

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CIVIL SUIT NO. 1112 OF 2013**

MARY NDATA KIHU ..... 1<sup>ST</sup>  
PLAINTIFF  
KATHIRA NOOR H. BILE ..... 2<sup>ND</sup>  
PLAINTIFF  
JOSEPH MWANGI ..... 3<sup>RD</sup>  
PLAINTIFF  
ROBERT OKWOYO MIROGA ..... 4<sup>TH</sup>  
PLAINTIFF

**VERSUS**

MUUGANO WA WANAVIJI /  
AKIBA ..... MASHINANI  
TRUST ..... DEFENDANT

**RULING**

1. By a Chamber Summons dated 21<sup>st</sup> May, 2025, brought pursuant to **Paragraph 11(2)** of the **Advocates Remuneration Act 2014**, the Plaintiffs seek the following orders:

*a. That the Honourable Court be pleased to set aside the Ruling and reasons for taxation on the party-to-party Bill of costs dated 1<sup>st</sup> July, 2024 taxed at Kshs. 1,092,016.67 delivered on 8<sup>th</sup> May, 2025.*

***b. That the Honourable Court be pleased to issue an order that the Defendant's Bill of costs dated 1<sup>st</sup> July, 2024 be taxed afresh before a different taxing officer.***

***c. That the costs of this application be provided for.***

2. The summons is based on the grounds on the face thereon and supported by the affidavit of Mary Nduta Kihiu, the 1<sup>st</sup> Plaintiff of an even date. She deponed that the Plaintiffs are dissatisfied with the Ruling of 8<sup>th</sup> May, 2025 taxing their Bill of Costs dated 1<sup>st</sup> July 2024.
3. According to Ms. Kihiu, in taxing off Item 1 and 2 of the bill of costs, the taxing officer failed to take into account the subject matter of the suit as disclosed in the pleadings, being the sum of Kenya Shillings 900,000,000 contrary to the established principles under **Schedule 6** of the **Advocates (Remuneration) (Amendment) Order**, which requires instruction fees to be assessed with reference to the value of the subject matter.
4. She deponed that by substantially reducing the instruction fees and the getting-up fees, the taxing officer failed to appreciate that the matter was complex and required considerable time and resources to prepare. Unless properly taxed, she urged, they stand to suffer irreparable loss. She urged that the interests of justice dictate that the summons be allowed.

5. The Defendant, vide its Deputy Director, Patrick Njoroge, opposed the application through a replying affidavit dated 24<sup>th</sup> October 2025. He deponed that the Plaintiffs filed a party-to-party bill of costs dated 1<sup>st</sup> July 2024 in the sum of Kshs. 18,692,016.67 and that vide a Ruling delivered on 8<sup>th</sup> May 2025, the Deputy Registrar taxed off Kshs 17,600,000 and awarded the Plaintiffs the sum of Kshs. 1,092,016.67.
6. The Defendant's Deputy Director stated that the taxing officer reduced the instruction fees claimed under Item 1 by Kes 13,700,000 and taxed the getting up fee claimed under item 2 at Kshs. 4,566,666.67; that in arriving at this decision, the taxing master relied on the principles set out in ***Joreth Ltd vs Kigano & Associates [2002] 1 EA 92*** and found that no valuation report had been provided to support the alleged subject matter value of Kshs. 900 million and that there was no clear computation in the pleadings or the judgment to enable proper ascertainment of the value of the subject matter.
7. Mr. Njoroge deponed that the figure of Kshs. 900,000,000 relied on by the Plaintiffs/Applicants had no basis in the pleadings or judgment and was therefore fictitious. It was the Defendant's position, and which according to him the taxing officer rightfully accepted, that the figure had been introduced solely for purposes of inflating the instruction fees.

