



REPUBLIC OF KENYA



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**Kinuthia & another v Ndegwa (Miscellaneous Case E027 of 2025)
[2025] KEELC 7478 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7478 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
MISCELLANEOUS CASE E027 OF 2025
MD MWANGI, J
OCTOBER 30, 2025**

BETWEEN

MONICA WAMBUI KINUTHIA 1ST APPLICANT

CAROLINE WANJA KINUTHIA 2ND APPLICANT

AND

TITUS GETHI NDEGWA RESPONDENT

(In respect of the reference challenging the decision on a party and party bill of costs arising out of NGONG MCELC CASE NO. 107 OF 2018)

RULING

Introduction

1. Before this Court is a Reference arising from the taxation of a Party and Party Bill of Costs in Ngong MCELC No. 107 of 2018. The Applicants, who were the Plaintiffs in the subordinate court, have moved this Court by way of a Chamber Summons application dated 2nd May 2025 brought pursuant to the provisions of Rule 11 of the Advocates (Remuneration) Order, and all other enabling provisions of the law.
2. In the said application the following substantive orders are sought:
 - a. Spent
 - b. That this Honourable Court be pleased to vary and/or set aside the decision of the Taxing Officer contained in the Ruling delivered on 3rd April, 2025;
 - c. That in the alternative, this Court be pleased to re-tax the Party and Party Bill of Costs dated 19th November, 2024 and/or award such amounts as it deems fit;



- d. That in the further alternative, this Court do refer the said Bill of Costs for taxation before another Taxing Officer; and
 - e. That this Honourable Court be pleased to grant such further or other orders as may meet the ends of justice.
3. The application is supported by the Affidavit of Monica Wambui Kinuthia, sworn on even date, and is further premised on the grounds set out on the face of the Chamber Summons.
 4. The gravamen of the Applicant's case is that the Respondent herein had filed a Party and Party Bill of Costs dated 19th November, 2024, which was taxed by the learned Magistrate on 3rd April, 2025 at Kshs. 379,785/=. The Applicants contend that the said taxation was erroneous and unjust, given that the underlying suit had been withdrawn before trial. They further aver that they filed a Notice of Objection dated 14th April, 2025 in accordance with Rule 11(1) of the Advocates (Remuneration) Order, objecting to specific items of the Bill—namely items 1, 17, 18, 19, 24, 26, 27, 28, 32, 35, and 45—and seeking reasons for the Taxing Officer's decision, which reasons are yet to be furnished.
 5. It is the Applicants' position that the instruction fee of Kshs. 350,000/= was manifestly excessive, having regard to the fact that the suit did not proceed to hearing. They also fault the taxing officer for allowing attendances for mentions and rulings, which they argue are not provided for under Schedule 7 of the Advocates (Remuneration) Order, 2014, and for taxing items in respect of an application whose ruling expressly made no orders as to costs. The Applicants thus urge this Court to find that the Taxing Officer misapprehended the applicable legal principles, thereby arriving at an oppressive and unjust assessment.
 6. The Reference is said to have been filed timeously and in accordance with Rule 11(2) of the Advocates (Remuneration) Order. The Applicants therefore pray that the Court sets aside the impugned taxation, or in the alternative, the court either be pleased to re-tax the Party and Party Bill of Costs dated 19th November, 2024 or orders a re-taxation before a different taxing officer, and that costs of this application be provided for.
 7. The application is opposed by the Replying Affidavit of the Respondent, TITUS GETHI NDEGWA, dated 10th July, 2025, in which he avers that the application is devoid of merit, misconceived, and an abuse of the court process. He confirms that he was the successful party in Ngong MCELC No. 107 of 2018 — Monica Wambui Kinuthia & Another v. Titus Gethi Ndegwa, where the suit was withdrawn with costs to him, and that pursuant thereto, he filed a Party and Party Bill of Costs dated 19th November, 2024, which was subsequently taxed on 3rd April, 2025, at Kshs. 379,785/=.
 8. In opposing the application, the Respondent contends that the prayer for stay of execution is not anchored on any provision of the law and is therefore untenable. He further asserts that an order of stay of execution of costs cannot be issued as a matter of law, and that the Applicants have not demonstrated any substantial loss they stand to suffer should execution proceed. It is his position that granting a stay would unjustly deny him, as the successful litigant, the fruits of his judgment, particularly where the Applicants have neither provided security nor demonstrated any error of principle to warrant the Court's interference with the Taxing Officer's discretion.
 9. The Respondent further deposes that in the Bill of Costs, he had sought instruction fees of Kshs. 500,000/=:, taking into account the urgency and importance of the matter, which involved allegations of wrongful eviction and trespass. He avers that the Taxing Officer, in the exercise of his discretion, assessed the instruction fees at Kshs. 350,000/=:, an amount he contends is both reasonable and justified under Schedule 7 of the Advocates (Remuneration) Order, given the nature, complexity, and significance of the dispute.



