - b. Whether the items 1, 2, 32, 55, 56, 57, 58 and 59 should be taxed afresh.
  - c. Who should bear the costs of this reference.
12. On the first issue, the respondent submitted that the applicant quoted figures in the Bill of Costs without reference from the pleadings, judgment, settlement or valuation report. While relying on the cases of *Premchand Raichand Ltd v Quarry Services of East Africa Ltd [1972] EA 16* and *Otieno Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR*, the respondent submitted that the applicant cannot persuade the court to adopt an arbitrary figure, and that the same must be shown from the pleadings. To further buttress on this issue, the respondent relied on the cases *Joreth Ltd v Kigano & Associates [2002] 1 E.A 92*, *Prof Tom Ojienda & Associates v City Council of Nairobi (Miscellaneous Application E022 of 2021) [2024] KEHC 16499 (KLR) (Constitutional and Human Rights) (31 December 2024)* and *Republic v Minister of Agriculture & 2 others ex parte Samuel Muchiri W'njuguna [2005] KEHC 2079 (KLR)*. The respondent further submitted that all procedural requirements were met and no irregularity or misdirection is demonstrated.
13. On the second and third issues, the respondents submitted that items 1, 2, 32, 55, 56, 57, 58 and 59 were taxed according to Schedule 6 of the Remuneration Order. He urged the court to dismiss the application with costs.



14. I have considered the chambers summons, the responses thereto and the written submissions filed by both parties. In my view, the issue for determination is whether the application has merit.
15. 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."
16. In applying the above principles to the circumstances of this case, the applicant filed the party and party bill of costs dated 21<sup>st</sup> March, 2024 seeking costs amounting to Kshs.32,226,122/-. Being dissatisfied with the ruling by the taxing officer delivered on 20<sup>th</sup> September, 2024, the applicant seeks that the ruling is set aside based on the fact that the taxing officer did not consider the complexity of the issues, and that the taxation of items 1, 2, 32, 55, 56, 57, 58 and 59 were not in line with the provisions of Schedule 6 Clause 7(d) of the Advocates Remuneration (Amendment) Order 2014.
17. In opposition, the respondent contended that the bill of costs was taxed according to Schedule 6, and that there is no need to interfere with the said ruling. The respondent contended that the taxing officer could not use an arbitrary figure to calculate instruction fees, and that the same ought to have been referred by the pleadings, judgment or valuation report. In response, the applicant argued that the taxing officer should instead have called for a valuation report to arrive at a fair determination.
18. I have carefully perused the pleadings in the taxation proceedings before the taxing officer, and the impugned ruling. While the applicant argues that half an acre piece of land in Karen is valued at Kshs.30,000,000/-, the pleadings in this matter do not refer to the same. In justifying items 1 and 2 of the Bill of Costs, the applicant ought to have supplied evidence to demonstrate the arrival of the figures. In this case, it was not done. Instead, the applicant expects the court to look at the item that was conceded by the respondent. In other words, the applicant is informing the court that the taxing officer ought to have picked item 1 or 2 whichever was the case. Unfortunately, that is not the practice of the court in taxation proceedings. It is incumbent upon the applicant to prove its case to a reasonable degree to enable the court find in her favour.
19. In the absence of any evidence, it is impossible to expect the taxing officer to fill a litigant's gap in their case and take a risky assumption. There being no evidence to substantiate the value of the subject



matter, the taxing officer properly exercised her discretion in awarding instruction fees. With regard to items 32, 55, 56, 57, 58 and 59, the same were taxed according to scale and supported by the court file.

20. From the above, and in my view, I see no reason to disturb the findings by the taxing officer. The chamber summons dated 15<sup>th</sup> October, 2024 lacks merit, and it is hereby dismissed with no orders as to costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 21<sup>st</sup> DAY OF OCTOBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**21/10/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Alubi for the Respondent

Ms. Chepng'eno for the Objector/Applicant

