



REPUBLIC OF KENYA



KENYA LAW

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Igwe General Stores Limited & 2 others v Board of Trustees, National Social Security Fund & 3 others (Environment and Land Petition E008 of 2020) [2026] KEELC 194 (KLR) (26 January 2026) (Ruling)

Neutral citation: [2026] KEELC 194 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E008 OF 2020
CG MBOGO, J
JANUARY 26, 2026

BETWEEN

IGWE GENERAL STORES LIMITED 1ST PETITIONER
JOHN MUTUNGA MWANGI 2ND PETITIONER
MARGARET WAIYEGO MUTUNGA 3RD PETITIONER

AND

THE BOARD OF TRUSTEES, NATIONAL SOCIAL SECURITY FUND 1ST RESPONDENT
THE NATIONAL LAND COMMISSION 2ND RESPONDENT
THE CHIEF LAND REGISTRAR 3RD RESPONDENT
THE HON ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. Before this court for determination is the chamber summons dated 5th March, 2025 filed by the 1st petitioner/applicant, and it is expressed to be brought under the provisions of Rule 11 of the Advocates (Remuneration) Order seeking the following orders:
 1. That the honourable court be pleased to review, revise, vary or set aside the decision of the taxing officer/deputy registrar Hon. Vincent Kiplagat delivered on 6th February, 2025 on the taxation of the 1st petitioner/applicant's bill of party and party costs dated 11th December, 2023 particularly item 1(a) on instructions fees to take out the petition and item 2 on getting up fees.



2. That the honourable court be pleased to order that the 1st petitioner/applicant's bill of party and party costs dated 11th December, 2023 be taxed afresh by a different deputy registrar/taxing officer other than honourable Vincent Kiplagat.
 3. That in alternative to prayer (2) above, the Hon. court be pleased to reassess and/or tax afresh the costs lawfully payable under item 1(a) and item 2 of the 1st petitioner/ applicant's bill of party and party costs dated 11th December, 2023.
 4. That the honourable court do issue such other orders and/or directions as it may deem fit and just to issue in the interest of justice.
 5. That costs of this application be provided for.
2. The application is premised on the grounds appearing on its face. It is further supported by the affidavit of Mbugua Mureithi, advocate sworn on even date. The learned counsel deposed that the petitioner/ applicant is aggrieved by the decision of the taxing officer to the extent of the fees assessed in regard to items 1(a) and 2 of the party and party bill of costs dated 11th December, 2023. It was contended that the taxing officer's failure to make an award on the disputed items is a fundamental error that goes to the core of the impugned taxation.
 3. Opposing the application, the 1st respondent filed its replying affidavit sworn by Kellen Njue on 16th June, 2025 in her capacity as the corporation secretary. The 1st respondent deposed that paragraph 1(j) (ii) of Schedule 6 provides that instruction fees to present a constitutional petition is Kshs.100,000/= irrespective of the subject matter. That in awarding the Applicant Kshs.2,100,000/= as instruction fees, the taxing officer was reasonable and fair.
 4. The 1st respondent went on further to depose that the petition was disposed of by way of written submissions and hence getting up fees are inapplicable since the same is contemplated in the event that witnesses and viva voce evidence is involved. It was contended that the taxing officer was right in taxing off getting up fees. The 1st respondent urged the court to dismiss the reference herein with costs.
 5. In a further affidavit sworn by Mbugua Mureithi, advocate on 4th July, 2025, it was contended that it is within the power of this court on a reference to interfere with the taxing officer's decision on instruction fees in exceptional circumstances particularly when the decision is based on a non-existent item of instruction fees. Further, that the petition herein was heard by way of affidavit evidence and written submissions and hence the averment that getting up fees was not awardable is misconceived.
 6. The 1st respondent filed a further affidavit in support thereof sworn on 21st July, 2025. The 1st respondent deposed that the taxed amount is a fair reflection of the work done by the advocates in these proceedings. Further, that being aggrieved by the decision of the taxing officer in the advocate-client bill of costs dated in Misc Appl. No. E221 of 2024, they filed a reference against the said taxation with a ruling that was slated for 30th July, 2025. The 1st respondent deposed that the petitioner/applicant cannot use the taxation of the advocate-client costs as the basis of this application, as the same is under challenge for being bereft of sound principles of taxation. The 1st respondent reiterated that the applicant's reference lacks merit and the same ought to be dismissed with costs.
 7. The reference was disposed of by way of written submissions. The 1st petitioner/applicant filed its written submissions dated 31st October, 2025. The 1st petitioner/applicant submitted that the taxing officer construed that the 1st petitioner had given instructions to set aside judgment and proceedings when in fact the primary instructions were to prosecute the petition herein. Further, that the taxing



officer's finding that the value of the subject matter could not be ascertained was wrong because it had earlier been awarded Kshs.100,000,000/= in the judgment of this court.