10. He further points out that the Applicants themselves, in their written submissions dated 4th February, 2025, had proposed instruction fees of Kshs. 300,000/=, and therefore cannot now be heard to say that the assessment of Kshs. 350,000/= was manifestly excessive. In support of this contention, he relies on the principles set out in *First American Bank of Kenya Ltd v Gulab P. Shah & 2 Others* [2002] eKLR and *Joseph Tamaa v May Nthambi Mbuvi* [2021] eKLR, to the effect that a court will not interfere with the Taxing Officer's discretion unless it is shown that the officer acted on a wrong principle, or that the amount awarded is manifestly excessive or insufficient.
11. On the contested items for attendances for mentions and rulings, the Respondent avers that Paragraph 7 of Schedule 7 of the Advocates (Remuneration) Order, 2017 expressly provides for costs of Kshs. 1,400/= "on any necessary application to or attendance on a magistrate in court or chambers," and that the Taxing Officer correctly applied the said provision. He further maintains that some of the items now disputed—specifically Items 24 and 45—were not opposed in the Applicants' written submissions before the Taxing Officer and therefore cannot properly form the basis of this Reference.
12. The Respondent concludes that the Applicants have failed to demonstrate any error of principle or misdirection on the part of the Taxing Officer, and urges this Honourable Court to find that the taxation was conducted properly in accordance with the law, and that the assessed sum was fair, reasonable, and within the discretion of the Taxing Officer. Accordingly, he prays that the application be dismissed with costs.

Directions

13. The court directed that the reference be canvassed by way of written submissions. I have had the opportunity to read the parties' submissions and the same have been considered in the writing of this ruling.

Analysis and Determination

14. Having considered the pleadings, the rival submissions, and the record of taxation before me, the Court now turns to determine the substantive issues arising from this reference; the primary issue being whether this Court should interfere with the decision of the Magistrate/Taxing Officer and, if so, to what extent.
15. Taxation of costs is primarily a matter within the discretion of the Taxing Officer. The principles upon which a Judge of the High Court may interfere with the exercise of that discretion are well settled. The Court in *Republic v Ministry of Agriculture and 2 Others; Ex parte Muchiri W'Njuguna & Others* [2006] eKLR, articulated the test in the following terms:

“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 is somewhat too high or too low; it will only interfere if it thinks the award is 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 authorizing clause in the law, or a particularized 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....”

16. The foregoing decision sets out, in clear terms, the limited jurisdiction of a Judge reviewing a taxation. It emphasizes that the Court will not interfere merely because it would have reached a different conclusion on quantum. The Court will only interfere where there is proof of an error of principle, or where the amount taxed is manifestly excessive or manifestly low as to amount to an injustice.
17. This principle has been reiterated in numerous subsequent decisions. In *KANU National Elections Board & 2 Others v Salah Yakub Farah* [2018] eKLR, the Court stated:

“...before the court interferes with the decision of the taxing master it must be satisfied that the taxing master's ruling was clearly wrong, as opposed to the court being clearly satisfied that the taxing master was wrong. This indicates that the court will not interfere with the decision of the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differs so materially from its own that it should be held to vitiate the ruling.”

