

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC MISC APPL. NO. E014 OF 2024**

**WILSON NDISO KILUNDO.....APPLICANT**  
**-VERSUS-**  
**DANIEL MUTUA NDISO.....RESPONDENT**  
**RULING**

1. This is a ruling in respect of a Chamber Summons dated 16<sup>th</sup> December, 2024 in which the Applicant seeks the following orders:
  1. **That this honourable court be pleased to vary and/or vacate the decision of the taxing officer, Hon. Jepkosgei Elizabeth Kemei delivered on the 2<sup>nd</sup> day of December, 2024 and/or any other consequence orders arising therein.**
  2. **That this honourable court be pleased to remit the bill of costs dated 27<sup>th</sup> November 2023 for retaxation before a different taxing officer with appropriate directions thereof.**
  3. **That the costs of this application be provided for.**
2. The Applicant contends that the taxing officer taxed the instruction fee at Kshs.250,000/= which was excessive and that she ignored the value of the subject matter which was clearly indicated in the pleadings.
3. The Respondent opposed the Applicant's application contending that the taxing officer exercised her discretion properly and that the taxation should be left the way it was taxed.
4. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties.
5. The only issue for determination is whether the Applicant has demonstrated that there are grounds to warrant the court to interfere with the discretion of the taxing officer.

6. The Court of Appeal in the case of **Joreth Ltd –vs- Kigano & Associates (2002) KELA 153 (KLR)** stated 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 of matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances”.**

7. In the instant case the Applicant had filed originating summons seeking removal of a caution which had been registered against the title number Konza South/Konza South Block 5 (Konza) 2592 measuring two acres. The Applicant had sold this property to Pistis Destiny Limited for Kshs.2,170,000/= but he could not transfer it as there was a caution.

8. The parties compromised the suit before hearing but they could not agree on the costs. The value of the suit property was therefore ascertainable from the pleadings from annexure “Wnk 4” under paragraph 5.

9. According to schedule six of the advocates Remuneration (Amendment Order) 2014, instruction fees should have been Kshs.98,400. Having the instruction fees in mind, assessment of getting up fees should not have been an issue. Given that this suit was settled by the parties without a hearing and given the fact that the value of the subject matter was ascertainable from the pleadings, I find that the taxing master committed an error of principle by awarding instruction fees of Kshs.250,000/= which was excessive in the circumstances.

10. I therefore set aside the ruling of Hon. Elizabeth Kemei on instruction fees and getting fees up and remit the bill of costs to be taxed by another taxing

officer other than Hon. Elizabeth Kemei strictly in compliance with the Remuneration Order based on the value as clearly shown in the pleadings. The Applicant shall have the costs of this reference.

It is so ordered.

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**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**IN THE PRESENCE OF:**

Mr. Munyasya for Respondent

Court assistant – Steve Musyoki