

**IN THE COURT OF APPEAL  
AT MOMBASA  
(CORAM: DR. K. I. LAIBUTA, JA. - IN  
CHAMBERS) CIVIL APPEAL (APPLICATION) NO.  
129 OF 2018**

**BETWEEN**

**MOHAMMED A. MAALIM.....APPLICANT**

**AND**

**THE REGISTERED TRUSTEE OF THE  
AGRICULTURAL SOCIETY  
OF KENYA & 33 OTHERS.....RESPONDENTS**

*(Being a reference against the Ruling on Taxation (E. M.  
Mwamuye, DR.) dated 20<sup>th</sup> March 2025)*

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**\*\* RULING**

1. By a judgment dated 14<sup>th</sup> March 2019 in determination of Mombasa Civil Appeal No. 129 of 2018, this Court dismissed the applicant's appeal with costs to the 1<sup>st</sup> to the 8<sup>th</sup> respondents in respect of which their Party-and-Party Bill of Costs dated 13<sup>th</sup> February 2023 was taxed in the sum of Kshs. 518,970 inclusive of instructions fees taxed at Kshs. 500,000.

2. Dissatisfied with the decision of the Deputy Registrar (E. M. Mwamuye, SRM), the applicant (Mohammed A. Maalim) filed a Reference challenging the award of Kshs. 500,000 on account of instructions fees, which he contends ought to have been awarded in the sum of Kshs. 1,500 or such lesser amount as I may determine. According to the applicant, the award of Kshs. 500,000 on account of instructions fees is manifestly excessive in the circumstances of the case.

3. In support of the Reference, counsel for the applicant, M/s. Oluga & Company, filed written submissions dated 14<sup>th</sup> May 2025. Counsel urged me to set aside the award of Kshs. 500,000 on account of instructions fees and substitute therefor Kshs. 1,500 or such lower amount as I may determine.

4. In rebuttal, learned counsel for the 1<sup>st</sup> to 8<sup>th</sup> respondents, M/s. Millimo, Muthomi & Company, filed written submissions dated 15<sup>th</sup> May 2025 urging me to dismiss the Reference with costs, uphold the award of instructions fees in the sum of Kshs. 500,000.

5. According to counsel, the sum of Kshs. 500,000 was moderate and reasonable considering the nature, complexity and public importance of the dispute involving the Agricultural Society of Kenya. Counsel further submitted the discretion exercised by the Taxing Officer was lawful, fair and grounded on judicial precedents.

6. It is instructive that the subject appeal arose from a decision of the High Court of Kenya at Mombasa in judicial review proceedings the nature of which no particular value is assignable. Be that as it may, taxation of costs in this Court on similar appeals is governed by the Third Schedule to the Court of Appeal Rules, 2022. In particular, I take to mind paragraph 9(2) thereof, which reads:

***9. (2) The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.***

7. Unlike in private law cases and appeals where instructions fees are ascertainable in relation to the value of the subject matter, public law litigation, such as applications for judicial review of administrative action, as well as appeals therefrom, are proceedings of a special nature the determination of which attracts costs to be taxed pursuant to the Third Schedule to the Court's Rules. Accordingly, paragraph 9(2) requires the Taxing Officer to consider, among other things, the nature of the dispute, the importance and difficulty of the issues in contention, the parties' interests, the general conduct of the proceedings, the fund or persons to bear the costs and other relevant circumstances.

**8. In Republic v Minister for Agriculture & 2 others  
Ex-**

**parte Samuel Muchiri W'Njuguna & 6 others** [2006]  
eKLR,

Ojwang, J. (as he then was) held:

***“It is noteworthy that counsel for the respondents herein invoked many authorities from private-law claims sounding in damages and entailing pecuniary awards. Such examples do not, in my opinion, fall in the same class as most public-law claims - such as those in judicial review, in constitutional applications,***

***in public electoral matters, etc. Such matters are in a class of their own, and the instruction fees allowable in respect***

***of them should not, in principle, be extrapolated from the practices obtaining in the private law domain which may involve business claims and profit calculations.”***

9. The applicant’s grievance was essentially founded on the contention that the applicable scale is the Third Schedule to the Court of Appeal Rules, 2022 which provides that the scale of fees for instructions to act for a respondent is Kshs. 1,500; that there was no justification for enhanced costs; that this was an ordinary judicial review matter; and that the Taxing Officer did not give any reason why she departed from the amount provided for in the Third Schedule.

**10. In Kipkorir, Titoo & Kiara Advocates v Deposit**

**Protection Fund Board** [2005] eKLR, the Court of Appeal held:

***“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.”***

**11. In Thomas James Arthur v Nyeri Electricity Undertaking**

[1961] EA 492, the predecessor to this Court held:

***“The principles which are applied by judges upon review of taxing officers’ certificates are well known ... 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 intervene only in exceptional cases.”***

12. I find no error on any matter of principle that would justify interference with the Taxing Officer’s discretionary decision in taxation of costs in an appeal relating to a judicial review decision that did not relate to a pecuniary award. Neither has the appellant demonstrated the simplicity of the proceedings alluded to that would justify interference with the assessment complained of.

**13. In Premchand Raichand Ltd & another v Quarry Services**

**of East Africa Ltd & others** [1972] EA 162, the predecessor to this Court held:

***“The taxation of costs is not a mathematical***

***exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly***

***where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”***

14. I find nothing to suggest that the amount awarded in instructions fees was inordinately high in the circumstances of the appeal to amount to an injustice.

15. In ***Joreth Limited v Kigano & Associates*** [2002] eKLR, the

Court of Appeal held:

***“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”***

16. Having carefully considered the grounds on which the

instant Reference was preferred, the impugned award of instructions fees,

the principles stipulated in the Rules of this Court on taxation of costs, the rival submissions of learned counsel, and the cited authorities, I find no reason to disturb the discretionary award of the Taxing Officer in assessing instructions fees at Kshs. 500,000. Accordingly, the applicant's Reference fails and is hereby dismissed with no orders as to costs.

**Dated and delivered at Mombasa this 21<sup>st</sup> day of November 2025.**

**DR. K. I. LAIBUTA CARb, FCIArb.**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*  
**DEPUTY REGISTRAR**