



**Wamae & 2 others v Kamau (Miscellaneous Application  
E023 of 2025) [2025] KEELC 6576 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6576 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
MISCELLANEOUS APPLICATION E023 OF 2025**

**JM KAMAU, J  
OCTOBER 1, 2025**

**BETWEEN**

**LYDIA NYAGUTHII WAMAE ..... 1<sup>ST</sup> APPLICANT**

**JOSEPH WANGAI WAMAE ..... 2<sup>ND</sup> APPLICANT**

**RUTH WANJIRU WAMAE ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MOSES KANYINGI KAMAU ..... RESPONDENT**

**RULING**

1. The Applicant's Advocate – Client Bill of Costs dated 22<sup>nd</sup> July 2024 arose from legal services rendered to the Respondent in Nyeri Elc Case No.170 Of 2014 Lydia Nyaguthii Wamae & 2 others vs Moses Kanyingi Kamau. The said bill of costs was on 15<sup>th</sup> April 2025 taxed at Kshs 512,195.00. Being dissatisfied with the taxing officer's decision, the Applicant filed the Chamber Summons dated 11<sup>th</sup> March 2025 seeking the following orders:
  1. That the taxing master's order dated 09.04.2025 be set aside and the Bill be taxed afresh.
  2. That costs of this application be provided for.
2. In support of the Application, the Applicants' Advocate swore an affidavit, in which he deposes that the Party and party bill of costs dated 22<sup>nd</sup> July 2024 was not taxed in accordance with the Advocates Remuneration(Amended) Order 2014, Schedule 6, especially on item 1-instruction fees, considering the value of the subject matter as indicated in the valuation report produced as an exhibit.
3. He argued that the value of the subject land is unknown as it was neither mentioned in the pleadings nor determined by the Court and the value alleged by the Defendant is unreliable as both parties were not involved in the valuation.



4. Items 5 and 9 were also deposited not to have been taxed in accordance with Schedule 6(4) of the Advocates Remuneration Order. Item 22 was highlighted as costs of adjournment which the defendant did not pay and did not avail proof of payment.
5. Regarding items 23 and 24, Counsel deposed that attendance was only for half a day and that they should be taxed at Ksh.5,000/=.
6. Counsel also deposed that the taxing master erroneously stated that there was no objection to the bill of costs but the same was uploaded online, but not placed in the court file. Therefore, she failed to consider the Plaintiff's objection filed on 5<sup>th</sup> February 2025.

#### **The Applicants' written submissions**

7. The Counsel for the Applicants relied wholly on the on their supporting affidavit, highlighting the mentioned items in the bill of costs.
8. Counsel relied on the authority in the case of Kipkorir Titoo & Kiara Advocates vs Deposit Protection Fund Board(2005)eKLR where it was held that if a taxing master applies the wrong formula in assessing costs, then it is an error in principle.
9. Their submission is that injustice has been visited upon the Applicants, as the Bill of costs is highly inflated and the taxing master failed to consider the Plaintiff's objection dated 03/02/2025 and filed in court on 05/02/2025.
10. The Respondent did not file a response to the application.

#### **Analysis and Determination**

11. The Applicant challenges the Deputy Registrar's taxation of the Respondent's Bill of Costs dated 22<sup>nd</sup> July 2024, that was taxed at taxed at Kshs 512,195.00 on 15<sup>th</sup> April 2025
12. The Applicant raises issues mainly with Item 1 which is the instruction fee, Items 5 and 9, Item 22, 23 and 24.
13. The subject matter of the original suit, ELC 176 of 2014 was L.R 12315 Nanyuki, which the Plaintiff/Applicant claimed that the defendant has trespassed upon and sought for vacant possession of the same from the defendant. The suit was dismissed by J.O. Olola J on 7<sup>th</sup> June 2024, with costs to the Defendant, which gave rise to the aforesaid party and party bill of costs under consideration. I note that apart from the claim of trespass, there was an ownership dispute as well.
14. The Court of Appeal in the famous case of Joreth Limited v Kigano & Associates [2002] eKLR. held that the value of the subject matter for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement or settlement (if such be the case) but if the same is not so ascertainable the Taxing Officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.
15. There is a Report and Valuation over the suit property on record prepared by Bakiam Consult Valuers Limited that assessed the value of the property and the structures thereon at Ksh.15,000,000 shilings. This should be the value of the subject matter to be taxed.
16. Schedule 6 part 1 of the Advocates Remuneration Order provides for the scale of preparing a party and party bill of costs. It states that fees for a subject value that is between KES.1,000,000-20,000,000



is calculated as fees as for Kshs.1,000,000 plus an additional 2%. Meaning KES.120,000 being that the matter was defended plus an additional 2% of the figure, which is within the KES.400,000 that was taxed. The Court finds no fault with the taxation of Item 1 of the Bill of Costs.

17. Counsel for the Applicant also raised issue with Items 5 and 9, which are drawing and filing Notice of Motion Applications dated 19<sup>th</sup> September 2014 and defending application dated 18<sup>th</sup> May 2018, both taxed at KES.5,000, with an addition of drawing the application at 1,100, filing fees of 500 and service upon plaintiff's advocates at Ksh.1,400.
18. The Advocates Remuneration order does not provide for instruction fees for an application, therefore Items 5(1) and 9(1) at Ksh.5000 are taxed off, leaving the drawing fees and others. As for filing fees and service, the receipts of the same have not been provided but follow in the ordinary business of the court therefore can be allowed.
19. Item 22 was contended to be costs of adjournment which the defendant did not pay and did not avail proof of payment. The same indicates that it was for court attendance for Defence hearing on 31.05.2022 which aborted, that was taxed at Ksh.1,900. I understand this to be attendance fee for half an hour or less under Schedule 6(7) of the Advocates Remuneration Order and not the Plaintiff/Applicant's counsel's fees that was ordered by J.O.Olola J on 31<sup>st</sup> May 2022 to be paid. Therefore, the attendance costs still stands.
20. Regarding items 23 and 24, Counsel deposed that attendance was only for half a day and that they should be taxed at Ksh.5,000/=. I note from the record that on the said dates of 20<sup>th</sup> March 2023 and 5<sup>th</sup> July 2023, the Defence case was extensively heard and thus suffices as a full day hearing, even though counsel may not have spent the entire day in court.
30. The Court cites with approval the case of Republic vs. Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others Ojwang, J (as he then was) expressed himself inter alia as follows:-

The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; 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.... The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle."

31. Based on the above the court finds as follows;

That the decision of the taxing officer dated 9<sup>th</sup> April 2025 on the taxation of the respondent's Bill of Costs dated 22<sup>nd</sup> July 2024 be and is hereby set aside and/or varied to a limited extent, that items 5(1) at Ksh.5000/= as instruction fees to file Notice of Motion Application dated 19<sup>th</sup> September 2014 and 9(1) at Ksh.5,000/= as instruction fees to defend the Application dated 18<sup>th</sup> May 2018 are taxed off.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 1<sup>ST</sup> DAY OF OCTOBER 2025**

**HON. MUGO KAMAU**

**JUDGE**

In the presence of:

Ms Maina H/B for Mr. Ng'ang'a.



N/A for the Respondent

