



**Menjo v Mokoosio & another (Environment and Land Case
E075 of 2021) [2025] KEELC 5764 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5764 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E075 OF 2021**

MD MWANGI, J

JULY 31, 2025

BETWEEN

REHEMA CHEPKEMBOI MENJO PLAINTIFF

AND

MARTIN L. MOKOOSIO 1ST DEFENDANT

HIMS HOME LIMITED 2ND DEFENDANT

RULING

(In respect of the Plaintiff Chamber Summons Application dated 19th July,2024 and Notice of Motion Application dated 11th December,2024)

Background

1. Before this court for determination are the following two Applications filed by the Plaintiff:
 - A. Chamber Summon dated 19th July,2024
2. By way of a Chamber Summons Application dated 14th July pursuant to Section 51(2) of the *Advocates Act*, Rule 11 of the Advocates Remuneration Order, the said plaintiff sought for orders that: -
 - a. This honorable court be pleased to set aside the decision and Ruling of Taxing Officer delivered on 10th July,2024 by the Deputy Registrar, Hon. Jane Kamau on the 1st and 2nd Respondents Party and Party Bills of Costs dated 2nd March,2023 together with all consequential orders and subsequently thereto, the orders of 19th July, 2024.
 - b. This honorable court be pleased to issue an order for the 1st and 2nd Respondents' Bills of Costs dated 2nd March, 2023 to be remitted to a different Taxing Officer for fresh taxation, other than Hon. Jane Kamua.



- c. This honorable court be pleased to make any further orders as it deems fit.
 - d. Costs of this Application be provided for.
3. The Application is premised on grounds enumerated in the application as well as Rehema Chepkemboi Menjo affidavits sworn on 19th July, 2024 and 2nd August,2024. She states that on 22nd November,2021, the court issued injunction orders against the Respondents pending interparty hearing following institution of a Plaintiff and Certificate of Urgency dated 16th November, 2021 on 17th November, 2021. Although the Respondents never appeared during the interparty hearing, they responded to the Application by way of a Replying Affidavit and Preliminary Objection dated 25th April, 2022 challenging the jurisdiction of the court based on Clause 35 of the Sale Agreement dated 16th July, 2021.
 4. The Plaintiff/Applicant asserts that on 26th January, 2023, the Defendants were awarded costs after she withdrew the suit through a Notice of Withdrawal dated 7th November, 2022. According to the Applicant, neither the suit nor the Preliminary Objection proceeded to full hearing. She further asserts that she opposed the 1st and 2nd Respondents party and party Bills of Costs dated 2nd March, 2023 amounting to Ksh.778,796 and Ksh.778,940 through grounds of opposition dated 9th May, 2023.
 5. The Applicant further contends that she objected the Taxing Master’s Ruling delivered on 10th July,2024 taxing the Bills of Costs at Ksh.750,165/= through a letter dated 15th July,2024. According to the deponent, given that the Taxing Master erroneously exercised her judicial discretion by awarding unjustifiable excessive costs, this court ought to interfere with the Ruling.

1st and 2nd Defendants/Respondents case

6. The 2nd Defendants/Respondents replied to the Chamber Summons application through Angela Mulwa’s Replying Affidavit sworn on 23rd September, 2024. She asserts that the issues raised by the Applicant were raised in her application dated 9th May,2023 wherein she sought review of costs granted to the Defendants and the same was dismissed through a Ruling delivered on 26th October, 2023 by Lady Justice Komingoi.
7. It is stated that the Taxing Master rightfully taxed the Bills at Ksh.750,165/= from Ksh.1,557,736/= in accordance with Schedule 6A Paragraphs 1(a) of the Advocates Remuneration Order 2014. This amount excluded “getting up” fees because no defence was filed. Further, the Taxing Master took into account the relevant taxation principles during taxation because the Applicant has not laid out any misapplication. Accordingly, the court is implored not to countenance the Plaintiff avoidance of paying taxed costs.
8. According to the deponent, the Application is an abuse of court process because there is no legal or factual basis to warrant re-assessment and fresh taxation of Bills of Costs. Further, no sufficient grounds have been demonstrated to warrant interference of the Taxing Master’s decision.
9. The defendant contended that an order of stay of execution should be granted on condition that the Plaintiff deposits Ksh.750,165/= in an interest earning bank account jointly held by the Plaintiff and Respondents counsel within 14 days.

