



Maxam Limited v Heineken East Africa Import Company Limited & another (Commercial Case 29 of 2016) [2025] KEHC 16360 (KLR) (Commercial and Tax) (7 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16360 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 29 OF 2016
JWW MONG'ARE, J
NOVEMBER 7, 2025

BETWEEN

MAXAM LIMITED PLAINTIFF

AND

HEINEKEN EAST AFRICA IMPORT COMPANY LIMITED 1ST DEFENDANT

HEINEKEN INTERNATIONAL BV 2ND DEFENDANT

RULING

1. By an application filed by way of the Chamber Summons dated 12th March 2025, the Plaintiff seeks to set aside the Warrants of Attachment issued by the Deputy Registrar on 10th March 2025 in execution of the decree issued on 15th August 2019 as the Deputy Registrar did not compute and/or disregarded, overlooked and/or omitted interest on the decretal sum amounting to Kshs.1,349,047,175.70/= . The Plaintiff thus wants to rectify the Warrants to include interest and further interest. The application is supported by the affidavits of Ngugi Kiuna sworn on 12th March 2025 and 28th March 2025 and opposed by the Defendants through the replying affidavits of Kevin Santry sworn on 20th March 2025.
2. The 1st Defendant has also filed a Reference by way of the Chamber Summons dated 24th February 2025 challenging the Deputy Registrar's ruling of 11th February 2025 where she assessed the instruction fees and getting up fees in respect of the Plaintiff's Party and Party costs at Kshs.86,000,000.00/= and Kshs.28,666,666.67/= respectively. This application is supported by the affidavits of Victor Mailu And Vianney Sebayiga, advocates in conduct of this matter on behalf of the Defendants, sworn on 25th February 2025 and 16th May 2025 respectively. It is opposed by the affidavit of Ngugi Kiuna sworn on 29th April 2025.



3. The applications were canvassed by way of written submissions which I have considered and I will be making relevant references to the same in my analysis and determination below.

Analysis And Determination

4. I propose to first deal with the Defendants' Reference. The Defendants state that the Deputy Registrar correctly calculated the base instruction fee at Kshs.27,199,683.02/= based on the ascertainable value of the subject matter of Kshs 1.799 billion. However, that she then tripled this amount to Kshs.86,000,000.00/= and that this enhancement of Kshs.58,800,316.98/= was arbitrary and without a substantiated reason. That the sole reason given for this massive enhancement was "the importance of the matter to parties" and the Defendants contend that this is a broad, general, and loose-textured phrase and that the Deputy Registrar failed to specify what was uniquely important about the case, as set out in the case of Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W'Njuguna & 6 others [2006] KEHC 3504 (KLR)
5. The Defendants argue the Deputy Registrar did not properly consider the Court of Appeal's judgment on the case, which would have provided a different perspective on the issues' complexity and novelty. They allege, she may not have adequately considered the 1st Defendant's written submissions during the taxation process, potentially breaching their right to a fair hearing and they further point out that in a related taxation involving the 2nd Defendant, with a higher subject matter value of Kshs. 3.558 billion, the same Deputy Registrar awarded significantly lower instruction fees, that is, Kshs. 40.4 million after a discount and did not find the matter to be particularly important or complex. The Defendants state that this inconsistency is presented as evidence of an error in her ruling.
6. For the above reasons, the Defendants urge the court to review and reduce the instruction and getting-up fees awarded by the Deputy Registrar or in the alternative, order that the Bill of Costs be sent back to be taxed afresh by a different Taxing Officer. They also seek to set aside any Certificate of Taxation or Warrants of Attachment based on the ruling.
7. In response, the Plaintiff states that that the application is grossly misconceived, gravely misplaced, mischievous, frivolous, scandalous and vexatious and constitutes an abuse of the court process. It states that assessment of costs is a matter within the broad discretion of the Deputy Registrar and that a court should not interfere with this discretion merely because it disagrees with the quantum, but only if a clear error of principle is shown, which it argues the Defendants have failed to do. The Plaintiff defends the Kshs.86,000,000.00/= instruction fee by highlighting the case's complexity, which it argues justified the Deputy Registrar's use of her discretion to enhance the base figure. The Plaintiff states that this case raised great issues of novelty concerning the termination of a distribution agreement, resulting in a detailed 58-page judgment.
8. The Plaintiff claims it was like a "bet-the-company" case, where losing would have meant the loss of its entire business, that the suit involved voluminous pleadings, numerous intricate applications, and went through appeals to both the Court of Appeal and the Supreme Court, underscoring the substantial legal effort required. It contends that the subject matter for costing should not be limited to the special damages awarded, that is the Kshs. 1.799 Billion but must also account for other significant, non-monetary reliefs granted by the court. The Plaintiff states that the Deputy Registrar did provide a reason for her award, quoting from her ruling: "After considering all these guidelines laid down in the two matters and the importance of the matter to parties, I find it reasonable to award the instruction fees as prayed." It argues this is sufficient and that allegations to the contrary are entirely baseless.
9. The Plaintiff also raises a technical objection, alleging the application is bad in law and incurably defective because the 1st Defendant failed to first request the Deputy Registrar to provide formal



reasons for her decision, as required by Paragraph 11(2) of the Advocates Remuneration Order and it argues this failure prevents the court from properly exercising its jurisdiction.

