

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR. NO. E242 OF 2024

REPUBLIC APPLICANT/ RESPONDENT

AND

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW
BOARD
RESPONDENT**

**ACCOUNTING OFFICER, NAIROBI CITY COUNTY
GOVERNMENT1ST INTERESTED PARTY/ APPLICANT**

**NAIROI CITY COUNTY GOVERNMENT 2ND INTERESTED
PARTY/ APPLICANT**

**JUBILEE HEALTH INSURANCE LIMITED3RD INTERESTED
PARTY**

AND

**THE KENYA ALLIANCE INSURANCE COMPANY
LIMITED.....EX PARTE APPLICANT**

RULING

- 1.** This court in its judgment delivered on 2024-12-03 awarded costs to the Applicants.
- 2.** Subsequently the Applicants filed a Bill of costs dated 26th day of March 2025 (wrongly dated 26th March 2024) seeking the sum of Kshs.30,207,074/=.

3. The same was taxed at Kshs.200,000. This has precipitated the filing of the instant reference dated 20th May 2025 by wherein the 1st and 2nd Interested parties seek orders;
- 1) THAT the Honourable Court be pleased to set aside the Ruling on Taxation delivered on 9th May 2025 by Hon. E.C. Chelule, Deputy Registrar, in respect of the Party and Party Bill of Costs dated 26th March 2025.
 - 2) THAT the said Bill of Costs be remitted back to a different Taxing Officer for reassessment of instruction fees, taking into account:
 - a) The value of the subject matter being Kshs. 1,484,474,477/ The complexity and public importance of the matter; and
 - b) The time, skill and responsibility expended by counsel.
 - 3) THAT the costs of this Reference be awarded to the 1st and 2nd Interested Parties.

The Applicant's Case;

4. The Applicants are dissatisfied with the decision of the taxing master. It is their case that the trial Taxing Master failed to consider the complexity of the Judicial Review suit which ran into Kenya shillings
5. They feel that the amount awarded is inordinately low and not in proportion with the amount claimed.

6. It is their case that the taxing master did not consider the time spent, the volume of the work and the complexity of Judicial Review which affected a large number of people.
7. They refer to the guiding legal framework which is provided for under the Advocates Remuneration Order, Schedule 6 Paragraph 1 which provides for the computation of instruction fees in contentious matters, taking into account the value, complexity, and work involved.
8. Reliance was placed in the case of **First American Bank of Kenya Ltd v Gulab P. Shah 2 others [2002] eKLR** wherein the Court of Appeal held that the Taxing Officer must consider:

The amount or value of the subject matter involved;

- i) The nature and importance of the cause or matter;
 - ii) The interest of the parties;
 - iii) The general conduct of proceedings;
 - iv) Any directions by the trial court.
9. It is the Applicants case that the matter involved the award of a medical insurance tender worth Kshs. 1,495,474,577 for employees of the Nairobi City County Government. The Exparte Applicant, a major insurance company, challenged the award in both the Public Procurement Administrative Review Board (PPARB) and subsequently the High Court, but lost in both forum.
 10. This matter according to the Applicant was:

- a. Of significant public interest, impacting all county employees who lacked valid insurance cover.
 - b. Complex and time-sensitive, governed by strict procurement timelines under Section 175 of the Public Procurement and Asset Disposal Act.
 - c. Required the Advocates for the 1st and 2nd Interested Parties/Applicants to work under tight deadlines, including weekends, and review large volumes of documentation.
 - d. Involved multiple court appearances and filings, including a reply to a Judicial Review Application and a subsequent stay Application both filed by the Ex Parte Applicant.
- 11.** The Applicant is disgruntled because despite the high value, complexity, and legal effort involved, the Taxing Officer awarded a flat instruction fee of only Kshs. 200,000, which is challenged as grossly inadequate.

The Respondents Case;

- 12.** The Exparte Applicant in opposing the reference submits that the 1st & 2nd interested parties have not shown that the taxing master committed an error of principle.
- 13.** They argue that the 1st & 2nd interested parties have not alleged that the taxing was guided by improper motive. They have not demonstrated that the taxing master failed to properly exercise her discretion or apply her mind to the issues before her.

14. According to them, the Applicants have failed to demonstrate that the taxing master wrongly interpreted the law or gave an unreasonable ruling.
15. They submit that the 1st & 2nd interested parties have merely raised a litany of baseless and frivolous complaints which fall short of the threshold to be met before this court can disturb the decision of a taxing master.
16. The Applicant submits that these are judicial review proceedings seeking prerogative orders with no monetary value attached to them as a result of which it is not correct to assess costs using the tender value.
17. In the case of **Nyangito & Co. Advocates v Doinvo Lessos Creameries Ltd [2014/ KEHC5481 (KLR)** where the court held as follows-

“...In her ruling, the learned Taxing Master was the view which view I agree with that in judicial review Application the subject matter is not the basis of determining the instructions fees though it is one of the factors to be considered...”

