



**Mwamunga & another v Mzungu (Civil Appeal (Application)  
E208 of 2023) [2026] KECA 42 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 42 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPEAL (APPLICATION) E208 OF 2023  
GW NGENYE-MACHARIA, JA  
JANUARY 30, 2026**

**BETWEEN**

**SAMUEL MAZERA MWAMUNGA ..... 1<sup>ST</sup> APPLICANT**

**JOSIAH CHOLA MWAMUNGA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SHEILA MUNGA MZUNGU ..... RESPONDENT**

**RULING**

1. By a judgment of this Court (Murgor, Laibuta & Ngenye, JJ.A.) delivered on 21<sup>st</sup> February 2025, the respondents' (Samuel Mazera Mwamunga and Josiah Chola Mwamunga) appeal was dismissed with costs to the applicant, Sheila Munga Mzungu.
2. The applicant rightfully pursued the costs of the appeal by filing a Bill of Costs dated 16<sup>th</sup> May 2025 particularly asking that the instructions fee be taxed at Kshs.21,820,000. In her ruling, the taxing master instead awarded Kshs.300,000 which she considered to be the reasonable and fair amount by holding that:

“The court takes note of the monetary value of the appeal. The court also notes that appeal did not raise any issues of exceptional legal complexity or that it involved unusually voluminous records that would justify the excess instruction fees claimed. In view of the above considerations and in exercise of my discretion, I find that Kshs.300,000 is a fair and reasonable amount.”



3. Dissatisfied with the ruling of the taxing master, and pursuant to Rule 117 of the Court of Appeal Rules, 2022, the applicant filed a Reference which is erroneously dated 21<sup>st</sup> July 2024 instead of 21<sup>st</sup> July 2025 for me to determine the following question:
  - i. Whether the Taxing Officer has absolute discretion to award instructions fee/cost that is inordinately low, that is provided for in the third schedule paragraph 9(2), set out in the third schedule of the Court of Appeal Rules; and
  - ii. If the answer to (1) above is in the negative, whether the award of Kshs.300,000 by the Taxing Officer as instructions fee was based on any justifiable principle and whether the said amount is manifestly low in the circumstances of this case.”
4. In view thereof, the applicant prayed for orders that the instruction fee of Kshs.300,000 assessed by the taxing officer be increased to Kshs.12,000,000 (Twelve Million) in accordance with the scale of costs, or, such other higher amount as I may determine.
5. I heard the reference on 3<sup>rd</sup> November 2025. Learned counsel Mr. Ambwere appeared for the applicant while learned counsel Mrs. Wambugu was present for the respondents. Both counsel relied on respective parties’ written submissions which they orally highlighted. Those of the applicants are dated 14<sup>th</sup> October 2025 while of the respondents are dated 2<sup>nd</sup> October 2025.
6. Mr. Ambwere referred to the decision of Premchand Raichand Limited & another v Quarry Services of East Africa Limited & others (1972) 1 EA 162 in highlighting the guiding principles set out on award of instructions fee; and that the principles underpinned therein should be considered cumulatively and not in isolation. Counsel therefore faulted the taxing officer for relying only on the reasoning that costs should not limit the access to courts by the litigants.
7. It was submitted that the instructions fee should be based on the value of the subject matter, in this case the estate of the deceased which was Kshs. 1.2 billion, and that, therefore, the fee of Kshs.300,000 was inordinately too low; that a litigant should not be punished because the court thinks that the fee is high; that this Court should raise the figure to between Kshs. 6 and 7 million; that inasmuch as the applicant is a beneficiary of the deceased’s estate, she had been denied her rights to enjoy her share for 8 years; that the length of the period that has taken to conclude the dispute explains the complexity of the matter; and that the figure of Kshs.300,000 as awarded was inordinately too low.
8. Mrs. Wambugu submitted that the fact that the applicant had now come down on the figure they demand of instructions fee of between Kshs. 6 and 7 million, is a testament that indeed the fee is awardable against a ruling as opposed to the entire succession dispute; that the amount that the taxing officer awarded in the circumstances was reasonable; that Rule 117(3) of this Court’s Rules, 2022 bars references on the issue of quantum alone, and that, as such, the Court is bereft of jurisdiction to revisit the question of the taxation; and that the taxing officer correctly applied the principles in the case of Premchand Limited & another (supra) in arriving at a figure of Kshs.300,000.
9. As to the justification of the Kshs. 6 - 7 million, based on the value of the estate, it was submitted that the succession proceedings were on going and the appellate proceedings were interlocutory; that the claim that the deceased’s estate was valued at Kshs.1,400,000,000 was unsubstantiated since there was no valuation report on record; and that, accordingly, the reference should be dismissed.