10. The Plaintiff also states that the getting-up fees awarded are in line with the standard calculation and are therefore justified by the instruction fee awarded. In sum, the Plaintiff believes the Reference was filed with the intention of delaying the execution of the Certificate of Taxation, further characterizing it as an abuse of the court process. It prays that the same be dismissed.
11. In making this determination, even though the Plaintiff raises a technical objection that the 1st Defendant failed to request reasons from the Deputy Registrar, I am in agreement with the Defendants' submission that this request was actually made to the court via email and a formal letter is available in the Court Tracking System (CTS). In any event, I have gone through the ruling and note that the reasons are contained in its body and therefore, no prejudice has been suffered by any party.
12. On the award of instruction fees, the parties agree that the Deputy Registrar was right to determine the value of the subject matter from the court's judgment of 29th July 2019 and award a base fee of Kshs.27,199,683.02/=. The point of difference is whether she properly exercised discretion to enhance this base figure to Kshs.86,000,000.00/= as prayed for by the Plaintiff in its Bill of Costs. The Deputy Registrar stated that she had noted the guidelines in Republic v The Minister for Agriculture(supra) and Premchand Raichand Ltd and Another vs Quarry Services of East Africa Ltd and Another No. 3 East Africa Law Report (1972) E. A. page 162 and; the importance of the matter to the parties to award the instruction fees as prayed. Earlier, she had also noted the Plaintiff's contention for her to consider the interest accrued in the matter for 3 years. The Deputy Registrar held that the court did not award any interest and even if the same had been awarded, it could have been calculated at the point of issuance of a decree and not while calculating instruction fees.
13. From the above, I am of the view that the Deputy Registrar considered relevant factors and properly exercised her discretion to increase the base fee for a number of reasons. First, in Republic v Minister for Agriculture(supra), it was held that the base instruction fee at Schedule 6 of the Advocates Remuneration Order is a guide and not a straightjacket dictate and that a taxing officer has the discretion to enhance the fee to reflect the true value and nature of the work done. Second, in Joreth Limited v Kigano & Associates [2002] KECA 153 (KLR), the Court of Appeal stated that the factors to be considered by a taxing officer in awarding instruction fees are not exhaustive and it includes "the importance of the matter to parties". The Defendants' contention that this is a "vague" phrase ignores the context in which it was used. The Deputy Registrar did not rely on this factor in isolation. As stated, she first considered the guidelines from the Republic v Minister for Agriculture, Joreth and Premchand cases(supra) and then applied the overarching factor of importance. As the court that heard the case, I do not think the Deputy Registrar was really far off in her assessment as to the importance of this case to the parties. The subject matter involved a multi-billion-shilling distributorship, the termination of which threatened the Plaintiff's very existence, as deponed by the Plaintiff's Managing Director. The litigation was protracted, involving voluminous pleadings, numerous interlocutory applications, and proceeded to the Court of Appeal and the Supreme Court. The Judgment of the was extensive and dealt with complex contractual and constitutional issues arising from a distribution agreement.
14. Third, as was held in Republic v Minister for Agriculture(supra), the court ought to be circumspect in interfering with a Deputy Registrar's discretion in taxation matters. The Court of Appeal, in Ouma v Warega [1982] KECA 27 (KLR) emphasized that judges must extend some latitude to taxing officers and avoid unnecessary interference with questions of quantum in which taxing officers have greater experience, unless, of course there is some misdirection. I find that the Deputy Registrar was properly guided and I fail to see any whimsical application of discretion in this case and I therefore decline the entreaty to interfere with the instruction fees as awarded.



