



**Orago v Adede (Environment and Land Case 52 of 2017)  
[2025] KEELC 7552 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7552 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND CASE 52 OF 2017  
MN KULLOW, J  
OCTOBER 31, 2025**

**BETWEEN**

**GEORGE ORANGO ORAGO ..... PLAINTIFF**

**AND**

**JOHN WARINGA ADEDE ..... DEFENDANT**

**RULING**

**A. Introduction**

1. This Applicant approached this court by way of Chamber Summons dated 11<sup>th</sup> July 2023 brought under Rule 11(1) & (2) of the Advocates (Remuneration) Order, Sections 1A, 1B & 3A of the *Civil Procedure Act*, and Articles 159 & 165 of *the Constitution* seeking review/revision of the taxation ruling delivered on 21<sup>st</sup> June 2023.
2. The Applicant prays that the Court sets aside the Taxing Officer's decision on Item 1 (Instruction Fees) and Item 49 (Getting Up Fees) together with other specified items, and substitutes the Certificate of Costs with one compliant with the Advocates (Remuneration) (Amendment) Order, 2014.
3. The application is supported by the Supporting Affidavit sworn on 11<sup>th</sup> July 2023 and the Supplementary Affidavit sworn on 26<sup>th</sup> July 2023 by Winny Adhiambo Ochwal, Advocate. The Respondent filed no response or submissions despite leave; the Court will determine the reference on the material before it.

**B. Brief Background and Procedural History**

4. The Plaintiff/Applicant filed this suit on 6<sup>th</sup> June 2016 concerning LR No. Kanyamkago/Kajulu/2002. After a defended hearing, judgment was delivered on 31<sup>st</sup> October 2022 in favour of the Plaintiff together with costs.



5. The Plaintiff thereafter lodged a Party-to-Party Bill of Costs dated 28<sup>th</sup> November 2022. The Bill was heard and on 21<sup>st</sup> June 2023 the Taxing Officer taxed the Bill at Kshs. 179,890/=, taxing off Kshs. 552,979/=. A Certificate of Costs accordingly issued. In the ruling, Item 1 (instruction fees) was allowed at Kshs. 75,000/= and Item 49 (getting up fees) was taxed off as “not applicable,” among other findings.
6. Aggrieved, the Applicant filed a Notice of Objection to Taxation on 26<sup>th</sup> June 2023 seeking reasons on the impugned items. The Taxing Officer supplied a certified copy of the ruling which embodied the reasons.
7. On 19<sup>th</sup> September 2023 the matter came up for mention; Ms. Apondi appeared for the Applicant. There was no representation for the Respondent. The Court directed that the reference be canvassed by way of written submissions.
8. On 23<sup>rd</sup> October 2023 both counsels appeared; Mr. Onyango for the Respondent sought 14 days to file submissions.
9. On 21<sup>st</sup> November 2023 when the matter was again mentioned, both counsels were present and Mr. Onyango informed the Court that the Respondent would not be filing any response or submissions.

### **C. Submissions by the Applicant**

10. The Applicant, through learned counsel, submitted that the Taxing Officer fundamentally misdirected herself both in fact and in law. It was argued that the award of Kshs. 75,000/= as instruction fees was unreasonably low and did not reflect the value, nature, and importance of the suit property, which involved land of significant size and value. Counsel contended that the Taxing Officer failed to give reasons or demonstrate how the said figure was arrived at, contrary to the principles enunciated in *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board and Joreth Ltd v Kigano & Associates*.
11. On the issue of getting up fees, counsel submitted that since the Respondent had filed a defence, issues were joined, and the matter proceeded to full hearing, the Plaintiff was entitled to getting up fees as stipulated under Paragraph 2 of Schedule 6A of the Advocates (Remuneration) Order, 2014. Failure to award the same was said to be an error of principle. Reliance was placed on *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W’Njuguna & 6 Others and Kamunyori & Co. Advocates v Development Bank of Kenya Ltd 2015*, where courts held that omission to consider relevant factors or to ascribe proper value to the subject matter constitutes an error in principle. Counsel therefore urged the Court to set aside the taxation ruling and reassess the contested items in line with the law.