18. They submit that the taxing master actually increased the basic fees by 100% which is quite generous. The taxing master went at great lengths to give reasons why she exercised her discretion to tax the instruction fees as she did.
19. It submits that Judicial review are common Applications that are litigated upon countless times on a daily basis and that the

Application was not in any way complex or raised any new issue that would warrant instruction fees of Kshs. 22,637,118/- as drawn.

20. It is the Exparte Applicant's case that the taxing master carefully considered the bill of costs and assessed costs within the framework of the correct legal principles.

Analysis and determination:

21. The issue for determination is whether the Taxing Master erred in principle while taxing the Bill of Costs.
22. 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.
23. The principles of setting aside the decisions of Taxing Master were well established in the cases of **Premchand Raichand Limited & Another vs Quarry Services of East Africa Limited and Another [1972] E.A 162, First American Bank of Kenya VS Shah and Others (2002) EA 64 and Joreth Ltd vs Kigano and Associates (2002) 1 EA 92**. These include:
 - a) That there was an error of principle;
 - b) The fee awarded was manifestly excessive or is so high as to confine access to the Court to the wealthy,
 - c) That the successful litigant ought to be fairly reimbursed for the costs he has incurred,

d) That so far as practicable, there should be consistency in the award.

24. The applicable law in this case is Schedule 6(1) of the Advocates Remuneration Order 2014 which provides that: -

(i) To present or oppose an Application for a constitutional and prerogative orders such fee as the Taxing Master in the exercise of his discretion and taking into consideration the nature and importance of the Petition or Application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate;

(i) Where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000/=.

(ii) Where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000/=

25. The Taxing Master has the discretion to increase this figure. However the discretion granted to the taxing Master must be exercised judiciously and also subject to the principle of reasonableness. The court has gone through the ruling before deciding whether or not to grant the orders sought.

26. In particular I note that the Taxing Master observed as follows,

“The Judicial review Application was filed on the 25/10/2024 and Judgement delivered on the 3rd December 2024. This

matter was therefore completed within 2 months of its inception.

I have carefully considered the factual and legal issues with a view to gauge complexity of issues, importance of the matter. I have also perused the pleadings herein and noted the volume thereof. Bearing in mind all the aforesaid factors and the reasons herein and in exercise of discretion vested in me, I am fully convinced that the amount sought by the 1st and 2nd interested parties in their party and party Bill of costs is inordinately high and outside the provisions of the ARO. Courts have severally held that costs should not be allowed to rise to such level as to confine access to court to the wealthy; a successful litigant ought to be fairly reimbursed for the costs he had to incur in the case. It is important that advocates should be well motivated but it is also in the public interest that costs be kept to a reasonable level so that justice is not put beyond the reach of poor litigants.

In my opinion there is nothing novel or complex that arose in this matter while also considering the time taken to dispose the matter. The Application was for prerogative orders and as such the value of the subject matter does not arise. It however is a matter of consideration before this court as it speaks into the importance of the matter and interests of the parties herein. Therefore, the basic fee applicable is governed by Schedule 6 (J) (ii) of the Advocates Remuneration Order, 2014 and the fee provided is Kshs. 100,000/=

Having considered all the factors raised by the parties in the Party and Party Bill of Costs before me, I am of the view that Kshs. 200,000/= is reasonable instruction fees taking into account the time taken in this matter, the interests of the parties, the importance of the matter, the volume of the pleadings, scope of the work done and the nature of the dispute herein.”

27. The court is in the agreement with the Taxing Master that the amount awarded as costs is proportionate and in line with the advocates remuneration order.
28. The court has perused the ruling and the court agrees with the reasoning of the Taxing Master. The court is satisfied that she applied the principles that govern the taxation of bills of costs appropriately.
29. The court is of the opinion that the Taxing Officer, in rendering the Ruling dated 28th May 2024, did not commit an error in principle by awarding instruction fees in the sum of Kshs. 200,000.
30. As stated in **Premch and Rajchand Ltd & Another v Quarry Services of East Africa Ltd [7 972] EA 162**, an award of costs must:
 - a) Be just and reasonable;
 - b) Avoid being excessive or insufficient;
 - c) Ensure fair compensation to the successful litigant;
 - d) Reflect consistency with established practice.

- 31.** This court finds that the Applicant has not demonstrated and shown that the Taxing Master misapplied the law or failed to consider mandatory guiding factors thus giving it the authority to interfere with the Taxing Master’s ruling which I hereby do.
- 32.** The Taxing Master’s ruling is within the principles as laid out in the case of **Premch and Rajchand Ltd & Another v Quarry Services of East Africa Ltd [7 972] EA 162** (supra).

Disposition;

- 33.** The Application lacks merit.

Order:

The Application is dismissed with costs.

Dated, signed and delivered at Nairobi this 11th day of November, 2025

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J. CHIGITI (SC)
JUDGE