15. Fourth, regarding the alleged inconsistency with the taxation of the 2nd Defendant's Bill of Costs, I find that each party's bill is taxed on its own merits. The circumstances, including the stage at which the 2nd Defendant's matter was determined, that is withdrawal before full trial, as indicated in ruling of 22nd December 2023, were materially different and justified a distinct approach.
16. As I have not reviewed the instruction fees and the getting-up fees is a derivative of the instruction fees and calculated at the statutory one-third, the same must consequently stand. The 1st Defendant's Reference is now dismissed.
17. I now turn to the Plaintiff's application where the court is being called to determine whether the Plaintiff is entitled to interest on the decretal sum. The Plaintiff contends that the Respondents settled the principal judgment sum on 3rd December 2024 via a bank guarantee, however, they did not pay interest on the judgment sum from 29th July 2019 to date of payment calculated at Kshs.1,349,047,175.70/=. The Plaintiff avers that the Deputy Registrar's omission to include interest in the Warrants is contrary to the Practice Direction No. 38 issued by the Chief Justice in Gazette Notice No.189 of 2022 which provides that "Where a decree is silent with respect to the payment of interest on such aggregate the court shall be deemed to have ordered interest at 14 % per annum or as the Chief Justice will direct from time to time".
18. The Plaintiff also states that the omission is in total disregard of Order 4 Rule 6 of the Civil Procedure Rules which provides that "Every plaint shall state specifically the relief which the plaintiff claims, either specifically or in the alternative, and it shall not be necessary to ask for costs, interest or general or other relief which may always be given as the court deems just, whether or not it could have been asked for or granted when the suit was filed; and this rule shall apply also to a defence or counterclaim."
19. In response, the Defendants have stated that interest was never claimed or awarded and that both this Court, in its judgment of 2019 and the Court of Appeal in the judgment of 2024 specifically did not award any interest in their respective judgments. That the courts had the discretion to do so but elected not to. The Defendants state that the Plaintiff is trying to use this application as a backdoor appeal to re-litigate an issue that was already decided or not decided by the higher courts. They state that the proper route to claim interest would have been for the Plaintiff to file a cross-appeal when the Defendants appealed the case, which it did not do.
20. The Defendants contend that the High Court is now functus officio regarding the substantive judgment and that allowing this application would require the court to sit in appeal over its own and the Court of Appeal's final judgments, which would be a judicial embarrassment. The Defendants argue that the legal provisions cited by the Plaintiff above, that is, the Practice Direction No. 38 of 2022, only sets an interest rate when interest has been awarded but the rate is unspecified and does not create a right to interest where none was granted and that Order 4, Rule 6 gives a court the discretion to award interest even if not pleaded. However, that since neither this Court nor the Court of Appeal exercised this discretion, the Deputy Registrar was correct not to include it at the execution stage. As such, the Defendants urge that the Plaintiff is not entitled to any interest and they urge the court to dismiss the Plaintiff's application with costs.
21. The determination of this issue goes to the interpretation of the aforementioned provisions. Going through Practice Direction No. 38 of 2022, whereas the Defendants state that the same only sets the interest rate, when interest was awarded but the rate was unspecified, I find that the same actually and specifically provides for when "... a decree is silent with respect to the payment of interest". Further, I find that indeed, Order 4, Rule 6 gives a court the discretion to award interest even if not pleaded. As



such, it can be stated that where a party has not pleaded for interest or a decree is silent on the same, then it is presumed that the court ordered interest at a rate of 14 % per annum.

22. In summary, having considered the parties' submissions on this point, the Court finds that the Plaintiff's reliance on Practice Direction No. 38 of 2022 is not misplaced. Contrary to the Defendants' contention that the Practice Direction applies only where an interest rate is unspecified, a plain reading of the provision reveals that it also specifically provides for the scenario where "a decree is silent with respect to the payment of interest." Furthermore, the Court aligns itself with the discretionary power enshrined in Order 4, Rule 6 of the Rules, which permits a court to award interest even in the absence of a specific prayer in the pleadings. The combined effect of these provisions leads this Court to the conclusion that where, as in the present case, a party did not expressly plead for interest and the resulting decree is silent on the matter, a presumption arises that the court ordered interest at the statutory rate of 14% per annum from the date of the suit or judgment until payment in full.

Conclusion And Disposition

23. In the foregoing, I now make the following dispositive orders:-
1. The 1st Defendant's Reference dated 25th February 2025 is dismissed:
 2. The Plaintiff's application dated 12th March 2025 is allowed in the following terms:
 - a. The Warrants of Attachment and sale of movable property issued by the Deputy Registrar on 10th March 2025 are hereby set aside and shall be replaced with amended warrants reflecting the orders below.
 - b. The Decree Holder is awarded interest on the principal decretal sum of Kenya Shillings 1,799,978,868.00 at the rate of 14% per annum from the date of judgment (29th July 2019) until the date of full payment.
 - c. The Deputy Registrar is hereby directed to compute the interest payable in accordance with Order b) above and to issue fresh warrants of attachment and sale for the consolidated sum of the principal decretal amount and the accrued interest.
 - d. Each party shall bear their costs of both applications.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025

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J.W.W. MONGARE

JUDGE

In The Presence Of:-

Mr. Nyachoti for the Applicant/Plaintiff.

Mr. Kituku holding brief for Mr. Mailu for the 1st Respondent/Defendant.

Mr. Sebayiga for the 2nd Respondent/Defendant.

Amos- Court Assistant

