

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA
MISC. APPLICATION NO.E006 OF 2025

ELIJAH CHKAMAI BEN 1ST APPLICANT

JOHN KEYA MWANDO.....2ND APPLICANT

VS

JUMA LUKONGO..... 1ST

RESPONDENT

MWANZO OBAYE.....2ND

RESPONDENT

PETER MUTEVESI OBAYE.....3RD

RESPONDENT

**(Being a reference from the decision of the Taxing
officer Hon. V.O. Amboko DR ELC delivered on 12th
February 2025 in Kakamega ELC Appeal Case No. E002
of 2023)**

R U L I N G

Introduction

1. Before court is an appeal against the decision of the Taxing officer made on 12th February 2025, in Kakamega ELC Case No. E034 of 2022. This appeal was presented by way of a chamber summons dated 20th February 2025

filed by the applicants against the respondents seeking the following orders;

- a) That the Honourable court be pleased to set aside in its entirety the ruling of the Taxing officer's decision dated 12th February 2024 on the Party to Party Bill of Costs dated 3rd October 2024 filed vide Kakamega ELC Appeal No. E002 of 2023**
- b) The certificate of costs issued in respect of the ruling delivered on the said 12th February 2024 be set aside.**
- c) That this Honourable court be pleased to re-tax the said party to Party Bill of costs.**
- d) That in the alternative to prayer 3 above, this Honourable court be pleased to remit the Party to Party Bill of costs dated 3rd October 2024 for retaxation before a different Taxing officer with appropriate directions thereof.**
- e) That the costs of the application be provided for.**

2. The application was predicated on the supporting affidavit sworn by the 1st applicant. The applicants' case is that the respondent filed Kakamega ELCA No. E002 OF 2023 challenging the judgment in Butali SPMC ELC Case

No. 24 of 2024. That the appeal was dismissed with costs. That they filed a bill of costs for the total sum of Kshs. 603, 790/= but that on 12th February 2025 the said bill of costs was taxed in the sum of Kshs. 153, 450/=. That because the bill sought Kshs. 603, 790/=:, therefore the taxation of the same in the sum of Kshs. 153, 450/= was unreasonable and unjustified. That the Taxing officer's decision was erroneous. That there was a gross and fundamental error of principle in her finding that the value of the subject matter could not be ascertained, as the same was in the valuation report, the lower court judgment and record of appeal, pleadings and proceedings. That item 1 of the bill of costs was underassessed. That the Taxing officer made a fundamental error by miscalculating item Nos. 7, 8, 9, 10, 12 and 13 of the bill of costs. That the Taxing officer erred in principle in failing to check the documents under items 17, 18, 31, 32 and 33 from the Court Tracking System. That the Taxing officer misapplied her discretion in underassessing attendance fees. That she taxed some items twice and ended up with two different

figures for item 24. He attached the Bill of costs and the Taxing officer's ruling.

3. The reference was opposed. Mwanzo Obaye, the 2nd respondent filed a replying affidavit dated 7th April 2025. He stated that there was no fundamental error in the Taxing officer's decision as the value of the subject matter was not ascertainable from pleadings or the judgment. That the applicants' bill was properly taxed and the applicants want to reap from where they have not sown. That the application was incompetent, bad in law and defective and should be dismissed.
4. Parties were directed to canvass the reference by way of written submissions. On record are submissions filed by the applicant dated 21st October 2025. No submissions were filed by the respondent. **Applicants' submissions**
5. Counsel for the applicants submitted that the Taxing officer's decision should be set aside because she made a gross and fundamental error of principle and fact in finding that the value of the subject matter could not be ascertained when the same was manifest in the judgment

of the trial court and valuer's report dated 20/01/ 2023. Counsel argued that the Taxing officer did not give reasons how she arrived at Kshs. 75, 000/= as instruction fees when the valuers report valued the suit property at Kshs. 14, 667, 000/= and that the value of the subject matter was captured in the trial court's judgment as being Kshs. 1, 300, 000/=. Reliance was placed on the case of **Kamunyori & Company Advocates v Development Bank of Kenya Ltd [2015] e KLR** for the proposition that failure to ascribe the correct value to the subject matter is an error of principle.

