



Gatimu v Kenya National Highways Authority (Environment and Land Case 106 of 2020) [2025] KEELC 7151 (KLR) (16 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7151 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 106 OF 2020**

JA MOGENI, J

OCTOBER 16, 2025

BETWEEN

CHARLES NJENGA GATIMU ADVOCATE

AND

KENYA NATIONAL HIGHWAYS AUTHORITY CLIENT

RULING

1. The matter for determination is the Chamber Summons dated 15/11/2024, by the Advocate/Applicant seeking for Orders that;
 1. Spent
 2. That the Applicant be granted leave to file an Objection and a Taxation Reference to this Honorable Court against the Ruling of the Taxing Master delivered on the 7th November 2024 without reasons required under Rule 11 (2) of the Advocate Remuneration Order
 3. That this Honorable Court be pleased to issue an order for stay of execution of the said Ruling aforesaid and any or all other consequential proceedings
 4. That the decision of the Deputy Registrar of the 7th November 2024 be set aside and or varied.
 5. That the Party and Party Bill of Costs dated 6th October 2023 be taxed afresh by a different Taxing Officer with appropriate directions.
 6. That this Honorable Court grant any other relief that may be just to meet the ends of justice in this case.
 7. That costs of this application be in the cause.



2. The Application is premised on the grounds that for the party and party Bill of Costs dated 16/10/2023 the Deputy Registrar correctly applied Schedule 6 Section 1 (b) of the Advocates Remuneration Order (ARO) but failed to apply the said formula correctly.
3. The Applicant being aggrieved by the Ruling wrote to the Deputy Registrar seeking to have his reasons for taxing the said instruction fees at Kesh 130,000 but it was not forthcoming. The Applicant states that the amount of instruction fees does not equate to the work done. He further states that he is only dissatisfied with the taxation of the instructions fees as the rest of the items were taxed as provided in the ARO.
4. The Applicant seeks retaxing of the Bill of Costs dated 6/10/2023.
5. The Summons is supported by the Affidavit of Charles Njenga Gatimu.
6. Upon being served the Respondent filed a Replying Affidavit sworn on 14/03/2025 by one Ian Mudavadi an Advocate in conduct of the matter and he averred that the Application is misconceived, incompetent and an abuse of the Court process and should be struck out.
7. It is his averment that the Applicant drew and filed his Bill of Costs seeking for it to be taxed at Kesh 1,508,120.00 and the Respondent filed and served its submissions of the Bill of Costs. Upon taxation the Applicant was awarded Kesh 291,410 and that the Applicant has filed the present reference disputing the award of the instruction fees which was taxed at Kesh 130,000 instead of Kesh 1,310,000 and the Applicant faults the calculation by the Taxing Officer.
8. That Schedule 6 Section 1 (b) of ARO provides the formula for calculating advocates fees and it gives the Taxing Officer the discretion to increase or reduce the instruction fees. Which discretion was rightfully exercised taking into account other factors such as general conduct of proceedings, time spent, research done and skills deployed by Counsel including the complexity of the matter.
9. According to the Respondent, the Taxing Officer noted correctly that the Applicant's case was merely seeking orders stopping demolition of plaintiff's building and so the matter was not complex in nature as the orders sought were straight forward.
10. The Respondent further avers that the Taxing Officer applied his discretion judiciously as required by law and there was therefore no error in principle as alleged by the Applicant and that the instruction fees as stated is to seek no more no less reasonable compensation for professional work done.
11. It is the Respondent's averment that instruction fees is not meant to enrich and advocates to be punitive in such a way as to discourage litigation. Further that the issue in contention in the main suit was not the whole property but the section that was encroaching onto the road who dimensions were clearly stated in the Statement of Defence and submissions and that the value of the portion of the property that was to be demolished was not established.
12. It is therefore the contention of the Respondent that neither was the value of the portion of the property that was demolished established and so the pleadings and or the Judgment cannot be used to determine the value of the property and the Taxing Officer did not err since he took into account the relevant principles.
13. The Court issued directions on the application to be canvassed by way of written submissions. The plaintiff filed their submissions dated 6/03/2025 and the Respondent filed their dated 13/03/2025
14. The gist of the plaintiff's submissions is that Deputy Registrar made submits that the Deputy Registrar made an arithmetical mistake in arriving at the instruction fees and as such the said Ruling ought to



