



REPUBLIC OF KENYA



KENYA LAW
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**Ocharo & another v Ojowi & 2 others (Environment and Land Case
370 of 2017) [2025] KEELC 7557 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7557 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND CASE 370 OF 2017
MN KULLOW, J
OCTOBER 31, 2025**

BETWEEN

DINA MILLICENT OCHARO 1ST PLAINTIFF

ROSE ADHIAMBO OCHARO 2ND PLAINTIFF

AND

ADEK OJOWI 1ST DEFENDANT

DANIEL MOI GITANGE 2ND DEFENDANT

THE COUNTY GOVERNMENT OF MIGORI 3RD DEFENDANT

RULING

1. The 1st and 2nd Defendants/Applicants filed a Chamber Summons dated 23rd October 2023 brought under Paragraph 11(1) and (2) of the Advocates (Remuneration) Order and all other enabling provisions of the law. They seek orders that:
 - a. The Honourable Court be pleased to set aside and/or vary the Ruling of taxing officer dated 19th April 2023 be set aside and/or varied.
 - b. This Honourable Court be pleased to re-assess or order re-assessment of items Nos. 1, 2, 3, 4, 5, 6, 7, 10, 11, 14, 17, 18, 19, 20, 22, 23, 27, 28, 33, 45, 49, 52, 53, 55, 56, and 58 on the 1st and 2nd Defendants Bill of Costs dated 26th January 2023.
 - c. The Honourable Court be pleased to grant such Orders as it considers just and proper in the circumstances.
 - d. Costs of the application be provided for.
2. The application is supported by the affidavit of Nyaenya Moraa Lydia, advocate, sworn on 23rd October 2023, and the grounds appearing on the face of the application.



3. The Applicants contend that the taxing officer erred in principle by failing to take into account relevant considerations in assessing the instruction fees and other items, thereby arriving at an erroneous and manifestly low assessment of Kshs. 125,550/= as against a claimed sum of Kshs. 1,035,437/=.
4. The Applicants aver that the subject matter of the suit was of a substantial nature, involving land and proprietary interests in Marindi Market Plot No. 2, Suna West, Migori County, and thus the instruction fee should have reflected the pecuniary and jurisdictional value of a matter filed before the Environment and Land Court.
5. They further contend that the taxing officer failed to properly apply Schedule 6 of the Advocates (Remuneration) Order, particularly in respect of getting up fees, attendance items, and service of process, which were either taxed off or undervalued without justification.
6. The Respondents did not file any replying affidavit or submissions opposing the reference despite being served.

Submissions by the Applicants

7. The Applicants submit that the taxing officer's ruling of 19th April 2023 is vitiated by error in principle and manifestly low assessment. They say their Bill of Costs (dated 26th January 2023) arose from a high-value Environment & Land suit concerning proprietary rights in Marindi Market Plot No. 2, involving multiple defendants and serious remedies (injunctions, demolition/eviction, damages). Because the pleadings and nature of the dispute demonstrate substantial importance, the Applicants argue the instruction fee awarded (Kshs. 75,000) is unreasonably low and the taxing officer failed to have regard to the matter's true scope and requisite factors under the Advocates (Remuneration) Order.
8. They further submit specific errors in taxation of discrete items: (a) getting-up fees were not allowed although Schedule 6 provides they should be not less than one-third of the instruction fee; (b) several perusal, drawing and folio items were undervalued (items 4, 5, 7, 11, 16–20, 23, 28 etc.), with arithmetic shortfalls identified; and (c) service and attendance items (e.g. service to Nairobi and Migori, numerous mentions/attendances) were either taxed off or reduced contrary to the Remuneration Order and the actual distances/efforts involved. They ask the court to re-assess the listed items (items 1,2,3,4,5,6,7,10,11,14,17–20,22,23,27,28,33,45,49,52,53,55,56,58).
9. Finally, the Applicants maintain that the taxing officer failed to apply the Advocates (Remuneration) Order correctly and thus the Court should interfere. They invite the Court to enhance the instruction fee (they suggest not less than Kshs. 500,000 in argument, though acknowledging no valuation report was filed), allow appropriate getting-up fees, reinstate or correct service/attendance and folio items as drawn, and order re-assessment or re-taxation of the specified items. Costs of the reference are also sought.

Issue for Determination

10. Having carefully reviewed the Chamber Summons dated 23rd October 2023, the supporting affidavit of Nyaenya Mora Lydia, and the written submissions filed on behalf of the Applicants, I am of the considered view that the following issues arise for determination by this Honourable Court:
 - a. What are the legal principles governing the Court's power to interfere with a taxing officer's decision on taxation of costs?