8. He argued that the Plaintiffs ought to be restricted to the claim placed before the trial court in the sum of Kshs. 27,212,450 as that was the only figure pleaded and considered by the court. He contended that the Plaintiffs could not claim to suffer irreparable loss, as the sums sought were exorbitant and unsupported, and would result in unjust enrichment to the detriment of the Defendant.
9. Mr Njoroge, the Defendant's Deputy Director urged the court to uphold the decision by the taxing officer, contending that the bill of costs had been taxed to scale, with due regard to the nature of the matter and the work undertaken by Counsel, and to restrain the Plaintiffs from imposing excessive and unjustified fees.

### **Submissions**

10. The Plaintiffs through Counsel filed submissions on 5<sup>th</sup> November, 2025. Counsel submitted that the taxing master erred in not making a determination as to whether the value of the subject matter was ascertainable from the pleadings and not giving reasons for the award made for the instruction fee.
11. Counsel urged that if this court is able to ascertain the value of the suit property from the pleadings, it should set aside the ruling and reasons for taxation dated 8<sup>th</sup> May 2025 and proceed to make an appropriate award.

- 12.** Reference was made to paragraph 4(a) of the Plaintiff, which disclosed that the suit property comprised of two parcels of land within Nairobi County, namely L.R. No. 7109/88 (Original No. 7109/82) measuring 7.658 hectares and L.R. No. 7109/89 (Original No. 7109/83) measuring 1.619 hectares, with a combined acreage of approximately 22.92 acres.
- 13.** Counsel further referred to paragraph 6 of the Plaintiff, which stated that the Plaintiff purchased the suit property on 6<sup>th</sup> January 2010 at a consideration of Kenya Shillings 81,000,000 and which property was valued at Kshs 900,000,000 at the time of filing the suit. Counsel submitted that the Defendant did not specifically traverse that paragraph in its Defence and that the value of the subject matter was therefore admitted.
- 14.** The Defendant filed submissions on 14<sup>th</sup> November, 2025. Counsel submitted that as correctly acknowledged by the taxing officer, the matter proceeded to full trial and to its logical conclusion with the court delivering its judgement on 5<sup>th</sup> May 2022 and that the pleadings thereof and the said judgement did not have any ascertainable value of the subject matter.
- 15.** Counsel asserted that the sum of Kshs 900,000,000 claimed by the Plaintiff was not settled or confirmed by the court,

hence the same cannot be used for taxing any legal fees by the Plaintiff/Applicant's herein.

16. In addressing computation of the party-to-party bill of costs, Counsel submitted that reliance should be placed on **Schedule 6 Part A (i)** of the **Advocate (Remuneration) Order** which provides that instruction fees are to be assessed based on the value of the subject matter where such value can be determined from the pleadings, judgment, or settlement.
17. Counsel cited the Supreme Court decision in **Kenya Airports Authority vs Otieno Ragot and Company Advocates [2024] KESC 44 (KLR)** for the principle that the value of the subject matter must first be identified from the pleadings, judgement or settlement of the parties. Also cited were the Court of Appeal decisions of **Joreth Ltd. vs. Kigano & Associates [2002] E.A.** and **Peter Muthoka & Another vs Ochieng & Others, Civil Appeal No. 328 of 2017; [2019] eKLR.**
18. According to Counsel, in view of the foregoing, the taxing officer properly exercised his discretion in awarding the instruction fees and getting-up fees as taxed. Reference was made to **Peter Muthoka & another vs Ochieng & 3 others [2019] eKLR,** and **D. Njogu and Co. Advocates vs. Kenya National Capital Authority, HC Misc. Appl. No. 21 of 2003; [2005] eKLR.**

### **Analysis and Determination**

19. Having considered the Summons, the response and the submissions, the sole issue for determination whether the decision of the Taxing Master delivered on 8<sup>th</sup> May, 2025 in respect to the Party-Party Bill of Costs dated 1<sup>st</sup> July, 2024 should be set aside?
20. The procedure for the challenge of a taxation decision is provided under **Paragraph 11** of the **Advocates (Remuneration) Order** which provides that:

***“(1) Should any party object to the decision of the Taxing officer, he may within fourteen days after the decision give notice in writing to the Taxing Officer of the items of Taxation to which he objects.***

***(2) The Taxing Officer shall forthwith record and forward to the Objector the reasons for his decision on those items and the Objector may within fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”***

21. The legal parameters within which the court can interfere with a taxing master’s decision are well settled. The Court of

Appeal in **Joreth Ltd vs Kigano & Associates Civil Appeal No. 66 of 1999 [2002] eKLR** was categorical that a judge sitting on a reference against the taxing officer ought not to interfere with the assessment of costs unless the taxing officer had misdirected himself on a matter of principle.

22. Similarly, the Ugandan Supreme Court in **Bank of Uganda vs. Banco Arabe Espanol SC Civil Application No. 23 of 1999 (Mulenga JSC)** stated:

*“Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.*

*Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. In this regard, application of a wrong*

*principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.*

*Thirdly, even if it is shown that the taxing officer erred on principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties.”*

23. More recently, the Apex Court in **Non- Governmental Organizations Coordination Board vs EG & 5 others (Petition (Application) 16 of 2019) [2023] KESC 102 (KLR) (Civ) (8 December 2023) (Ruling)** noted:

*“A certificate of taxation would be set aside, and a single judge could only interfere with the taxing officer’s decision on taxation if: There was an error of principle committed by the taxing officer. The fee awarded was shown to be manifestly excessive or was so high as to confine access to the court to the wealthy; (and conversely, if the award was so manifestly deficient as to amount to an injustice to one party).The court was satisfied that the successful litigant was entitled to fair reimbursement for the costs he had incurred,*

***(and the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party). The award proposed was so far as practicable, consistent with previous awards in similar cases. There was no mathematical formula to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances. Although the taxing officer exercised unfettered judicial discretion in matters of taxation that discretion must be exercised judicially, not whimsically. The single judge would normally not interfere with the decision of the taxing officer merely because the judge believed he would have awarded a different figure had he been in the taxing officer's shoes"***

- 24.** By way of brief background, the Plaintiffs instituted this suit against the Defendant seeking, *inter-alia*, a transfer of L.R 7109/88 Nairobi and L.R 7109/89, Nairobi to Mukuru Makao Bora Trust and an order that the Defendant discloses and pays to Mukuru Makao Bora Trust interest earned on Kshs 27,212,450 which it deposited in a fixed deposit account on or about the 28<sup>th</sup> May, 2009 and 16<sup>th</sup> October, 2009.

- 25.** The Plaintiffs' case was that they, together with 2221 members originally operated as a self-help group (Sisal Settlement/Savings). They sought to purchase property but lacking the legal capacity to do, asked the Defendant to purchase it on their behalf. They asserted that despite having fulfilled their obligations in this regard, the Defendant refused to transfer the properties to them necessitating the suit.
- 26.** In its Defence, the Defendant conceded that it purchased the suit properties on behalf of the group. It nevertheless contended that the deposits made by the members were insufficient to meet the full purchase price together with interest, and that it sourced additional funds from third parties which, in its view, the Plaintiffs were obliged to refund.
- 27.** In determining the matter, the court found that it was not in dispute that the suit properties had been discharged and that the loan had been cleared. The central issue for determination was whether the loan had been fully repaid by the Plaintiffs' members, or whether the Defendant had instead applied its own funds towards the discharge of the loan and was therefore entitled to reimbursement.
- 28.** The court found in favour of the Plaintiffs and was satisfied that they had fully discharged their obligations to the Defendant under the informal arrangement entered into for

the purchase of the suit properties. Consequently, judgment was entered for the Plaintiffs, and the Defendant was ordered to unconditionally transfer L.R. No. 7109/88 and L.R. No. 7109/89, Nairobi, to the Plaintiffs to hold in trust for the members of Mukuru Makao Bora Trust.