- be set aside and taxed afresh. That despite having appreciated that the value of the suit property was Ksh 54,000,000 which was contained in the valuation report, the Deputy Registrar did not consider this value in the taxation especially for the instruction fees.
15. On his part, the gist of the Respondent's submission is that Schedule 6 of ARO provides for instruction fees but also gives the Taxing Officer the discretion to increase or reduce the same. That the discretion has to be exercised judiciously. It is the submission of the Respondent that the Applicant has not shown any way in which the Taxing Master has used his discretion improperly, despite claiming there to be an error of principle which they have failed to demonstrate in their submissions.
 16. It was the Respondent's submission that the Taxing Master applied his discretion as provided for in the Advocates Remuneration Order and the same was applied using the correct principles and so there is no basis for taxing the Bill of Costs afresh.
 17. This Court has considered the application and the submissions therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:
 - “(1) Should any party object to the decision of the Taxing Officer, he may within 14 days after the decision give notice in writing to the Taxing Officer of the items of taxation to which the objects.
 - (2) The Taxing Officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”
 18. Be that as it may, the principles of varying or setting aside a Taxing Master's decision as set out in the cases of *First American Bank of Kenya v Shah and Others* (2002) EA 64 and *Joreth Ltd v Kigano and Associates*(2002) 1 EA92, that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law.
 19. In *First American Bank of Kenya v Shah and Others* (2002) EALR 64 the Court held that;
 - “First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle.”
 20. These principles reiterate the position of the Court of Appeal in *Joreth Ltd v Kigano & Associates* (2002)eKLR, where the said Court held that a Taxing Master in assessing costs to be paid to an Advocate in a Bill of Costs was exercising her judicial discretion and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously, and in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the Taxing Master is excessive to amount to an error in principle.



21. In *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W’Njuguna* (2006) eKLR Ojwang, J (as he then was) expressed himself 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 inference that it was based on an error of principle. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case 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. Needless to state not all the above factors may exist in any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. 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...A Taxing Officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved...Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularised justification of the mode of exercise of any discretion provided for ... The complex elements in the proceedings which guide the exercise of the Taxing Officer’s discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon Counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by Counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs”

18. The main issue for determination is whether the Applicant has established a case for this Court to interfere with the Taxing Officer’s decision.
19. It is trite that in a reference case like this one, the governing principle that guides exercise of the Court’s jurisdiction was well summarized in the case of *Kipkorir, Titoo & Kiara Advocates Vs. Deposit Protection Fund Board NRB CA Civil Appeal No. 220 of 2004* [2005] eKLR where the Court of Appeal distilled the principle as follows;

“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: “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.”

20. The gist of the application is that whereas the Deputy Registrar recognized the value of the subject matter while assessing the instruction fees as Kesh 54,000,000 which the value of the building that was to be demolished and also the formula applied in Schedule 6 Section 1 (b) of ARO, the Deputy Registrar failed to apply the said formula correctly. This led to the taxing of instruction fees at Kesh 130,000 whereas the Applicant believes it should have been yielded Ksh 1,010,000.
21. On his part the Respondent submits that whereas the value of the building was Kesh 54,000,000 only a part of the building was being demolished and therefore the Taxing Officer used their discretion correctly in taxing the instruction fees at Kesh 130,000.
22. Indeed the Taxing Officer proceeded to rely on the case of Premchand Rachand Ltd vs Quarry Service of EA Ltd & Others [1972] EA and Republic vs Minister for Agriculture & 2 Others Ex Parte Samuel Muchiri W Njuguna & 6 Others [2006]eKLR.
23. While addressing the issue of value of the property the Court of Appeal in the case of Joreth Ltd Vs. Kigano & Associates [Supra] addressed the issue thus;

“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 the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances.” [Emphasis mine]
24. Further in the Court of Appeal Peter Muthoka and Another Vs. Ochieng and 3 Others [2019]eKLR where the Court allowed the Taxing Officer exercise discretion when the subject matter is neither discernible from the pleadings, Judgment or the settlement. Notably the Appellate Court was emphatic that such discretion only steps in after the Taxing Officer has engaged with the proper basis as expressly and mandatorily provided.
25. Peter Muthoka (supra) the Court of Appeal was emphatic that a Taxing Officer 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. That he has no leeway to disregard the statutorily commanded starting point. The Appellate Court further added that the starting point can only be one of the three. That 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.
26. Lastly the Court of Appeal in the case of Otieno, Ragot & Company Advocates Vs. Kenya Airports Authority [2021] eKLR held that once the instruction fee in the party and party costs are ascertained, they become the basis of the computation of the instruction fees in the Advocates and client bill. It follows therefore the ascertainment of the instruction fees is at the heart of the Taxing Officer’s Taxation.
27. In the instant application it has clearly emerged that the Taxing Officer did recognize the value of the property as was provided for in the valuation report but seems that in calculating the instruction fees the Taxing Officer seem to have made an error in the calculations. I am therefore in agreement with the Applicant that the item on instructions needs to be relooked into.



28. Guided by the above precedents, in this instance I find that the Taxing Officer proceeded to adopt a subject value that is not the value of the subject matter as stated herein.
29. The upshot of the forgoing is that the Application is merited in so far as Item 1 is concerned.
30. The Bill of Cost be and is hereby remitted for fresh assessment before a completely different Taxing Officer.
31. Costs are awarded to the Applicant.
Orders accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 16TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

Ms. Mwaura for the Plaintiff

Defendant - Absent

Melita – Court Assistant