6. Counsel also submitted that the Taxing officer miscalculated the number of folios in items 7, 8, 9, 10, 12 and 13. Counsel further contended that the Taxing officer fell into error of principle by failing to check the documents under items 17, 18, 31, 32 and 33.

Analysis and determination

7. The court has carefully considered the reference, the replying affidavit and the submissions filed by the applicant. The issue for determination is whether there is

sufficient material before this court to justify this court's interference with the decision of the Taxing officer.

8. It is trite law that taxation of bills of costs is an exercise of discretionary power by the Taxing officer which discretion ought to be exercised judiciously and not arbitrarily. Essentially, this court will not ordinarily interfere with the Taxing officer's exercise of discretion merely on the basis that the award is low or high, unless it is demonstrated without ambiguity that the decision on taxation was clearly wrong due to a misdirection by failure to take into consideration relevant matters or taking into consideration irrelevant matters or that the awarded sum is manifestly excessive or too low to justify a conclusion that it was based on an error of principle.

9. In the case of **DK Law Advocates v Zhong Gang Building Material Co. Ltd & Another [2021] e KLR** it was held that a Judge will interfere with the Taxing officer's discretion where that decision is predicated on an error of principle, inter alia, failure to take into account relevant matters or taking into account irrelevant matters.

10. Also, in the case of **First American Bank of Kenya v Shah & Others (2002) 1 EA 64**, the court held as follows;

“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. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge.if the court considers that the decision of the Taxing officer discloses errors of principle, the normal practice is to remit it back to the Taxing officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment...A Taxing officer does not arrive at a figure by multiplying the scale fee, but places

what he considers a fair value upon the work and responsibility involved.”

11. In the instant case, while the applicants appealed against the entire bill of costs, in the supporting affidavit and submissions, they objected to items 1, 7- 10, 12 and 13 and 17, 18, 24, 31- 33. As for items 17, 18, 31 - 33, their complaint being that the Taxing officer failed to check the documents on the CTS. The applicants did not specify the documents to be checked or clarify what the Taxing officer ought to have done after checking the CTS in regard to the said items. They also failed to and demonstrate proof that the Taxing officer did not check the CTS. In short, the applicants were unable to communicate their grievance concerning items 17, 18, 31 - 33 of their Bill of costs, hence their complaint is baseless and without merit.

12. Concerning the applicants’ grievance regarding items 1, 7-10, 12 and 13, they argued that the Taxing officer miscalculated the number of folios. The applicants do not explain how the miscalculation was done neither do they disclose what, according to them, ought to have

been the correct number of folios, and what ought to have been the proper calculation. What the applicant has done is to throw claims at the court which are neither coherent or supported. In any case, those documents and or folios are not before this court and therefore the applicants' complaints cannot be verified, hence their dissatisfaction with the Taxing officer's decision on the same is without justification.

13. Regarding item 24, which is in respect of attendance for mention on 15/06/2023, the Taxing officer awarded Kshs. 1900/=, which in my view is in tandem with provisions of Schedule 6 of the Advocates Remuneration Order regarding attendance. Hence there is no justification for interference with the Taxing officer's decision on that item.

14. On the question of instruction fees, it is trite that a Taxing officer ought to consider the value of the subject matter. The value of the subject matter is to be discerned from the pleadings, judgment or settlement.

15. In the case of **Joreth Limited v Kigano & Associates [2002] 1 E.A 92** it was held that the value of the subject matter is ascertained from the pleadings, judgment or settlement.
16. No pleading, judgment or settlement was availed before this court by the applicants. Therefore, the applicants presented nothing in support of their complaint regarding instruction fees. A party who moves a court challenging a Taxing officer's decision, ought to avail material in support for his or her complaint. In this case, the applicants' complaints were generalized and their approach casual, with nothing to support their complaints.
17. The upshot is that I find no merit in the Chamber Summons application dated 20th February 2025, which I hereby dismiss with costs to the respondent.
18. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA
IN OPEN COURT/VIRTUALLY THIS 21ST DAY OF
JANUARY 2026 THROUGH MICROSOFT TEAMS
VIDEO CONFERENCING PLATFORM**

A. NYUKURI
JUDGE

In the presence of:

Mr. Mbaka for the applicants

Mr. Osango for the 2nd and 3rd respondents

No appearance for the 1st respondent

Court Assistant; Delphine