



JM Njenga & Co Advocates LLP v Kimuri Housing Company Ltd (Environment and Land Miscellaneous Application E007 of 2024) [2025] KEELC 7149 (KLR) (13 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7149 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E007 OF 2024
JA MOGENI, J
OCTOBER 13, 2025**

BETWEEN

JM NJENGA & CO ADVOCATES LLP ADVOCATE

AND

KIMURI HOUSING COMPANY LTD CLIENT

RULING

1. The matter for determination is the Chamber Summons dated 9/06/2025, by the Advocate/Applicant seeking for orders that;
 1. That the taxation orders made on 29th May, 2025 be reviewed and/or set aside and the matter referred back to a Taxing Master for re-taxation of items 1 and 30.
 2. That further to (1) above and taking into account the peculiar circumstances of the status of the subject matter, the Honourable Court be at liberty to calculate the fees payable under item 1 and 30 of the Bill of Costs guided by the value of the subject matter rightly placed at Kesh 500,000,000/- by the Taxing Master vide the Ruling of 29th May 2025.
 3. That the costs of this application be provided for.
2. The Application is premised on the grounds that the Advocate/Client Bill of Costs dated 14/02/2024 was taxed on 29/05/2025 in the sum of in the sum of Kesh 1,351,528/- with a sum of Kesh 186,354 and Kesh 62,118 being allowed under items 1 and 30 respectively but the Advocate/Applicant is aggrieved by the taxation orders issued in respect of items 1 and 30.
3. That the Taxing Master despite correctly placing the value of the suit property as Kesh 500,000,000 erred in principle in his arithmetic and formula used in calculating the instruction fees payable under item 1 and which had a direct impact on item 30. Therefore, the taxation orders ought to be set aside and/or reviewed with the Court giving clear guidelines of the formula of re-taxation of the said items.



4. The Applicant also states that this will be the 2nd reference and there is only one Deputy Registrar in Thika thus the bill would have to be referred to the very same Taxing Officer who erred the Honorable Court be pleased to calculate the amount due under item 1 and 30 of the Bill of Costs. That the Advocate/Applicant stands greatly prejudiced unless the taxation orders issued are reviewed and/or set aside.
5. The Summons is supported by the Affidavit of Vivianne Wachanga. When served, the Client/ Respondent never filed a response therefore the Summons is unopposed.
6. The main issue for determination is whether the Applicant has established a case for this Court to interfere with the Taxing Officer's decision.
7. 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 v 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”.
8. The gist of the instant reference revolves around the awards on instructions and getting up fees of Kshs. 1,351,528 and Kshs. 186,354 and Kesh 62,118 being allowed under items 1 and 30 respectively which the Applicant contends are manifestly low to warrant this Court's re-assessment. The Applicant avers that the Taxing Officer despite rightly placing the value of the suit property at Ksh 500,000,000 million failed to use the formula under Schedule 6 A (i)b and ended up arriving at a figure that is not supported by the value of the suit property.
9. It is clear that both the Taxing Officer and the Advocate/Applicant settled on the value of the suit property to be Ksh 500,000,000 million and therefore it should guide both the award of the instruction fees which does affect the getting up fees charged at $\frac{1}{3}$ of the instruction fees. The Taxing Officer was obliged to use the value of the suit property to calculate the instruction fees.
10. Indeed the Taxing Officer proceeded to rely on the Court of Appeal case of Peter Muthoka and Another v Ochieng and 3 Others [2019]eKLR where the Court held as follows:

“The basis for determining subject matter value for purposes of instructions fees wholly dependent on the state at which the fees are taxed. Where it happens before the judgment, it is the pleadings that form the basis for determining the subject value.”
11. At the same time the Taxing Officer referred to Schedule 6 A and referred to the Taxing Officer's exercise discretion But in the Court of Appeal case referred to above, the Court was emphatic that such discretion only steps in after the Taxing Officer has engaged with the proper basis as expressly and mandatorily provided.



12. The Taxing Officer also relied on the case of Premchand Raichand Ltd & Anothers [1972] EA PG 162 and Republic vs Minister for Agriculture & 2 Others Ex Parte Samuel Muchiri W’Njuguna & 6 Others [2006] eKLR, and he also referred to Joreth Ltd v Kigano & Associates [2002] 1 E.A. 92.
13. I believe that the Court of Appeal addressed the issue of value of the subject matter in taxation when it stated in Joreth Ltd vs Kigano [supra] 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.”
14. Further in the above referenced case of 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.
15. Lastly the Court of Appeal in the case of Otieno, Ragot & Company Advocates v 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.
16. Guided by the above precedents, in this instance I find that the Taxing Officer failed to apply the formula even after acknowledging and ascertaining that the subject matter value was Kesh 500,000,000.
17. The upshot of the forgoing is that the Reference is merited in so far as Item 1 and 30 are concerned.
18. The Bill of Cost be and is hereby remitted for fresh assessment before another Taxing Officer.
19. The Reference is allowed with costs to the Applicant.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 13TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

Ms. Wachanga for the Applicant/Advocate

Respondent – Absent

Melita – Court Assistant



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**MOGENI J
JUDGE**