- b. Whether, applying those principles, the taxing officer in this case erred in principle or failed to consider relevant factors in taxing the Defendants/Applicants' Bill of Costs dated 26th January 2023.
- c. What orders should issue as to the variation or setting aside of the taxation and the costs of this reference

Analysis and Determination

Issue No 1: What are the legal principles governing the Court's power to interfere with a taxing officer's decision on taxation of costs

11. It is now settled law that a court will only interfere with the decision of a Taxing Master in very limited circumstances. The Taxing Officer exercises a judicial discretion, and such discretion must not be lightly disturbed unless it is shown that the decision was based on an error of principle, or that the fee awarded was manifestly excessive or manifestly low so as to amount to an injustice.
12. In *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the Court of Appeal underscored this principle, holding 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. 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. Similarly, 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. Further *Odunga J. (as he then was) in Republic v Competition Authority of Kenya Ex parte Ukwala Supermarket Ltd & Another* [2017] eKLR, where he outlined the controlling principles as follows:

The circumstances under which a Judge of the High Court interferes with the taxing officer's exercise of discretion are now well known. These principles are, (1) that 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; (2) it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause 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; (3) 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 and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high; (4) it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary; (5) the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it; (6) the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees; (7) the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of *First American Bank of Kenya vs. Shah and Others* [2002] 1 EA 64.

15. Guided by these authorities, this Court reaffirms that it does not sit on appeal over the Taxing Master's discretion. Its role is supervisory to correct an error of principle or a plainly unjust result, not to re-evaluate the entire taxation exercise.
16. The Applicant must therefore demonstrate, with specificity, that the Taxing Master misapplied the law for instance, by using the wrong paragraph of Schedule 6 or failed to consider material factors such as the nature and importance of the matter, complexity, and value involved.
17. Applying the above principles, this Court must first determine whether the Applicant has shown that the Taxing Master erred in principle, before it can proceed to evaluate the propriety of the paragraph applied.

Issue No 2: Whether, applying those principles, the taxing officer in this case erred in principle or failed to consider relevant factors in taxing the Defendants/Applicants' Bill of Costs dated 26th January 2023.

18. The Applicants have faulted the taxing officer's ruling delivered on 19th April 2023, arguing that the assessment of the Bill of Costs dated 26th January 2023 was erroneous in principle and manifestly low. They contend that the instruction fee of Kshs. 75,000/= did not reflect the value, nature, and importance of the matter, that the getting-up fees were improperly disallowed, and that certain attendance and service items were taxed off without justification.
19. The record confirms that the suit before the Environment and Land Court at Migori (ELC No. 370 of 2017) concerned ownership and use of Marindi Market Plot No. 2, in Suna West, Migori County. The pleadings sought permanent injunctive orders, demolition, and other ancillary reliefs. No specific monetary value was pleaded, and no valuation report was filed to guide the taxing officer in determining the value of the subject property.
20. The applicable legal principle on determining the value of the subject matter for purposes of assessing instruction fees was clearly set out by the Court of Appeal in *Peter Muthoka & Another v Ochieng & 3 Others* [2019] eKLR, where the Court held as follows: "It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court."



21. Applying the above principle, it is evident that in the present matter, the value of the property could not be ascertained from the pleadings, as no valuation report or documentary evidence was provided to support the figure proposed by the Applicants. Consequently, the instruction fees charged at Kshs. 665,000/= in the Bill of Costs had no legal or factual basis.
22. I fully agree with the reasoning of the learned taxing officer, A. C. Munyuny, that in the absence of an ascertainable value from the pleadings or supporting valuation, the proposed instruction fee was unjustified. The taxing officer therefore acted within her discretion in assessing a reasonable sum of Kshs. 75,000/= as instruction fees. I find no error of principle on this item.
23. Regarding the getting-up fees, it is not in dispute that the suit was dismissed on 19th December 2022 following a Notice to Show Cause. There was therefore no hearing conducted on the merits. Under Schedule 6(2) of the Advocates (Remuneration) Order, getting-up fees are only earned where a matter has been set down for hearing and the advocate has prepared for such hearing. Since no hearing took place in this case, the taxing officer correctly disallowed that item.
24. As for the remaining items on perusal, drawing, attendance, and service, I find no demonstrable fault in the taxing officer's approach. The ruling reflects that she duly considered the relevant provisions of the Advocates (Remuneration) Order, the work done, and exercised her discretion judiciously. The Applicants have not shown that any of these items were improperly or unfairly taxed.
25. Consequently, the Court finds no error of principle in the taxing officer's decision dated 19th April 2023. The assessment of instruction fees, getting-up fees, and the other taxed items was proper and grounded in law.

Final Conclusion and Orders

26. Upon careful consideration of the Chamber Summons dated 23rd October 2023, the supporting affidavit, and the submissions of counsel, the Court finds no error of principle or misdirection on the part of the taxing officer. The assessment of instruction fees at Kshs.75,000/=, the disallowance of getting-up fees, and the taxation of the remaining items were all properly and judiciously undertaken.
27. Accordingly, the Reference is dismissed in its entirety. Each party shall bear their own costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 31ST DAY OF OCTOBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

N/A for the Applicant

N/A for the Respondent

Philomena W. Court Assistant