- 29.** Following the judgment, the Plaintiffs filed a party-to-party bill of costs dated 1<sup>st</sup> July, 2024, which was taxed at Kshs. 1,092,016.67 vide a ruling delivered on 8<sup>th</sup> May, 2025. The Plaintiffs contend that in taxing the bill of costs, the taxing officer failed to take into account the value of the subject matter of the suit as disclosed in the pleadings, namely Kshs. 900,000,000, and thereby erred in principle in the assessment of instruction fees and getting-up fees.
- 30.** It is trite that instruction fees are to be determined from the value of the subject matter of a suit. It is also trite that the value of the subject matter of a suit is to be ascertained from the pleadings, judgment or settlement. It is only where the value of the subject matter cannot be ascertained from the pleadings, judgment or settlement, that the taxing officer has discretion to assess the instruction fees. Speaking to this, the Court of Appeal in ***Peter Muthoka & Another vs Ochieng & 3 others NRB CA Civil Appeal No. 328 of 2017 [2019] eKLR*** noted 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.

***It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the***

***taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.”***

**31.** Vide its bill of costs dated 1<sup>st</sup> July 2024 and, under instruction fees, the Plaintiffs sought the sum of **Kshs. 13,700,000** being:

***“Advocates’ fees for receiving instructions to prosecute the Plaint dated 18th September 2013 in respect of the suit properties pleaded under clause 4(a) of the Plaint as being worth Kshs. 900,000,000/=, calculated in accordance with the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014.”***

**32.** In his taxation of the bill, the taxing officer noted thus:

***“The 2<sup>nd</sup> Defendant claim a sum Kshs. Kshs. 13,700,000 as instruction fees. I note that the matter proceeded to full trial and to its logical conclusion. The Court of Appeal in the case of Otieno, Ragot & Company Advocates v Kenya Airports Authority [20211 eKLR Murgor JA cited the case of Joreth Ltd -vs- Kigano & Associates [2002] 1 EA 92 where it was stated that....”***

***This court in taking into account the activities and processes that culminate to instruction Fees***

*sought and taking into account the subject matter, its value, nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings. This court is taking into account the industry taken by the advocate in sifting through documents in the present case. For the applicants bill of cost, I will therefore proceed to tax Item 1 at Kshs. 500,000/= As a result, I tax off Kshs. 13,200,000 Having considered the instruction fees as Kshs. 500,000/= the get up fees ought to be 1/3 of the instruction fees therefore I proceed to tax item 2 as 166,666.67 and tax off 4,400,000.”*

- 33.** In determining whether the taxing officer committed an error in principle, the starting point is whether he correctly appreciated and identified the subject matter of the suit and its value as disclosed in the pleadings and the record. The subject matter of the suit was the properties, L.R. No. 7109/88 and L.R. No. 7109/89, Nairobi, together with a claim relating to interest allegedly earned on a fixed deposit of Kshs. 27,212,450.
- 34.** A perusal of the Plaint shows that the Plaintiffs expressly pleaded the value of the suit properties. It was averred that the properties were purchased at a consideration of Kshs.

81,000,000 and that at the time of filing suit, the value of the properties was Kshs. 900,000,000. This was not a speculative figure introduced at the stage of taxation but a pleaded fact forming part of the Plaintiffs' cause of action.

35. Significantly, the pleaded purchase price of Kshs. 81,000,000 was expressly admitted by the Defendant and was further acknowledged by the court in its judgment. In these circumstances, the value of the subject matter was plainly ascertainable from both the pleadings and the court record.
36. It therefore fell upon the taxing master to determine which of the pleaded figures would properly constitute the basis for instruction fees. The taxing master thus fell into error in principle by treating the value of the subject matter as incapable of ascertainment and by resorting to a discretionary assessment of instruction fees, contrary to the mandatory statutory framework.
37. The position adopted by this court is fortified by the reasoning in **Masore Nyang'au & Co Advocates vs Kensalt Ltd (Misc. Application No. 196 of 2015) [2019] KEELC 2712 (KLR)**, where the court held that even where the plaint discloses the purchase price, and subsequent documents on record point to a higher or more realistic value, the taxing officer is entitled, and indeed obliged, to rely on such material in the record to ascertain the value of the subject matter, rather than defaulting to discretion.