B. Notice of Motion dated 11th December,2024

10. The Notice of Motion dated 11th December, 2024 brought pursuant to Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules seeks for the following orders;



- a. That this Honorable Court be pleased to review the orders issued on 9th December, 2024 to allow the sum of Kenya Shillings Three Hundred and Seventy-five Thousand {Ksh.375,000/=} be deposited with the honorable court pending the hearing and determination of the Reference dated 19th July, 2024.
 - b. That in the alternative the court be pleased to review the orders issued on 9th December, 2024 to allow the sum of Kenya Shillings Three Hundred and Seventy-five Thousand {Ksh.375,000/=} be deposited in a joint bank account held in the names of the Applicant's Advocates and the Respondents Advocates pending the hearing and determination of the Reference dated 19th July, 2024.
 - c. Costs of the Application be in the cause
11. The Application is supported by Rehema Chepkemboi Menjo sworn on 11th December, 2024 who reiterates the averments of the Chamber Summons dated 14th July, 2024. She alleges that on 23rd September, 2024 Beafect Auctioneers unprocedurally proclaimed her assets and items. On 24th September, 2024, Hon. Justice M.N. Gicheru upon considering the Applicant Application dated 24th September, 2024 issued stay orders against the warrant of attachment and proclamation pending its hearing and determination.
 12. The Deponent states that when the Application dated 19th July, 2024 and 24th September, 2024 came up for hearing on 9th December, 2024, the court reviewed its earlier orders and granted a stay of warrants of attachments and proclamation notice on condition that the Applicant pays Ksh.375,000/= to Respondent within 14 days failure to which the order would automatically lapse.
 13. It is the Applicant case that stay orders of 9th December, 2024 ought to be reviewed to allow Ksh.375,000/= to be deposited with the court or joint account held of the Applicant and Respondent advocate. This is because depositing the funds with the Respondents will cause irreparable monetary loss and damages and render the Reference a nugatory if it succeeds. Further, the Applicant will have difficulties in obtaining the refund of the said monies. The Applicant further depones that there is an ongoing arbitration between the parties in the suit wherein she seeks reimbursement of Ksh.891,400/= from the Respondents which has been delayed by them.

Defendants/Respondents case

14. The Defendants opposes the Application through grounds of opposition dated 27th March 2025 premised on grounds that
 - a. There is no mistake or error on the face of the record to justify and or warrant review of the orders issued on 9th December, 2022 by Hon. Justice M.N Gicheru ordering the Plaintiff to pay the Defendants the sum of Ksh.375,000/= being half of the tax amount as a condition for stay of the warrants of attachment.
 - b. No good/reasons grounds or any sufficient reasons have been adduced by the Plaintiff to justify and warrant the court to review the orders issued on 9th December, 2024.
 - c. There is no just cause demonstrated by the Plaintiff for depriving the Defendants payment of the sum of Ksh.375,000/= as ordered by the court on 9th December, 2024.
 - d. The Defendants are entitled to enjoy the fruits of the Ruling and resultant certificate of Taxation in the sum of Ksh.750,165/- taxed by the Taxing Officer.



- e. The Plaintiffs is principally asking this court to sit on appeal of its decision (Orders issued on 9th December,2024) and reverse it, if aggrieved by the said Ruling, the Plaintiff ought to have lodged an appeal against the orders issued on 9th December, 2024 as opposed to applying for a review.
 - f. That the orders issued on 9th December,2024 were sound, clear, unambiguous, unbiased, good in law and fully clothed in the need for natural justice.
 - g. The Application is frivolous, vexatious, without merit and an abuse of the court process.
15. The 2nd Respondent also prays for dismissal of the Application through Angela Mulwa's Replying Affidavit, sworn on 27th March,2025. She asserts that this is the 5th consecutive application by the Applicant on costs. It is contended that there is no mistake or error on the face of the record, good and reasonable grounds or any sufficient reasons nor has any just cause been demonstrated to justify and warrant review order issued on 9th December,2024 by Hon. M.N Gicheru.
 16. According to the 2nd Respondent, the Plaintiff ought to have lodged an appeal against the orders instead of applying for review as she is principally asking the court to sit on its appeal. Further the Applicant has not demonstrated any prejudice suffered if the application is not allowed.
 17. The Deponent avers that the Application is baseless, incompetent and unmerited because it causes undue hardship of depriving the Respondents an opportunity to enjoy the fruits of their orders yet there is sound, clear, unambiguous and unbiased order. Further, a successful litigant with lawful and valid orders must not be denied her right unless exceptional circumstances exist.
 18. According to the Defendants/Respondents, the court should allow the application on condition that Ksh.750, 165/= is deposited in an interest earning bank accounts jointly held by the Plaintiff and Respondent Counsel.

Issues for determination

19. The following are the issues for determination upon critical examination of the Plaintiffs Applications as well as responses by the Defendants.
 - a. Whether the Plaintiff has demonstrated that the Taxing Master did not appropriately exercise her discretion to warrant issuance of the orders sought?
 - b. Whether the Plaintiff has met the threshold for review of the orders?

Whether the Plaintiff has demonstrated that the Taxing Master did not appropriately exercise her discretion to warrant issuance of the orders sought?

