



Gilani & 2 others v Kenya Railways Corporation & another (Environment and Land Case 302 of 2018) [2025] KEELC 7298 (KLR) (28 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 302 OF 2018
MAO ODENY, J
OCTOBER 28, 2025**

BETWEEN

**FAIZ ZAHIR GILANI 1ST APPLICANT
SHAMSHER GULAMHUSSEIN GILANI 2ND APPLICANT
ZAHIR GULAMHUSSEIN GILANI 3RD APPLICANT**

AND

**KENYA RAILWAYS CORPORATION 1ST RESPONDENT
CHIEF LAND REGISTRAR 2ND RESPONDENT**

RULING

1. This ruling is in respect of the Applicant's Notice of Motion application dated 7th March, 2025, which seeks the following orders:
 - a. That this Honourable Court be pleased to set aside and/or vary the ruling of the Taxing Master delivered on 27th February 2025, which taxed the Defendants' Party and Party Bill of Costs at Kshs 224,770.
 - b. That this Honourable Court be pleased to re-tax the bill of costs afresh or remit it back to a different Taxing Master for fresh taxation.
 - c. That in the alternative, this Honourable Court be pleased to review the taxed amount downward to Kshs 20,000, considering the prior consent order recorded between the Plaintiffs and the 1st Defendant.
 - d. That the costs of this application be provided for.
2. The application is supported by the annexed affidavit of Faiz Zahir Gilani, the 1st Applicant sworn on 11th March, 2025, where he deponed that the ruling of the Taxing Master dated 27th February, 2025,



failed to consider that the Plaintiffs and the 1st Defendant had entered into a consent that compromised the suit allowing the surveyors report to be adopted. He deponed that in light of the consent order, it is unjust to award full costs against the applicants, who propose a minimal award of Ksh 20,000/= to reflect the reality of the proceedings.

3. George K. Mbiyu Advocate, filed a Replying Affidavit sworn on 28th May, 2025 and deponed that the decision of the Taxing Master delivered on 27th February, 2025, taxed the Defendants Party and Party Bill of costs at Ksh 394,080/=.
4. It was his deposition that the taxation was conducted in accordance with the provisions of the Advocates Remuneration Order and the Taxing Master applied her discretion judiciously. He prayed that the Notice of Motion dated 7th March, 2025, be dismissed with costs.

Applicant's Submissions

5. Mr. Opondo, counsel for the Applicants filed submissions dated 15th September, 2025, and identified the following issues for determination:
 - a. Whether the reference is merited?
 - b. Whether the order as to costs on 27th February, 2025, by the Taxing Masters should be set aside or varied?
6. On the first issue, counsel submitted that for the Court to be able to determine if the reference is merited, it should first inform itself on whether there has been an error in principle to warrant its intervention. Counsel submitted that the Applicants challenged the assessment of the Bill of Costs by the taxing officer on three grounds: the taxing officer failed to consider the consent order in place, the taxing officer had erroneously assessed the instruction fees payable and the getting up fees awarded were unjustified.
7. It was counsel's submissions that the applicants were aggrieved by the taxing officer's assessment of the bill at Ksh. 224,770 without any justification. Counsel relied on the following cases: Premchand Raichand Ltd vs Quarry Services of East Africa Ltd [1972] E.A 162, Machira & Co Advocates vs Magugu [2000] 2EA 428, Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board [2005] 1KLR 528, Kagwimi Kang'ethe & Co Advocates vs o-lerai Nuseries Ltd [2009] KEHC 2224 (KLR), Morgan Air Cargo Limited vs Evrest Enterprises Limited [2014] KEHC 8693 (KLR), Joreth Limited vs Kigano & Associates [2002] eKLR and Royal Ngao Holdings Limited vs NK Brothers Limited [2023] KEHC 19428 (KLR).
8. On the second issue, counsel submitted that the Taxing Master erred in principle and failed to recognize that parties had entered into a consent, and urged the court to set aside or vary the decision of the taxing master. Mr. Opondo relied on the cases of Peter Muthoka & another vs Ochieng & 3 others [2019] KECA 597 and Mbali vs Villa Care Management Limited [2023] KEELRC 1983 (KLR).

