



**University of Nairobi v Standard Group Limited (Miscellaneous Civil Application E199 of 2025) [2025] KEHC 14899 (KLR) (Civ) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14899 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E199 OF 2025**

**NW SIFUNA, J**

**OCTOBER 23, 2025**

**BETWEEN**

**UNIVERSITY OF NAIROBI ..... APPLICANT**

**AND**

**THE STANDARD GROUP LIMITED ..... RESPONDENT**

**RULING**

1. This is a Taxation Reference filed by a Party against another (the University of Nairobi a Judgment-Creditor/Decree-Holder, against The Standard Group Limited the Judgment-Debtor). It is against a Taxation decision arising from taxation of Party and Party Costs. The taxation was by Hon Sylvia Motari a Taxing Officer. The said taxation decision is dated 7<sup>th</sup> February 2025.
2. The Reference, which was by a Chamber Summons dated 20<sup>th</sup> February 2025, was filed pursuant to the provisions of Paragraph 11 of the Advocates Remuneration Order (ARO). It was supported by the Supporting Affidavit of Indira Makori an Advocate of the High Court of Kenya, and is based on the grounds stated in itself.
3. The grounds are set out therein as follows:
  1. That the Taxing Officer's decision was based on an error of principle and the Instruction Fees awarded is absurdly low.
  2. That the Taxing Officer erred in law in her assessment of the Instruction Fees; thereby arriving at a manifestly low award on getting up fees.
  3. That the Taxing Officer's error in principle on Instruction Fees resulted in an award of Getting Up fees that is inordinately low.



4. That the Taxing Officer erred in law in failing to take into consideration the relevant factors in taxation. Including, but not limited to, the nature of the matter giving rise to the taxation and the damage caused to the Applicant's reputation a premier university ranked 1<sup>st</sup> in East Africa and 7<sup>th</sup> in the continent; by the defamatory words published by the Respondent.
4. The Reference was canvassed through written submissions. With each party being afforded an opportunity to highlight its own submission. The Respondent in the Replying Affidavit filed in opposition, has opposed the Reference, and urged this Court to dismiss it. It has further lauded the said impugned decision as being correct and in accordance with the applicable law.

### **The Factual Background**

5. The taxation the subject of this Reference arose from a defamation suit (NairobiHCCC No. 70 of2017) that the Applicant the University Of Nairobi filed against the Respondent The Standard Group Limited that owns the Standard Newspaper. The suit arose from a report/story that the said newspaper published in Newspaper's issue of Saturday 18<sup>th</sup> February 2017. Which the Applicant considered defamatory of its stature and credentials.
6. The report/story which was titled "Shocking Case of 120,000 Useless Degrees" stated that the Applicant had been censured by the Council for University Education (CUE), for awarding Master of Arts (MA) and Doctor of Philosophy (Ph D) degrees to prominent people who hire researchers to write their theses.
7. The suit was later comprised and settled by a Consent by the both parties. Which Consent was in the terms that the Respondent was to thereafter be the official media partner of the University (the Applicant), for the launch of the University's Foundation scheduled for 30<sup>th</sup> June 2022, and that it was to in the said partnership, do the following;
  - a. Carry four (4) promotions daily on KTN News and KTN Home, for three weeks.
  - b. Carry three promotions daily on Radio, for three weeks.
  - c. Offer Media coverage during the pre-launch of the Event on 23<sup>rd</sup> June 2022.
  - d. Offer live links during the Event.
  - e. Offer on-air interview opportunities to the Applicant, on Spice FM and KTN Home.
  - f. Publish three half-page publication on the Standard Newspaper.
  - g. Publish posters on its online media platforms.
8. The parties later attempted to negotiate the Applicant's Party and Party costs of the suit, but the negotiations did not bear fruit. Hence the matter proceeded for taxation of the Applicant's filed Party and Party Bill of Costs. The Bill sought a sum of Ksh 7,999,584= . Of which amount, Ksh 4,500,000= was billed as Instruction Fees, and Ksh 2,250,000= as Getting Up Fees.
9. Which Bill was later taxed by Hon Sylvia Motari, a Taxing Officer of this Court. In a Taxation Decision contained in a Ruling delivered by her on 7<sup>th</sup> February 2025, she assessed Instruction Fees at Ksh 100,000=, and Getting Up Fees at Ksh 33,333/33, correspondingly. The Advocates Remuneration Order prescribes that Getting Up Fees should be one third of the Instruction Fees.
10. The Applicant was dissatisfied with and aggrieved by that assessment. Describing the amount awarded on Instruction Fees and Getting Up Fess, as manifestly, absurdly, and inordinately low. Being so



dissatisfied with the decision, it through its Advocates on record Ngatia & Associates Advocates, filed this Reference. Challenging the said taxation and urging this Court to set it aside.