8. The 1st petitioner/applicant held the view that having misapprehended that the nature of instructions given as being instructions to set aside the judgment, the taxing officer proceeded on an invalid legal position that the bill of costs was in respect of an application as opposed to the petition herein. Furthermore, it was submitted that the taxing officer fell into error by taxing off the entire amount of getting up fees in Item No. 2.
9. Urging the court to allow the reference, the 1st petitioner/applicant cited the following authorities to buttress his submissions: -
 - i. Benson Ambuti Adegga & 2 others v Kibos Sugar and Allied Industries Ltd & 4 others; Kenya Union of Sugar Plantation and Allied Workers (Interested Party) [2022] eKLR.
 - ii. Jovet (Kenya) Limited v Savaria NV [2020] eKLR.
 - iii. Nguruman Limited v Kenya Civil Aviation Authority & 3 others [2014] eKLR
10. The 1st respondent filed its written submissions dated 18th November 2025, and submitted that under paragraph 1(j)(ii) of Schedule 6 of the Advocates Remuneration Order, 2014 the amount of fees which the 1st petitioner/applicant is entitled to is Kshs.100,000/=. That by awarding Kshs.2,100,000/= as instruction fees, the taxing officer was reasonable and fair. The 1st respondent added that a demand for more would be an act of unjust enrichment on the part of the 1st petitioner/applicant.
11. It was further submitted that matters of quantum of costs are regarded as matters within the specialty of the taxing officer and the court should only interfere in exceptional circumstances which had not been demonstrated in this application. That in the event that the court determines that the taxing officer made an error in principle, the proper course is to remit the bill to a different taxing officer for re-taxation. The court was urged to dismiss the reference with costs.
12. I have considered the chamber summons, the replies thereof, and the written submissions filed by the respective parties. The issues for determination arising in this reference are whether the learned taxing officer, in awarding the instruction fees, misapprehended the principles of taxation to such an extent as to render the award grossly insufficient and whether by wholly taxing off getting-up fees the taxing officer erred fundamentally.
13. The principles which ought to be applied in the assessment of costs were outlined in the landmark case of Premchand Raichand Limited v Quarry Services of East Africa Limited (No. 3) [1972] 1 EA 162 as follows:-
 - “ a) That costs should not be allowed to rise to a level as to confine access to justice to the wealthy;
 - b) That a successful litigant ought to be fairly reimbursed for the costs he has had to incur;
 - c) That the general level of remuneration of advocates must be such as to attract recruits to the profession; and
 - d) That so far as practicable there should be consistency in the awards made;
 - e) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”



14. The 1st petitioner/applicant contended that the taxing officer wrongfully assessed costs due to it in respect of items 1(a) and 2 of the party and party bill of costs dated 11th December, 2023. It was insisted that the taxing officer erred by misconstruing the nature of the instructions given by the 1st petitioner/applicant, and thereafter wholly taxing off getting-up fees under item 2 of the bill of costs.
15. It is the 1st petitioner/applicant's case that the taxed amount of Kshs.2,100,000/= as instruction fees under item 1 was manifestly low considering that an award of Kshs.100,000,000/= in damages was made in the main suit.
16. The applicable legal provision in the taxation of the subject party and party bill of costs is Schedule 6A Paragraph 1(j)(ii) of the Advocates Remuneration Order, 2014 which sets out as follows:-
- “To present or oppose an application for a constitutional and prerogative orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—
- i.
- ii. where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than 100,000
- SUBPARA iii.
- ...”
17. The Court of Appeal in *Peter Muthoka & Another v Ochieng & 3 Others* (2019) eKLR succinctly observed as follows:-
- “It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.”
18. Similarly, in *Murgor & Murgor Advocates v Kenya Airports Authority* [2023] KEELC 18458 (KLR), the court aptly held as follows: -
- “It is also important to underscore that where the taxation is carried out and/or undertaken after the conclusion of the primary suit, giving rise to the taxation, the monetary value or amount if any, to be taken into account and considered by the taxing master should be what was found due by the court in the judgment. Consequently and in this regard, the figures which were reflected and contained in the primary pleadings, would thus have no relevance in the ascertainment of the instruction fees... For clarity, the judgment of the court shall be deemed to supersede the pleadings and henceforth shall provide the benchmark/yardstick for ascertaining the instruction fees.”
19. It is indisputable that the court awarded the 1st petitioner/applicant Kshs.100,000,000/= in damages as per paragraphs 143 and 144 of the final judgment. This is the value of the subject matter which ought



to have made the point of reference when making an assessment of the amount due as instruction fees. In the learned taxing officer's ruling, the below finding was noted: -

“The applicant's use of Kshs.100,000,000.00 as the basis of their calculation cannot be sustained as the nature of their instructions was to set aside judgment and proceedings and the application setting aside does not fall within the definition of pleadings as envisaged in section 2 [supra].”

