

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC APPEAL No. E098 OF 2021

KENYA HARLEQUINS FOOTBALL CLUB.....APPELLANT

VERSUS

QUADCO TWO HUNDRED AND THIRTY-TWO LIMITED.....RESPONDENT

RULING

1. The Respondent in the appeal filed a reference on the taxed costs vide the chamber summons dated 14th May 2025, supported by an affidavit sworn by on the same date by Lemi Mwendar, seeking the following orders;
 - a. Spent
 - b. That this Honourable Court be pleased to review the Respondent's Bill of Costs taxed at Ksh. 21,653/-**
 - c. That Costs of this Application be awarded to the Respondent.**
2. The application is based on the grounds that, by a ruling dated 25th April 2025, the Respondent's Bill of Cost dated 7th October 2024, was taxed at Ksh. 21,653. It is dissatisfied with the said taxation, and the Respondent has a right to review the taxation, which therefore seeks the same.

3. Mr Mwendar deposes that the Taxing Master did not factor in the instruction fees of Ksh.300,000 when taxing the Bill of costs and also did not factor in the complexity of the matter as it required utmost care and attention. He stated that the taxed costs are unreasonable and ought to have been taxed at a higher scale as per Schedule 6 of the Advocates Remuneration (Amendment) Order, 2014 and the Advocates Act.
4. The application is not opposed but the court will still review it on its merits.
5. The Respondent filed submissions dated 10th November 2025 in support of the application stating inter alia that the Taxing Officer erred in principle by failing to apply the correct criteria under Schedule 6 of the Advocates Remuneration (Amendment) Order, 2014, leading to a low assessment of KES 21,653 for instruction fees and costs.
6. It argued that the Taxing Officer disregarded key factors such as the complexity, urgency, and importance of the matter, the volume of work, and the professional skill and diligence required. The Respondent submits that they instructed their advocates to defend an appeal involving complex factual and legal issues, necessitating careful analysis and extensive preparation. Thus, the instruction fees of KES 300,000 and getting-up fees of KES 100,000 were reasonable and consistent with the law.

7. In support the Respondent cited the case of **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Others [1972] EA 162**, which outlines the principles for interference with taxation, **Republic v Ministry of Agriculture ex parte Muchiri W'njuguna [2006] eKLR**, emphasizing judicious exercise of discretion, **Joreth Ltd v Kigano & Associates [2002] eKLR**, highlighting consideration of complexity and responsibility, **Kenya Airports Authority v Otieno Ragot & Co. Advocates (2023) eKLR**, stressing adherence to the applicable schedule and **Rachier & Amollo Advocates v Noble Gases International Ltd [2023] eKLR**, where it was held that failure to apply correct valuation warranted a fresh taxation.

8. That guided by these precedents, the Court should set aside the impugned taxation and substitute it with a fair assessment reflective of the matter's complexity and magnitude.

Analysis and Determination:

9. I have considered the Respondent's application and the submissions filed. The sole issue for determination is whether the Taxing Officer erred in principle in the assessment of the instruction fees.

10. It is trite that the court will not interfere with the discretion of a Taxing Officer merely because it would have arrived at a different conclusion. Interference is only

justified where there has been a clear error of principle, or the award is so manifestly excessive or low as to justify an inference of misdirection.

11. This was the position stated by the Court of Appeal in **Joreth vs Kigano & Associates (2002) EA 92** as cited in **Kenyariri & Associates Advocates v Salama Beach Hotel Ltd & 4 others [2014] KEELC 214 (KLR)**. These factors include the importance of the matter, general conduct of the case, the nature of the case, time taken for its dispatch and the impact of the case on parties.

12. Further, in the case of **Kipkorir, Titoo & Kiari Advocates vs Deposit Protection Fund Board (2005) 1 KLR 528**, the Court of Appeal held 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 – an example for an error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles.”

13. In **Arthur Vs Nyeri Electricity Undertaking (1961) EA 497** as cited in **Kenyariri & Associates Advocates (supra)**, the predecessor of the Court of Appeal held that 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 with and the court will interfere only in exceptional circumstances.

14. In the present case, the ruling of the Taxing Officer clearly indicated that the costs taxed were in respect of an application dated 18th February 2022, which application was dismissed for want of prosecution. The Respondent had filed a preliminary objection and grounds of opposition in response to that application. The dismissed application was filed within an existing appeal.

15. From the record, I note that the application dated 18.2.2022 was seeking orders to stay the execution. Once this application was dismissed on 26th July 2023, I recorded in the file that the matter was marked as closed. I note that the appeal itself has not been prosecuted, which is an omission that the Taxing Master could not, on her own accord, assume included the awarding of costs for the appeal.

16. The Taxing Officer therefore properly taxed the matter under the provision titled “matters arising during proceedings” in Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014. Given that the taxation related to an interlocutory application rather than a substantive appeal, the Taxing Officer rightly exercised her discretion in awarding KES 21,653 as reasonable costs.

17. In the event the Respondent wishes to tax their costs on the appeal, they are at liberty to move the court for the dismissal of that appeal. However, the taxing master guided by the record could only tax the costs of the dismissed application

and not the appeal. There is no evidence that the Taxing Officer applied wrong principles, disregarded relevant considerations, or failed to exercise discretion judiciously in this respect.

18. Hence, the Respondent's contention that the matter was complex and warranted higher instruction fees is premature and is not supported by the status of the record or by the nature of the application determined. It is for this reason that I hold that there is no basis for this Court to interfere with the decision of the Taxing Master.

19. As a result, the Respondent's Chamber Summons dated 14th May 2025 is dismissed with no order as to costs since it was undefended.

Dated, Signed and Delivered at Nairobi this 13th day of November, 2025

**A. OMOLLO
JUDGE**