11. The Reference which was vide a Chamber Summons Application dated 20<sup>th</sup> February 2025, and was filed pursuant to Paragraph 11 of the Advocates Remuneration Order, was supported by the Supporting Affidavit of Indira Makori an Advocate in the said law firm. This was despite the said Chamber Summons stating that it is relying on the Affidavit of Collins Omondi. This must have been an accidental error of draftsmanship.
12. Faulting the assessment, the Reference as already stated in this ruling, has described the said amount of Instruction Fees and Getting Up fees, as manifestly, absurdly, and inordinately low. It has contended that the amounts were arrived at in error of principle by failing to take into consideration the relevant factors of taxation, such as the stature and previous rankings of the Applicant (the University of Nairobi) among other universities in Kenya, and among the African continent's universities.
13. The Respondent for its part in the Replying Affidavit, of JESSE WAIGWA its Chief Legal Officer, opposed the Reference. Contending that the taxation was proper, and that the Taxing Officer correctly assessed the said Bill in accordance with applicable law and legal principles. The Reference was thereafter canvassed by way of written submission, with each party filing its submissions.

### **Analysis and Determination**

14. The issue for determination in this Reference, is whether the Taxing Officer's impugned assessment of the Instruction Fees (and Getting Up Fees) was in error and should be set aside. In determining this issue, I have considered not only the Chamber Summons (with its Supporting Affidavit), but also the Respondent's Response (the Replying Affidavit of JESSE WAIGWA), as well as the parties' filed submissions. I have also perused the taxation proceedings, the Taxing Officer's impugned ruling, as well as the primary pleadings in the suit itself, and the settlement in the Consent that the parties filed settling the suit.
15. There is a widespread belief and which is steadily taking root in the Kenyan society, that in defamation suits, courts should and will always award damages of millions of shillings. This is a mistaken belief. Because in some cases, the court will order the Defendant to only apologize or to publish an apology. There is also the possibility of an award of nominal damages; and even the possibility of dismissal of the suit. These are the actual realities of litigation, and defamation suits are not an exception.
16. Even where damages are awarded, they need not be in millions, as the quantum will depend on many factors. Among them:
  - a. The Defendants conduct.
  - b. Whether the Defendant has offered any apology or amends.
  - c. The Plaintiff's character and station in life.
  - d. The extent of publication of the defamatory matter. For instance the segment of society to which the defamatory statement(s) was published.
  - e. The content of the defamatory statement(s).
  - f. Whether the Defendant has shown any regret and remorse.
  - g. Awards by Courts in similar cases.



17. Therefore, the widespread belief that once you file a defamation suit, you are guaranteed of earning millions, is a misconceived and mistaken one. Besides, defamation as a cause of action was conceived to provide justice for damage to reputation, rather than as an avenue for enrichment. The compensation should be for wiping away your tears and punishing the wrongful act; not for enrichment.
18. In the strict sense, damages no matter the amount, cannot adequately compensate a shattered ego, an injured reputation, an injured character, a ruined career, dimmed career or career progression, or a decimated professional standing. Besides, society is not homogenous; and no two persons are mathematically identical. Therefore, the extent of the injury and harm, will vary from person to person, and from one set of circumstances to the other. Even from one locality to another.
19. As regards taxation of costs, I need to point out that in Kenya, the law and principles of taxation of costs, are well set out in legal treatises, the *Civil Procedure Act* and the Advocates Remuneration Order. Further, the grounds on which a Judge will interfere with a taxation decision of a Taxing Officer, have been extensively set out in decisions of superior courts.
20. Among them the often-cited decision in *Joreth Limited v. Kigano & Associates* [2002] KECA 153 (KLR). Where it was held that a Judge will interfere only where the Taxing Officer has in the taxation committed an error of law or error of principle. In my considered view, a Judge's intervention is an exception and in compelling circumstances and deserving cases, rather than mechanically as a matter of course.
21. It can certainly not be for the mere reason that a party is unhappy with decision or the assessment. Neither can it be for the mere reason that a party considers the amount laughably inadequate or that he had billed for more. A similar view was taken in *Kipkorir Titoo & Kiara Advocates v. Deposit Protection Fund Board* [2006] eKLR.
22. The Applicant's Reference is on both the Instruction Fees and the Getting Up Fees. Of these two, the Getting Up Fees is parasitic upon and consequent upon the Instruction Fees. As the Getting Up Fees is invariably one third of the Instruction Fees. Hence to determine the Getting Up Fees, you first have to determine the Instruction Fees. Such that once the Instruction Fees has been determined, the Getting Up Fees is automatically generated- that is in suits where the Taxing Officer has determined that Getting Up Fees is awardable.
23. For that reason, the main bone of contention here, is on Instruction Fees. The amount of Instruction Fees is determined from the value of the subject matter. Ordinarily, that value is ascertained from the pleadings, from the judgment, or from the settlement where there is one.
24. Where the amount is ascertainable and has been determined, the Taxing Officer in assessing the Instruction fees will have to just follow the ranges prescribed in the appropriate scale of the Advocates Remuneration Order. Also applying the applicable remuneration Order of the time when the suit was filed, as well as the applicable Schedule of the Order.
25. Where the amount cannot be ascertained, the Advocates Remuneration Order has provided a global figure that the Taxing Officer should award depending on the applicable schedule of the Remuneration Order. For costs in suits in the High Court, the applicable schedule is Schedule 6. While for costs in suits in subordinate courts, the applicable Schedule is Schedule 7. Therefore, in this matter the suit the subject of the Taxation, having been in the High Court, is Schedule 6. Which is the one that the Taxing Officer applied in this Taxation; and correctly.
26. Taxation is neither rocket science, nor a mathematical exercise entailing the use of mathematical formulae or complex applications. Neither does it entail the use of abstract constructs. It is a straight-