### **D. Issues for Determination**

10. Upon considering the Reference, the Applicant’s submissions, and the record of taxation, the Court is of the view that the following issues arise for determination:
  - a. Whether this Court should interfere with the decision of the Taxing Master dated 21<sup>st</sup> June 2023, and the principles governing such interference.
  - b. Whether the Taxing Master erred in principle in assessing the Applicant’s Bill of Costs dated 28<sup>th</sup> November 2022, particularly in relation to instruction fees, getting-up fees, and other disallowed items.
  - c. Whether the Applicant is entitled to the reliefs sought in the present Reference.



## E. Analysis and determination

### **Issue No.1: Whether this Court should interfere with the decision of the Taxing Master dated 21<sup>st</sup> June 2023, and the principles governing such interference.**

10. It is now well settled that the jurisdiction of this Court when dealing with a reference from the decision of a Taxing Master is supervisory, not appellate. The Taxing Officer exercises a judicial discretion under the Advocates (Remuneration) Order, and such discretion will not be lightly interfered with unless it is demonstrated that the decision was based on an error of principle, or that the amount awarded was manifestly excessive or inordinately low, thereby amounting to a miscarriage of justice.
11. In *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the Court of Appeal held that: “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.”
12. Similarly, 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”.(emphasis by Court)
13. The same position was reaffirmed in *Peter Muthoka & Another v Ochieng & 3 Others* [2019] eKLR, the Court emphasized that matters of taxation fall squarely within the province of the Taxing Master, and that the High Court must be slow to interfere unless the discretion was improperly exercised, resulting in misdirection or manifest injustice. The Court stated that: “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.”
14. Therefore, the burden rests squarely upon the Applicant to demonstrate, with particularity, that the Taxing Master misapplied the law, took into account irrelevant factors, omitted relevant considerations, or adopted a wrong schedule or paragraph under the Advocates (Remuneration) Order. In the present case, the Applicant contends that the Taxing Master failed to apply the correct principles in disallowing instruction fees on the counter-claim and other chargeable items. The Court must, therefore, first determine whether the impugned taxation was indeed tainted by error of principle to justify interference.

### **Issue No 2: Whether the Taxing Master erred in principle in assessing the Applicant’s Bill of Costs dated 28<sup>th</sup> November 2022, particularly in relation to instruction fees, getting-up fees, and other disallowed items.**

10. Upon a careful scrutiny of the record and the taxation ruling, this Court observes that the Taxing Officer awarded Kshs. 75,000/= as instruction fees under the heading “other matters” without assigning any discernible reason or indicating the criteria upon which the figure was founded. The record does not reveal any analysis of the value of the subject matter, which, according to the pleadings and judgment, concerned land measuring approximately 1.415 hectares (about 3.5 acres).
11. It is trite that a Taxing Officer must demonstrate, within the ruling, the factors considered in arriving at the quantum of instruction fees including the value, nature, complexity, and importance of the matter, as well as the interest of the parties. The absence of such reasoning renders the assessment arbitrary and amounts to an error of principle. As the Court of Appeal held in *Joreth Ltd v Kigano*



