



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISC. APPLICATION NO. E084 OF 2024
(Arising from ELC No. 1346 of 2016)

**FLORENCE WAIRIMU MBUGUA (SUING AS THE ADMINISTRATOR OF
THE ESTATE OF THE LATE JOSEPH KIARIE MBUGUA)**
..... **APPLICANT**

VERSUS

JOSEPH KWERI MBURU
RESPONDENT

RULING

1. The Court is seized of a Chamber Summons dated 30th April 2024, brought under **Rule 11(2) of the Advocates Remuneration Order, Sections 1A, 1B and 3A of the Civil Procedure Act**, and all other enabling provisions of the law. The application, which arises from the Ruling of the Taxing Officer, **Hon. Vincent Kiplagat, DR**, delivered on 16th January 2024, seeks orders that the said Ruling adopting a global sum of Kshs. 2,933,466.66 on the Respondent's Party-to-Party Bill of Costs dated 16th March 2023 be set aside, and that the Bill be taxed afresh by this Court or alternatively remitted to a different Taxing Officer for taxation.
2. The Applicant further prays that the Court intervenes on the basis that the impugned decision was reached in violation of the law and principles governing taxation, and in a manner that allegedly infringes her right to a fair trial and fair administrative action. She also seeks that the costs of this application be awarded to her.

APPLICANT'S CASE

3. The Applicant contends that the Taxing Officer committed a fundamental error by awarding a global sum without furnishing itemized reasons, thereby rendering the decision arbitrary, capricious, and contrary to the provisions of the **Advocates Remuneration Order**.
4. It is her case that the Deputy Registrar failed to take into account the applicable scale under **Schedule 6**, disregarded her written submissions, and relied on irrelevant considerations while excluding relevant ones. According to the Applicant, the absence of reasons deprives her of the ability to understand the basis upon which the figure of Kshs. 2,933,466.66 was reached, and therefore violates the rules of natural justice.
5. She further argues that the taxation as rendered is manifestly excessive and unjustifiable, and that the Taxing Officer's approach amounts to a misdirection that calls for correction by this Court. The Applicant urges the Court to intervene and either re-tax the Bill itself or remit the matter to another Taxing Officer, asserting that only such intervention will uphold the integrity of the taxation process and protect her constitutional rights.
6. Despite being duly served with the present application together with the hearing notice, the Respondent did not enter appearance and filed no response to oppose the application. There is on record an Affidavit of Service confirming that service was properly effected, and the Respondent has offered no explanation for his failure to participate in these proceedings.
7. The Court directed that the application be disposed of by way of written submissions, pursuant to the Court's practice directions and in

the interest of efficient case management. The Applicant duly filed her submissions, which the Court has carefully considered. The Respondent, having failed to appear or file any response, did not file submissions.

APPLICANT'S WRITTEN SUBMISSIONS

7. The Applicant identified two issues for determination in her written submissions: (i) whether she is entitled to the orders sought in the Chamber Summons dated 30th April 2024, and (ii) who should bear the costs of the application.
8. She submitted that the Taxing Officer's decision should be set aside because it was reached without adherence to the applicable legal framework and without giving itemized reasons for each disputed item in the Bill of Costs, thereby rendering the taxation arbitrary. The Applicant emphasized that her challenge is properly before the Court pursuant to **Paragraph 11 of the Advocates Remuneration Order**, which grants a party the right to question a taxation where reasons have not been given or where discretion has been improperly exercised.
9. In support of her position, the Applicant relied on the provisions of the **Advocates (Remuneration) Order**, particularly **Schedule 6** and **Paragraph 11**, arguing that a Taxing Officer is legally bound to apply the prescribed scale and to give reasons for each contested item in an itemized Bill of Costs.
10. She submitted that the award of a global sum of Kshs. 2,933,466.66, without explanation or itemization, was contrary to the law and amounted

to a misdirection of principle. The Applicant further contended that the Taxing Officer disregarded her written submissions and failed to demonstrate how the impugned sum was computed, thus offending the principles of fairness and the duty to act judicially.