forward factual enterprise that ought to be based on facts rather than speculation and prospecting as attempted by the Applicant in this Reference. Where a party seeks to rely on a particular amount as the value of a suit's subject matter, that figure ought be derived from the pleadings, or from the Judgment, or from a settlement where there is one.

27. Taxation is also not a hypothetical exercise that is based on hypothesis, imaginations, suppositions and predictions. It being actual, factual and ex post facto, it is based on actual amounts and not on speculated would be awards in similar cases. The Taxing Officer cannot in taxing say "the value of the subject matter is this figure for the reason that had the case been concluded and adjudged, this is what the Plaintiff would have been awarded in damages."
28. This will be a wrong approach because there is in each case also the possibility of losing. In litigation, although losing is not a probability, it is a possibility. As not every suit will succeed. Some are lost. I therefore politely decline to be persuaded by the Applicant's argument that the suit would have obviously ended in a win and with an award of millions of shillings in damages as to warrant the figure of almost Ksh 8 million that it has in its Party & Party Bill of Costs, billed.
29. That figure is neither based on the pleadings nor the settlement. The terms of the settlement being as already set out in this judgment. Not even the Plaintiff as drawn provides an empirical justification for that figure. That figure is therefore an arbitrary one, plugged from without. As it is neither based on a judgment, a consent or pleadings in the suit. The prayers in the Plaintiff in NAIROBI HCCC NO. 70 OF 2017 were as follows:
  1. A mandatory injunction.
  2. A permanent injunction.
  3. General, aggravated and exemplary damages.
  4. Costs of the suit.
  5. Interest on (3) and (4).
30. The figure to be used as the value of a suit's subject matter, cannot just be a hypothetical, imagined, guessed or hyperbolically derived figure. If it is based on damages, there ought to be actually a Judgment or a Consent awarding such damages. It cannot be pegged on damages that courts have awarded in similar cases; or merely be predicated on the narrative that awards in defamation suits have been in millions of shillings. This will be absurd, and the law abhors absurdity.
31. This is a suit that the parties settled at the pre-trial stage before it could go to trial. Therefore, the value of the subject matter would be ascertained, if at all, from either the pleadings or the settlement filed and adopted by court as an order/Judgment of the court.
32. Upon perusing the pleadings and the entire record of the suit, I find that nowhere is the value stated. I further find that this is a matter falling under what the Advocates Remuneration Order (ARO) 2014, which is the applicable one, has in Schedule 6 has described as "other matters". This the Taxing Officer correctly pointed out at page 3 of her ruling; where she stated that under that head "others" the Instruction Fees is Ksh 75,000= where the suit is defended. This being a minimum rather than a maximum.
33. I further find that she applied her mind correctly when she after considering the factors in the suit and which she stated in her ruling, assessed Instruction Fees at Ksh 100,000=. The corresponding Getting Up Fees for this being correctly, Ksh 33,333/33.



34. In *Nyangito & Co. Advocates v. Doinyo Lessos Creameries Ltd* [2014] KEHC 5481(KLR), which was a Taxation Reference, Odunga J (as he then was) held that a Judge will interfere with a taxation decision of a Taxing Officer, only where the decision is based on an error of principle, or the amount awarded is manifestly excessive or manifestly low.
35. From the pleadings on record in the subject suit, this was a straightforward defamation/suit that cannot be classified as complex litigation that require a greater dispatch of skill or resources, or as involving intricate issues. A similar view was taken in *Kipkorir, Titoo & Kiara Advocates v. Postal Corporaion of Kenya* [2005] KEHC 917 (KLR), where Visram J (as he then was) observed as follows:
- “...to me, that is a normal, simple, straightforward defamation suit. Nothing more, nothing less. There is nothing in this Plaint about the hyperbole the Applicant’s Counsel now unleashes regarding the huge loss of Ksh 941,450,000=. The parties to litigation are bound by the pleadings, and cannot now begin to invent imaginary claims to justify a staggering legal fee.”
36. In the end therefore, the Taxing Officer’s decision is hereby upheld in its entirety, and this reference is hereby dismissed with costs.

**DATED AND DELIVERED AT NAIROBI ON THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

