

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NYERI

MISCELLANEOUS APPLICATION NO E016 OF 2024

MUTUNGI KITHINJI & CO ADVOCATES

(formerly Kithinji Kimani Advocates).....**APPLICANT**

VS

COUNTY GOVERNMENT OF LAIKIPIA.....RESPONDENT

RULING

1. This ruling determines the Chambers Summons dated 27th March 2025, by which the Applicant asks that the ruling on taxation issued by Hon Anastasia Ndung'u on 26th February 2025 be set aside and the Bill of Costs dated 17th May 2024 be referred to another Taxing Master to be taxed afresh.
2. The application is supported by an affidavit sworn by Catherine Kendi Mutungi and is based on the following grounds:
 - a) That by a ruling delivered on 26th February 2025, Hon Anastasia Ndung'u taxed the Applicant's Advocate/Client Bill of Costs dated 17th May 2024 in the sum of Kshs. 597,850;
 - b) That being aggrieved by the decision of the Taxing Master, the Applicant filed a Notice of Objection dated 5th March 2025, against the taxation decision;
 - c) That the Taxing Master exercised her discretion wrongly by holding that the sum of Kshs. 500,000 was sufficient and reasonable as instructions fees;

- d) That the amount of Kshs. 500,000 allowed by the Taxing Master as instructions fees caused an injustice to the Applicant, taking into consideration the work done by the Applicant on behalf of the Respondent;
- e) That the Taxing Master erred in principle by failing to assign reasons or justification for awarding a manifestly low sum of Kshs. 500,000 as instructions fees;
- f) That the Taxing Master erred in principle by failing to consider the nature and complexity of the matter as particularised under item No 1 of the Applicant's submissions dated 16th September 2024 and filed on 17th September 2024;
- g) That the Taxing Master erred by failing to consider that the Respondent did not contest the fee notes issued by the Applicant;
- h) That the Taxing Master failed to consider the extensive preparations required in the matter;
- i) That the Taxing Master failed to consider that an Advocate is entitled to their fees once instructed, retained or employed as stated in *Supreme Court Petition No E011 of 2023: Kenya Airports Authority v Otieno Ragot & Co Advocates*.

3. The issue in contest in this reference, which the Respondent chose not to defend, is item 1 on the Bill of Costs dated 17th May 2024. The Applicant's complaint is that the amount of Kshs. 500,000 awarded by the Taxing

Master is too low, in view of the complexity of the matter giving rise to the Bill of Costs.

4. In her ruling dated 26th February 2025, the Taxing Master observed that in determining the amount to award in instruction fees, the circumstances of the case and the general conduct of the proceedings ought to be taken into account.
5. The Taxing Master relied on the decision in ***Jeroth Limited v Kigano & Associates [2002] 1 EA*** where the Court of Appeal stated as follows:

“...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 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.”

6. In her ruling, The Taxing Master observed that the value of the subject matter could not be discerned from either the pleadings or the judgment. She therefore exercised her discretion and awarded the Applicant Kshs. 500,000 as instructions fees.
7. In its submissions in support of the reference, the Applicant relied on the decision in ***Nyangito & Co Advocates v Doinyo Lessos Creameries Ltd [2014] eKLR*** where **Odunga J** (as he then was) held that instructions fees ought to be based on the amount of work done by the Advocate and the subject matter of the suit as well as the prevailing economic conditions,

where applicable. The learned Judge added that while Advocates ought to be well motivated, public interest demands that costs be kept at a reasonable level.

8. The Applicant further relied on the decision in *Rateo Oira & Co Advocates v Magereza Sacco Society Ltd [2019] eKLR* where it was held that an Advocate is entitled to payment of reasonable fees, commensurate with the work done.
9. Apart from a general complaint that the figure assigned to instructions fees was too low, the Applicant did not demonstrate any particular misstep by the Taxing Master.
10. For a court to overturn a decision by a Taxing Master, solid grounds must be presented. No such ground has been advanced in this case and I therefore find no reason to cause me to interfere with the decision by the Taxing Master.
11. In the result, the Chamber Summons dated 27th March 2025 is dismissed with no order for costs.
12. Orders accordingly.

DELIVERED VIRTUALLY THIS 11TH DAY DECEMBER 2025

LINNET NDOLO

JUDGE

Appearance:

Ms Muema h/b for Ms Mutungi for the Applicant

Ms Mwangi for the Respondent

ORIGINAL