- & Associates [2002] eKLR, where the value of the subject matter cannot be ascertained from the pleadings, judgment, or settlement, the Taxing Officer must exercise discretion by considering the nature and importance of the cause, the interest of the parties, and all relevant circumstances.
12. In the present case, there is no indication that the Taxing Officer undertook any such evaluation. The mere reference to “other matters” without further elaboration does not satisfy the statutory obligation to give reasons. This Court, therefore, finds that the omission constitutes an error of principle warranting interference with the taxation on this item.
  13. Turning to (Item 49) getting up fees, the record shows that a defence was filed, issues were joined, and the matter was heard to conclusion, resulting in a judgment for the Plaintiff. In *Kagwimi Kang’ethe & Co Advocates v Nairobi Mamba Village Limited* [2015] KEHC 8276 (KLR), CM Kamau (as he then was) observed at paragraph 35 that: “Evidently, the general principle is that a party is only entitled to getting-up fees if a matter has been fixed for hearing. If more than one suit proceeds separately, getting-up fees would be payable in all suits that have proceeded as such. However, if the suits are consolidated, getting-up fees are only chargeable once and if the matter is fixed for hearing. It is irrespective that such a matter does not proceed for hearing on the day that such matter had been set down for hearing. It is sufficient that an advocate has prepared to proceed with the trial on a particular day.”
  14. This authority reinforces that once a matter has reached the hearing stage, preparation for trial warrants getting-up fees. Under Paragraph 2 of Schedule 6A, getting up fees are payable in such circumstances at not less than one-third of the instruction fee allowed. The disallowance was therefore an error of law and principle.
  15. Regarding the other disallowed items drawings, making copies, and attendances the Court finds that these were provided for under Schedule 6A, and there existed affidavits of service and court record entries supporting them. The Taxing Officer’s failure to consider this evidence and provide reasons for their disallowance similarly constituted an error in principle.
  16. It bears repeating that reasons are the lifeblood of a judicial or quasi-judicial decision. As reiterated in *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W’Njuguna & 6 Others* [2006] eKLR, every decision that affects rights must be reasoned to allow a party to understand how the decision was reached and to enable meaningful challenge on review. The absence of reasons frustrates this Court’s supervisory role under Paragraph 11(2) of the Advocates (Remuneration) Order.
  17. Consequently, this Court finds that the Taxing Officer’s ruling fell short of the statutory and jurisprudential threshold required under Paragraph 11(2). The mere reproduction of figures without analytical justification does not amount to “reasons” within the meaning of the law.

### **Issue No 3: Whether the Applicant is entitled to the reliefs sought in the present Reference.**

10. From the foregoing, the Court finds that the impugned taxation was tainted with errors of principle. Consequently, the Court is persuaded to interfere with the decision of the Taxing Officer. The proper course is to set aside the ruling of 21<sup>st</sup> June 2023 to the extent of the disputed items and remit the Bill of Costs for re-taxation before a different Taxing Officer in accordance with the directions herein.

### **Disposition**

10. From the foregoing analysis, this Court finds that although the Taxing Officer supplied a certified copy of the taxation ruling, the same did not constitute adequate reasons as contemplated under Paragraph 11(2) of the Advocates (Remuneration) Order. The ruling merely stated the final figures without disclosing the criteria, considerations, or principles applied in arriving at them. It is therefore



not possible for this Court to properly interrogate the exercise of discretion or determine whether the Taxing Officer proceeded on correct principles.

11. The law is clear that the duty to provide reasons lies squarely upon the Taxing Officer once a notice of objection has been filed. Until such reasons are furnished, a reference cannot competently lie, and time does not begin to run for purposes of Paragraph 11(2).
12. Consequently, the Court finds that the Taxing Officer failed to discharge this mandatory duty, and the reasons contained in the taxation ruling were insufficient in law. This omission goes to the root of procedural fairness and denies the Applicant a meaningful opportunity to challenge the taxation.
13. In the premises, the proper course is to remit the matter back to the Taxing Officer with directions to comply fully with Paragraph 11(2) by recording and forwarding comprehensive reasons for the disputed items within thirty (30) days hereof. Only upon such compliance will the Applicant be at liberty to file a substantive reference, if still aggrieved.
14. Accordingly, the Court makes the following final orders: —
  - a. It is hereby declared that the Taxing Officer did not furnish adequate reasons as required under Paragraph 11(2) of the Advocates (Remuneration) Order.
  - b. The matter is remitted to a different Taxing Officer to provide full and reasoned justification for each disputed item within thirty (30) days of this ruling.
  - c. The execution of the Certificate of Costs is hereby stayed pending compliance with paragraph (b) above.
  - d. The Applicant shall have the costs of this Reference.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 31<sup>ST</sup> DAY OF OCTOBER, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Ruling delivered in the presence of: -

.....for the Plaintiff/Applicant

.....for the Defendant/Respondent

Philomena W. Court Assistant

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