



**Everflora Limited v Mogaka (Appeal E073 of 2022)
[2025] KEELRC 3388 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3388 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E073 OF 2022
DKN MARETE, J
NOVEMBER 19, 2025**

BETWEEN

EVERFLORA LIMITED CLAIMANT

AND

RODA NYANCHAMA MOGAKA RESPONDENT

RULING

- 1 This is an application dated 9th May, 2025 seeking the following orders of court; That this court be pleased to set aside the taxing masters decision dated and delivered on 30th October, 2024 in respect to item (2), getting up fee, item (3) instructions fee on cross-appeal, item (4) getting up fees, items (5) to (60) of the said bill of costs dated 18th March, 2024. That this court be pleased to revisit and or refer the party and party bill of costs dated 18th March, 2024 before a different taxing master for a fresh taxation in the disputed items with appropriate direction on how it should be done. That in the alternative, this court be pleased to tax the party-to-party bill of costs on the disputed items. Costs.
- 2 The application is grounded on the basis that the taxing master error in law in taxing the impugned items excessively and without justification. This also includes the taxing master's error in not strictly following the Advocates Remuneration Order and also wrongly applying *the constitution* and part of the Advocate Remuneration Order that applies to getting a fee and also on assessment of instruction fees on cross appeal and getting up fees. The Applicant had proposed a sum of Kshs.158,845.00 as opposed to the Kshs.340,345.00 that arose on taxation the bill.
- 3 Overall, the Applicant avers that the taxing master erred in not following the Advocate Remuneration Order strictly and did not consider the justification of the items but instead focused on getting up fee.
- 4 The Respondent opposes the application and avers that judgment on this appeal was delivered on 21st February, 2024 wherein the appeal was dismissed with costs and the Respondent's cross appeal



- allowed with costs. The costs of both the appeal and the cross appeal were to be borne by the Appellant. Subsequently, the Respondent filed their bill of costs dated 26th March, 2024 and in the objection the Appellant did not object to some items and agreed that they should be allowed as drawn. These are items 1, 6, 7, 8, 9, 10, 13 14, 15 19, 23, 27, 28, and 29 of the objections. The Applicant's objection to items 5 to 60 is therefore an afterthought, misconceived and made in bad faith.
- 5 The court delivered its ruling on 30th October, 2024 allowing the bill of costs as drawn for reasons that it was satisfied that the party-to-party costs were drawn to scale in accordance with the Advocates Remuneration Amendment Order, 2014. This is the offshoot of this application.
 - 6 The Appellant's objection to items 2, 3 and 4 is unlawful because the court awarded the costs of both the appeal and cross appeal to the Respondent. The cross appeal was allowed to the extend of Kshs.563,551.00 and this attracts an instructions fee of Kshs.90,000.000 per schedule 6 of the Advocates Remuneration (Amendment) Order. Getting up fees which is fees for getting up or preparing in any case where denial of reliability is filed or in which issues for trial are joined by pleading, a fee for preparing the case comes in and becomes due under Paragraph 2 of Schedule 6 above. This appeal went all the way to trial and judgment was delivered thereby meriting an award of getting up fee. Overall, Schedule 6 of the Advocates Remuneration (Amendment) Order relates to the applicable provisions of itemizing party to party bill of costs and in this case, this has been drawn strictly per scale.
 - 7 The Appellant's confusion of a folio being the same as page and the equation of these is wrong as a folio under the Advocate's Act is 100 or so words while a page is 4 to 5 folios. The Appellant also has reasons for objecting to the ruling on the bill of costs except for the reason that taxing master did not tax off any item in the bill. In this case, the tax master did not consider any irrelevant factor in the taxation nor was there an error of principle as all relevant factors were considered in the circumstances. The taxation took into account the relevant provisions of the Advocates Remuneration (Amendment) Order, 2014.
 - 8 The Appellant in their written submission dated 7th July, 2025 reiterate their case in support of the reference as the Respondent opposes it in their submission of 15th Mary, 2025.
 - 9 The Appellant in their written submission gets out on a one-by-one analysis of the defects of taxation and calls for a fresh taxation by this court or reference to a different taxing master for fresh taxation. The Respondent on the other hand brings out a case of proper and lawful taxation of the bill of costs and accordance with the Advocates Remuneration (Amendment) Order, 2014.
 - 10 The Respondent's case overwhelms that of the Applicant. A look at the relevant regulations on taxation does not indicate any error in the process or principle of taxation. This was done in accordance with the requisite provisions of the Advocates Remuneration (Amendment) Order, 2014. This has been demonstrated by the Respondent's case in this application.
 - 11 I am therefore inclined to dismiss the application with order that each bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 19TH DAY OF NOVEMBER 2025.

D. K. Njagi Marete

JUDGE

Appearances:

Mr. Mbuthia instructed by J. N. Mbuthia & Company Advocates for the Appellant/Applicant.

Ms Kogai instructed by Breda Kogai & Company Advocates for the Respondent.