The duty of this Court is to examine whether the Taxing Officer applied the correct legal principles taking into account all relevant considerations.

18. The Applicants have challenged the Taxing Officer's assessment of instruction fees under Item 1, arguing that the same was excessive and not justified given that the suit was withdrawn before hearing. They further invoked paragraph 1(b) of Schedule 7 of the Advocates (Remuneration) Order, 2014 to contend that the matter was determined in a summary manner and therefore the instruction fees should have been computed at 75% of the scale.
19. It is not in dispute that the suit was withdrawn before trial. However, paragraph 1(b) of Schedule 7 applies to suits determined in a summary manner involving liquidated claims, which was not the case herein. The subject matter being land, the Taxing Officer correctly exercised discretion to determine instruction fees based on the general parameters under paragraph 1(a), considering the value of the subject matter, nature and importance of the cause, and the interests of the parties.



20. From the record, the Taxing Officer took into account that the Plaintiffs had proposed Kshs. 300,000 while the Respondents sought Kshs. 500,000 and, in the exercise of his discretion, settled on Kshs. 350,000. I find no misdirection, omission of relevant factors, or consideration of irrelevant ones. Consequently, there is no error of principle in the taxation of instruction fees to warrant interference by this Court.
21. The Applicants also challenge the inclusion and taxation of various attendances and applications, arguing that some were unnecessary, while others had no order as to costs, and yet others were incurred when the court was indisposed. The Respondent maintains that all attendances were necessary and properly supported by the court record.

Items 17 and 35 – Attendances for Mention

22. The Applicants argue that Schedule 7 does not provide for costs for mere mentions. However, paragraph 6 of Schedule 7 allows Kshs. 1,400/= for any necessary attendance before a magistrate in court or chambers. The taxing officer was thus entitled to allow such items if he found them necessary. The record shows that the mentions were part of the case management process, and I find no error in their inclusion.

Items 18 and 19 – Attendances for Ruling

23. The Applicants assert that the ruling was only delivered on 18th July 2019, and therefore attendances listed for 27th June and 1st July 2019 were irregular. The record indicates that those dates were set for the ruling but adjourned. Such attendances form part of necessary appearances before the court. I therefore find no error of principle in allowing these items.

Items 24, 26, 27, 28 and 45 – Application dated 27th July 2021

24. It is undisputed that the ruling on this application delivered on 3rd February 2022 made no order as to costs. It follows that any costs claimed in respect of that specific application were not recoverable. To the extent that the taxing officer allowed costs for those items, there was an error of principle.

Item 32 – Attendance on 20th June 2024

25. The Applicants maintain that on this date the court was indisposed, hence the matter did not proceed. The Respondent did not rebut this assertion. Attendance cannot attract costs when the court is not sitting. The taxing officer therefore erred in principle by allowing this item.
26. Upon considering the reference as a whole, the court reaches the following findings:
 - a. The taxation of Item 1 (Instruction Fees) was proper and discloses no error of principle.
 - b. The inclusion of Items 24, 26, 27, 28 and 45 was erroneous, as the application in question was dismissed with no order as to costs.
 - c. Item 32 ought not to have been allowed as the court was indisposed on that date.
 - d. The remaining contested items (17, 18, 19 and 35) were properly taxed as necessary attendances within the meaning of paragraph 6 of Schedule 7 of the Advocates (Remuneration) Order, 2014.
27. Accordingly, the ruling of the taxing officer delivered on 3rd April 2025 is hereby varied only to the extent of Items 24, 26, 27, 28, 32, and 45, which shall be taxed off. The cumulatively amount to Kshs.7,785 which shall be deducted from the taxed costs leaving a sum of Kshs.372,000.



28. Considering the outcome of this ruling each party shall bear its own costs of this reference.

Orders accordingly.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF OCTOBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Radol for the Respondent

N/A by the Applicants

Court Assistant: Mpoye