20. In the case of *Kamunyori & Company Advocates v Development Bank of Kenya Limited* [2015] eKLR, the Court of Appeal held as follows: -

“Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a judge will normally not interfere with the taxing officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside (see *Elmandry and Others v. Salim* [1956] EACA 313).”

21. Amongst the principles of taxation cited in the *Premchand* case (supra) is that there should be consistency in the awards which are made by taxing officers. I have perused several authorities where the court either acknowledged or revised amounts awarded as instruction fees from proceedings which had been filed as constitutional petitions.

22. In *Mombasa Cement Limited v Ministry of Lands and Physical Planning & 3 others; Vipingo Estate Limited (Interested Party)* [2024] KEELC 3 (KLR), the court observed as follows:-

“Unlike in the case of *William Kabogo Gitau v Ferdinand Ndung'u Waititu* [supra], that was determined at the interlocutory stage, this was a hotly contested petition that was heard and determined on merit to the Court of Appeal stage, and I find the Kshs. 5,000,000 awarded as instruction fees not to be manifestly excessive to warrant this court interfering with it.”

23. In *Adega & 2 others v Kibos Sugar and Allied Industries Ltd & 4 others; Kenya Union of Sugar Plantation and Allied Workers (Interested Party)* [2023] KEELC 21619 (KLR), the court held as follows: -

“I am of the view that Kshs. 3,000,000/- and Kshs. 1,000,000/- awarded to the 5th respondent as instruction and getting up fees respectively were fair and reasonable compensation for the work done by its advocates.”

24. In *Kenya Agricultural & Livestock Research Organization v Attorney General & 3 others* [2022] KEELC 13587 (KLR), it was held as follows:

“In conclusion, the applicant's chamber summons application dated 15th November 2021 is allowed on the following terms; 1. The ruling and orders made by the taxing officer Hon. I.N.Barasa on 3rd November 2021 in respect of the items relating to instruction fees and getting up fees in the Bill of costs dated 19th August 2021 is set aside and in place thereof, the said items are taxed as follows; a. Item relating to instruction fees is taxed at Kshs. 6,000,000/-. A sum of Kshs. 30,000,000/- is taxed off. b. Item relating to getting up fees is taxed at Kshs. 2,000,000/-. Kshs. 8,000,000/- is taxed off. 2. The other items in the Bill of



costs shall remain as taxed by the taxing officer. 3. Each party shall bear its own costs of the reference.”

25. In *Benson Ambuti Adegia & 2 others v Kibos Sugar and Allied Industries Ltd & 4 others; Kenya Union of Sugar Plantation and Allied Workers (Interested Party)* [2022] eKLR, the court noted thus: -

“Based on this provision and the complexity of the matter, this court finds that the taxing officer was fair in awarding Kshs.3,000,000/= as basic instructions fees and Kshs.1,000,000/= as getting up fees.”

26. In the instant reference, the 1st petitioner/ applicant further pointed out that the learned taxing officer fundamentally erred by wholly taxing off Item No. 2 in respect of getting up fees. Schedule 6A paragraph 2 of the Advocates Remuneration Order, 2014 outlines as follows: -

“In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:..”

27. In the case of *Ngatia & Associates Advocates v Interactive Gaming & Lotteries Limited* [2017] eKLR, the court aptly held as follows: -

“Accordingly, I am persuaded that there is nothing in the Advocates Remuneration Order that disentitles an advocate who has represented his client in a judicial review matter and conducted the hearing in a matter which was defended from being awarded a getting up fee. I also find that the decision in *Nguruman Ltd vs Kenya Civil Aviation Authority & 3 Others* [2014] eKLR where the taxing master ruled that the fees for getting up was properly charged because the case was heard, and whether the hearing was by way of affidavits only or by viva voce evidence was immaterial, which case on a reference was upheld by Lenaola J, was a sound decision.”

28. I wholly associate myself with the above decisions and agree with the 1st petitioner/applicant’s submission that the learned taxing officer fundamentally erred by wholly taxing off Item No. 2 of the bill of costs.

29. From the findings noted above, the orders which commend themselves in respect of the instant reference dated 5th March, 2025 are as follows:-

1. The decision of the taxing officer/ deputy registrar Hon. Vincent Kiplagat delivered on 6th February, 2025 on the taxation of the 1st petitioner/ applicant’s bill of party and party costs dated 11th December, 2023 particularly item 1(a) on instructions fees to take out the petition and item 2 on getting up fees is hereby set aside.
2. The 1st petitioner/applicant’s bill of party and party costs dated 11th December 2023 shall be taxed afresh by a different deputy registrar/taxing officer other than Honourable Vincent Kiplagat.
3. Costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 26TH DAY OF JANUARY, 2026.



HON. MBOGO C.G.

JUDGE

26/01/2026.

In the presence of:

Ms. Vena Aron - Court assistant

Mr. Mbugua Mureithi for the Petitioner/Applicant

Mr. Muuo for the 1st Respondent