10. I have considered the grounds in the reference, the respective parties' submissions and the law. The singular issue that falls for determination is whether the award of Kshs.300,000 as the instructions fee was justifiable in the circumstances of this case.
11. First forward, Mrs. Wambugu submitted that I should down my tools for want of jurisdiction pursuant to Rule 117(3) of this Court's Rules, 2022. To the counsel, the question of quantum alone cannot be referred to a Judge as in the instant case. Rule 117(3) provides that:

“A person who contends that a bill of costs as taxed is, in all circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a judge, and the judge shall have power to make such deduction or addition as will render the bill reasonable and except as provided in this sub-rule, there shall be no reference on a question of quantum only.”
12. A party applying for a reference must bring themselves within the ambit of demonstrating that there was an error of law or principle or that the award of costs made by the taxing officer was manifestly excessive or manifestly inadequate. I hear Mr. Ambwere's argument to be that the award of instructions fee was manifestly inadequate for the reasons that irrelevant principles were considered.
13. Rule 117(1) states that a person dissatisfied with a decision of taxing officer may require that any matter of law or principle be referred to a Judge. The fact of a taxing master awarding costs that may be inordinately too low or too high is a matter of principle and law which the Court, sitting as a Single Judge under the Rule is conferred with jurisdiction to determine. Hence, I am not bereft of jurisdiction to determine the reference before me since the applicant is not only challenging the issue of quantum, but also the principles which the taxing master applied in arriving at the figure of Kshs.300.000 as instructions fee.
14. Paragraph 9(2) of this Court's Third Schedule which deals with taxation of costs guides the taxing officer in the exercise of discretion in the award of the instruction fees. It states:

“The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.”
15. In *Joreth Limited v Kigano & Associates* (2002) KECA 153 (KLR), Kwach, Shah & Bosire, JJ.A outlined the principles that a taxing officer should observe in exercise of his/her discretion in assessing instruction fees as follows:

“We would at this stage point out that 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 so 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.”
16. In *Nairobi Bottlers Limited v Ndungu & another* (Petition (Application) E024 of 2023 & Application E030, E034 & E038 of 2023 (Consolidated)) (2024) KESC 73 (KLR), the Supreme Court reiterated



that the decision of a taxing officer may be interfered with if there is an error of principle committed by the taxing officer, or if the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy, or is manifestly deficient as to amount to an injustice to one party.

17. The applicant's complaint is that the taxing officer failed to consider the value of the estate which was Kshs.1.4 billion. As was observed in the case of Joreth Limited (supra), and which I concur with, the value of the subject matter can be ascertained from the pleadings, judgement or settlement, but if the same cannot be ascertained, the taxing officer is entitled to exercise his discretion in assessment of instruction fees.
18. The respondents on the other hand contend that the appeal was simple with little or no complexity as to warrant the instructions fee as demanded by the applicant. I sat on the bench which determined the appeal and I appreciated the facts of the matter. The appeal arose from a ruling delivered by the High (Onyiego, J.) on 30<sup>th</sup> September 2022. The learned Judge found in favour of the applicant by stating that she was a sibling to the respondents and, hence, she was entitled to a share of the deceased's estate as a beneficiary.
19. In the premise, I am satisfied that the taxing officer was alive to the applicable principles in determining instructions fee. The appeal in itself was not complex as the issues touching on the distribution of the deceased's estate were not subject of the dispute. Instead, what was at stake was a determination as to whether the applicant ought to be considered as a beneficiary of the deceased's estate, and indeed, it was an interlocutory appeal. The taxing officer considered the relevant issues of legal complexity and the volume of work that required preparation. Consequently, it cannot be said that she did not consider matters that she ought to have considered, or considered some matters in isolation as argued by the applicants. My view is that that there is no error of principle which can be attributed to the decision of the taxing officer. I find no reason to interfere with the discretion of the taxing officer in awarding instructions fee of Kshs.300,000.
20. In the end, I arrive at the inescapable conclusion that the taxing officer adopted the correct approach and applied the correct principles in reaching her findings. Conversely, the applicant has not presented any compelling material to justify my interference with the discretion of the taxing officer. I find that the Reference is unmeritorious and I hereby dismiss it with costs to the respondent.

**DATED AND DELIVERED AT MOMBASA THIS 30<sup>TH</sup> DAY OF JANUARY, 2026.**

**G. W. NGENYE-MACHARIA**

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**JUDGE OF APPEAL**