11. On the second issue relating to costs, the Applicant submitted that although the award of costs is a discretionary exercise of the Court, such discretion must be exercised judicially and with regard to the circumstances of each case.
12. She argued that she was compelled to file the present Reference because the Taxing Master's decision was erroneous and unsupported by reasons, leaving her with no option but to seek redress before this Court. For that reason, she urged the Court to award her the costs of this application as against the Respondent, who neither participated in the taxation nor in the present proceedings despite proper and effective service.

Issues for Determination

13. The sole issue for determination in this application is whether the Application is merited

Analysis and Determination

14. The guiding principles for interfering with a Taxing Master's decision are settled in the authorities of **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] EA 162, First American Bank of Kenya v Shah & Others (2002) EA 64, and Joreth Ltd v Kigano & Associates (2002) 1 EA 92.** These decisions underscore that interference is warranted where;

(a) there is an error of principle,

(b) the fee awarded is manifestly excessive or so high that it confines access to justice to the wealthy,

(c) a successful litigant ought to be fairly reimbursed, and

(d) consistency in awards ought to be maintained. These principles guide this Court in determining whether the impugned taxation meets the threshold for disturbance.

15. In **First American Bank of Kenya v Shah & Others (2002) EA 64 at p. 69**, the Court stated: *“This Court cannot interfere with the Taxing Master’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.”*
16. The Applicant argues that the Taxing Master awarded a substantial global figure of Kshs.2,933,466.66 without assigning any reasons for doing so, despite the Bill of Costs being itemized. The awarding of a lump sum devoid of explanation raises a legitimate concern as to whether the correct principles were applied.
17. The Court in **Republic v Ministry of Agriculture; Ex parte Muchiri W’Njuguna (2006) eKLR** similarly held that although taxation is not a mathematical exercise, the Court will interfere where the award is “so high or so low as to amount to an injustice,” or where “irrelevant factors were considered or relevant factors omitted.” The absence of reasons is in itself a failure to demonstrate that relevant considerations were applied.
18. The Court of Appeal in **Vipul Premchand Haria v Kilonzo & Co. Advocates [2020] eKLR** stressed that the Taxing Master’s discretion *must be exercised judicially and judiciously*, stating: *“The matters the*

Taxing Master takes into consideration should be apparent from the reasons that she gives for her decision. It is those reasons that give an indication whether or not the discretion reposed in the Taxing Master was properly exercised.”

19. In this case, no reasons were provided for the computation of the global sum, and none were recorded addressing the disputed items of the Bill. This omission deprives the Court of the ability to ascertain whether the Taxing Officer considered the factors articulated in **Joreth (supra)**, which require assessment of the *nature and importance of the matter, complexity, interests of the parties, conduct of proceedings, and all relevant circumstances*. Without a reasoned basis, the award cannot be said to reflect judicial discretion. The absence of reasons is therefore an **error of principle**, and based on the authorities cited, it warrants this Court’s interference.

Final Orders

20. Having found that the Taxing Master committed an error of principle by awarding a global sum without giving reasons, the Court is satisfied that the threshold for interference has been met. The Application dated 30th April 2024 accordingly succeeds.

21. The Ruling of the Taxing Officer, Hon. Vincent Kiplagat, DR, delivered on 16th January 2024, is hereby set aside.

22. The Defendant’s Party-to-Party Bill of Costs dated 16th March 2023 is hereby remitted for fresh taxation before a different Taxing Officer, to be undertaken in accordance with the Advocates Remuneration Order and

the principles set out in this Ruling.

23. Each party shall bear their own costs of the Application.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **11th day** of **December, 2025.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Ms. Micha H/N for Mbabu for the Applicants

N/A for the Respondent

Philomena W. Court Assistant