1st Respondent's Submissions

9. Mr. Mbiyu, counsel for the 1st Respondent filed submissions dated 22nd September, 2025, and identified the following issues for determination:
 - a. Whether the ruling of 27th February, 2025, by the Taxing Master should be set aside and/or varied and/or re-taxed and/or that the taxed amount be reviewed downwards to Kshs 20,000/=?
 - b. Whether there is any basis for the court to interfere with the discretion of the taxing master?



10. On the first issue, counsel submitted that the Taxing Master exercised her discretion and gave reasons for every ruling she made. Counsel submitted that the Taxing Master did not err in principle and was right to allow getting up fee.
11. On the second issue, counsel submitted that the position in law is that the Judge in a reference cannot interfere with the quantum of costs awarded by the Taxing Officer save in exceptional cases. Counsel submitted that the Applicant has not proved that taxation of any item was manifestly high and there is no basis for interfering with exercise of her discretion.
12. Counsel relied on the cases of Kipkorir Titoo and Ikara Advocates vs Deposit Protective Fund Board [2005] eKLR, First American Bank of Kenya Limited vs Shah & Others [2002] EA 64 and Arthur vs Nyeri Electricity Undertaking [1961] EA 497, and urged the court to dismiss the application with costs.

Analysis and Determination

13. The issue for determination is whether this court should set aside and/or vary the ruling of the Taxing Master delivered on 27th February 2025. The Applicants contend that the Taxing Officer failed to consider the consent order in place, hence, she erroneously assessed the instruction fees payable and the getting up fees which were unjustified. The Court of Appeal in Joreth Ltd vs Kigano & Associates Civil Appeal No. 66 of 1999 [2002] eKLR was categorical that a judge sitting on a reference against the taxing officer ought not to interfere with the assessment of costs unless the Taxing Officer had misdirected himself on a matter of principle.
14. The Supreme Court in the case of Non- Governmental Organizations Coordination Board vs EG & 5 others (Petition (Application) 16 of 2019) [2023] KESC 102 (KLR) (Civ) (8 December 2023) (Ruling) noted:

“A certificate of taxation would be set aside, and a single judge could only interfere with the taxing officer’s decision on taxation if: There was an error of principle committed by the taxing officer. The fee awarded was shown to be manifestly excessive or was so high as to confine access to the court to the wealthy; (and conversely, if the award was so manifestly deficient as to amount to an injustice to one party). The court was satisfied that the successful litigant was entitled to fair reimbursement for the costs he had incurred, (and the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party). The award proposed was so far as practicable, consistent with previous awards in similar cases.

There was no mathematical formula to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances. Although the taxing officer exercised unfettered judicial discretion in matters of taxation that discretion must be exercised judicially, not whimsically. The single judge would normally not interfere with the decision of the taxing officer merely because the judge believed he would have awarded a different figure had he been in the taxing officer’s shoes.”
15. The Applicants contend that the ruling of the Taxing Master dated 27th February, 2025 failed to consider that the Plaintiffs and the 1st Defendant had entered into a consent that compromised the suit allowing the Surveyor’s report to be adopted. The Applicants contend that in light of the consent order, it is unjust to award full costs against the Applicants.



16. This matter was heard and determined vide affidavit evidence and the parties agreed on a joint survey and the mode of costs of the survey. Parties did not agree on the overall cost of the suit. It is important to note that when a matter is resolved through a consent, parties should explicitly address the issue of costs and specify who to pay the costs. In the absence of such an agreement, the issue of costs is left to the Taxing Master to deal with.
17. Similarly, the Applicant filed an Application dated 13th June 2014, seeking review on the issue of costs, a consent having been entered into by the parties. The court found that the joint survey consent by the parties did not address the issue of the costs of the main suit. Subsequently, the Application was dismissed.
18. It seems the Applicant has brought this application to circumvent the outcome of the review application on costs which was dismissed. This court finds that the Taxing Master exercised her discretion judiciously in taxing the Defendant's Party and Party Bill of costs taking into account the consent. Therefore, there was no error in principle, it follows that the Applicant's Notice of Motion application dated 7th March, 2025, is an abuse of court process and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