20. At this juncture, I find it necessary to provide a brief history of the proceedings in this matter before proceeding to analyze the issues identified for determination. The Plaintiff instituted legal proceedings against the Defendants in this suit on 17th November,2021 seeking various orders among them specific performance compelling the Defendants to furnish completion documents in respect of Ngong/Ngong/60642 relating to the sale agreement dated 16th July,2021.
21. Upon entering appearance on 28th March, 2022 through a notice of appointment dated 24th March, 2022, the Defendants filed a Notice of Preliminary Objection premised on grounds that the suit was an abuse of courts process because it offended Clause 35 of the Agreement where parties had opted to resolve their disputes through arbitration. Following the filing of the Preliminary Objection, the



- Plaintiff filed a Notice of Withdrawal of suit dated 7th November, 2022 on the same date seeking to withdraw her suit with no orders as to costs.
22. When the matter came up for mention on 7th November, 2023, the court allowed the withdrawal but with costs to the Defendants. Even though the Defendants sought to review the orders issued on 7th November, 2023 as well as seek stay of taxation of the Defendants Bill of Costs pending hearing and determination of the Arbitration, through a Notice of Motion dated 9th May, 2023, the Application was dismissed through a Ruling delivered on 26th October, 2023.
 23. On 6th March, 2023, the Defendants individually lodged their Party and Party Bills of Costs dated 2nd March, 2023. According to the Bills of Costs, the amount chargeable under Item 1 for receiving instructions to defend and oppose the Plaintiffs claim was indicated as Ksh.635,000/= because the value of the suit property i.e. purchase price for the suit property was Ksh.29,000,000/=. While opposing item 1 of the Bills of Costs through submissions dated 17th July, 2023, the Plaintiff argued that Ksh.635,000/= was excessive because the suit did not proceed to full hearing neither did the Defendants file statements of Defence.
 24. Through a Ruling delivered on 10th July, 2024, the Taxing Master taxed instruction fees at Ksh.520,000/= because Ngong/Ngong/60642 being the subject matter was valued at Ksh.20,000,000/= while Item 4 to 20 were taxed at Ksh.201,746/=. In concluding, the Taxing Master awarded Ksh.750,165/= for both Bills of Costs to the Defendants.
 25. The basis upon which the Plaintiff seeks to have the Taxing Master Ruling dated 10th July, 2024 set aside and the Defendants/Respondents Bills of Costs dated 2nd March, 2023 retaxed afresh is because she erroneously awarded unjustified and excess costs. These averments have been opposed by the Defendants/Respondents who maintain that the Bills of Costs were properly taxed because the Taxing Master took into consideration relevant taxation principles.
 26. The principles to be observed by a Judge while considering a Reference have been established in various judicial authorities. For instance, in *Kamunyori & Company Advocates v Development Bank of Kenya Limited* [2015] KECA 595 (KLR), the Court of Appeal adopted the following position

“Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer’s decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside”
 27. The importance of ascertaining the value of the subject matter to guide in taxing Bills of Costs was emphasized by the Court of Appeal in *Peter Muthoka & another v Ochieng & 3 others* [2019] KECA 597 (KLR) by holding as follows

“It is not lost to us, as we address that single issue, that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised,



resulting in mis-justice, to borrow the holding in *Mbogo -Vs- Shah* (Supra), then the decision though discretionary, may properly be interfered with.”

28. Additionally, the above guiding principles on circumstances under which Taxing Officer decision may be set aside by a Judge were similarly reaffirmed by Odunga J in *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* [2014] KEHC 5481 (KLR) by holding as follows;

1. that 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 inference that it was based on an error of principle;
2. it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or 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;
3. if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;
4. it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;
5. the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
6. the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;
7. the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate’s unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary.

29. Order 16 of the Advocates (Remuneration) Order, 2014 stipulates as follows in respect to the discretion power of taxing officer

“Notwithstanding anything contained in this Order, on every taxation the taxing officer may allow all such costs, charges and expenses as authorized in this Order as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons, or by other unusual expenses.”



30. While rendering her decision, the Taxing Master made reference to Paragraph 1(a) of the Schedule of the Advocates (Remuneration) Order, 2014 by holding that Ngong/Ngong/60642 which was the subject matter was valued at Ksh.20 million. The circumstances under which the Taxing Master arrived at this amount were not explained in her ruling. This is taking into consideration that there was no judgment, settlement by parties nor would the value of the subject matter be ascertained from the pleadings. Various judicial authorities have established precedents in the manner in which Taxing Officer ought to exercise their judicial authority when ascertaining the value of the subject matter where the above stated circumstances which are similar to this suit exist. For instance, in Peter Muthoka & another (supra), the Court of Appeal pronounced itself on this issue as follows

“It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.”