- 38.** In that case, the court stated that there was no justification for ignoring a value disclosed in the documents on record, and that nothing barred the taxing officer from making reference to such material in determining the value of the subject matter for purposes of instruction fees. The court accordingly found that failure to adopt an ascertainable value constituted an error of principle.
- 39.** Accordingly, this court finds that the taxing master erred in principle in declining to adopt the pleaded value of the subject matter and in assessing instruction fees on a discretionary basis.
- 40.** As the only contested item in the bill of costs relates to instruction fees, the court will accordingly proceed to re-tax this item. As earlier noted, the subject matter of the Plaintiffs' suit comprised two parcels of land, namely L.R. No. 7109/88 and L.R. No. 7109/89, Nairobi. A review of the Plaintiff reveals that the Plaintiffs expressly pleaded that the suit properties were purchased at a consideration of Kshs. 81,000,000 and that at the time of filing suit, their value stood at Kshs. 900,000,000.
- 41.** The claim of Kshs 900,000,000 was however unsupported and the court will instead rely on the conceded sum of Kshs 81,000,000. The court will adopt this sum as the value of the subject matter.

**42. Schedule 6** provides for instruction fees at the following rates where there is a defence or other denial of liability:

**(b) To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties and—**

***That value exceeds Kshs. But does not exceed Kshs.***

***- 500,000***

***75,000***

***500,000 750,000***

***90,000***

***750,000 1,000,000***

***120,000***

***1,000,000 20,000,000 fees as for Kshs.***

***1,000,000 plus an additional 2%.***

***Over 20,000,000 fees as for 20,000,000 plus an additional 1.5%.***

**43.** Applying the foregoing scale to the present case where the value of the subject matter is Kshs. 81,000,000, the instruction fees are computed as follows: the fee for Kshs.

1,000,000 is Kshs. 120,000; for the excess between Kshs. 1,000,000 and Kshs. 20,000,000 (being Kshs. 19,000,000 an additional 2% is chargeable, amounting to Kshs. 380,000, bringing the fee at Kshs. 20,000,000 to Kshs. 500,000. For the excess of over Kshs. 20,000,000 (being Kshs. 61,000,000/=), an additional 1.5% is chargeable, amounting to Kshs. 915,000. The total instruction fees therefore payable is Kshs. 1,415,000.

- 44.** Corresponding to the instruction fees is the getting-up fee which, under the Advocates (Remuneration) Order, shall not be less than one-third of the instruction fee allowed on taxation. Given that the instruction fees has been assessed at Kshs. 1,415,000, the applicable get-up fees is therefore one-third thereof, amounting to Kshs. 471,666.67.
- 45.** In the result, the court finds the Summons to be merited and re-assesses the party-and-party bill of costs dated 1<sup>st</sup> July 2024 as follows:
  - i. The Taxing Master's award of Kshs. 500,000 in respect of Item No. 1 (instruction fees) is hereby set aside and substituted with an award of Kshs. 1,415,000.**
  - ii. The Taxing Master's award of Kshs. 166,666.67 in respect of Item No. 2 (getting-up fees) is hereby set aside and substituted with an award of Kshs. 471,666.67.**

**iii. The remainder of the items in the Bill of Costs shall remain as taxed by the Taxing Officer.**

**iv. Each party shall bear its costs of the reference.**

**Dated, signed and delivered virtually in Nairobi this 19<sup>th</sup> day of February, 2026.**

**O. A. Angote  
Judge**

**In the presence of:**

Ms Mageya for the Plaintiffs

Mr. Thuo for the Respondents

Court Assistant - Tracy