31. The above principles were similarly restated by the Court of Appeal in Joreth Limited v Kigano & Associates [2002] KECA 153 (KLR)

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment 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 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.”

32. The Supreme Court of Kenya in Petition No. E011 of 2023 Kenya Airports Authority –vs- Otieno Ragot & Company Advocates, spelt out in great detail the principles applicable in taxation of instructions fees.

33. The Supreme Court noted that schedule VI of the Advocates Remuneration Order relates to the assessment/taxation of costs in proceedings before the High Court Part A thereof deals with party and party costs whereas part B deals with advocate-client remuneration costs. Paragraph 1 of the schedule VI A commences with assessment of instruction fees based on the value of the subject matter. The procedure then should be that the subject matter of the suit in issue should be identified first and then the value thereof determined.

34. The answer to the question as to how the value of the subject matter is to be ascertained is to be found at paragraph 1 of schedule VIA which is clear on the issue. It stipulates that.

“...where the value of the subject matter can be determined from the pleading, judgment or settlement of the parties”.



35. The Supreme Court of Kenya concurred with the reasoning of the court of appeal in *Joreth Limited –vs- Kigano Associates* (2002) IEA 92 where the court stated that the value of the subject matter for the purpose of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case).
36. The same position was taken in *Peter Muthoka and another –vs- Ochieng & 3 others* (2019) eKLR, where the Court of Appeal stated that,
- “It seems to us quite plain that the basis for matter value for purposes of instruction fees is wholly dependence on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining the subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.
- Where however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with pleadings where there is a settlement”.
37. The Supreme Court of Kenya held that where the value of the subject matter can be determined, the Taxing Officer required to set out the basic fees prescribed under schedule VI part A. Similarly, where the Taxing Officer assesses instruction fees based on the nature of the matter as stipulated in paragraph 1, for instance in bankruptcy proceedings or matrimonial causes he/she is required to set out the basic fees prescribed thereunder. It is after setting out the basic fees that the Taxing Officer can exercise his/her discretion to increase or (unless otherwise provided, like in matrimonial causes) reduce the said basic fees.
38. In exercising such unfettered discretion, the Taxing Officer is required to do so judiciously and not whimsically. Again, the court cited with approval the holding by Ojwanga Judge (as he then was) in *Republic –vs- Ministry of Agriculture & 2 others, Ex parte Muchiri W Njuguna & 6 others* (2006) eKLR, where he stated that,
- “It was necessary to specify clearly and candidly how she had exercised her discretion. Discretion as an aspect of judicial decision making, is to be guided by principles, the elements of which are clearly stated and which are logical and conscientiously conceived. It is not enough to set out by attributing to oneself discretion, and therefore merely cite wanted rubrics under which that discretion may be exercised, could permit of assignment of mystical figures of taxed costs”.
39. In the event that the value of the subject matter of a suit cannot be determined from either the pleadings, judgment or settlement by parties, and the nature of the said suit is not provided for in paragraph 1 of schedule VIA, proviso (i) thereunder empowers a taxing officer to exercise his/her discretion in assessing instruction fees for such a suit taking into consideration other fees and allowances done to the advocate (if any) in respect to which any such allowance applies the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, any direction by the trial court and all other relevant circumstances.



40. For emphasis, the Supreme Court of Kenya quoted the decision of the Court of Appeal in the Peter Muthoka case (supra) as to when discretion comes into play as follows.

“It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does not have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as provided; either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive”.

41. Going by the above judicial pronouncement it is the finding of this court that the Taxing Master erred in determining the value of the subject matter. This is because ascertainment of the appropriate value of subject matter was crucial in taxation of item 1. For that reason, it is only fair and in the interest of justice of justice that the Defendants Bills of Costs dated 2nd March, 2023 ought to be retaxed. This is because they were not taxed in accordance with the relevant settled legal principles.

42. Consequently, I hereby proceed to set aside the entire Taxing Officer Ruling dated 10th July, 2024 and direct that it be retaxed afresh by another Taxing Officer besides Hon. Jane Kamau.

43. Having set aside the decision of the taxing master the application for review is rendered moot.

44. Given the outcome, it is only fair that each party bears its own costs.

Final disposition

45. In a summary, the following are the final orders of the court;

- a. Taxing Officer Ruling dated 10th July, 2024 in respect of the Defendants/Respondents party and party Bills of Costs dated 2nd March, 2023 is hereby set aside.
- b. The Bills of Costs to be retaxed afresh by another Taxing Officer other than Hon. Jane Kamau.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

M/S. Abwao holding brief for Amadi for the plaintiff/applicant

M/S. Mwangi holding brief for Kimani for the defendant/respondent

Court assistant- Edwin

M.D. MWANGI

JUDGE

