



Kamau & another v Ali & another (Environment and Land Miscellaneous Case 150 of 2024) [2026] KEELC 1365 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1365 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE 150 OF 2024**

J OMANGE, J

FEBRUARY 26, 2026

BETWEEN

SAMUEL NDUNGU KAMAU 1ST APPLICANT

GRACE WAIRIMU KAMAU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DAVID KAMAU NJOROGE - DECEASED) 2ND APPLICANT

AND

IBRAHIM MOHAMMED ALI 1ST RESPONDENT

YUSUF ADAN MALIM 2ND RESPONDENT

RULING

1. The applicant had earlier filed a Chamber Summons application seeking leave to file a reference against the taxing masters decision dated 19th July 2024. On the 18th September 2024, with the concurrence of the Respondents, the parties agreed to dispense with the hearing of the application for extension so that the matter proceeds for hearing of the reference.
2. In the reference application dated 4th February 2025 the applicants prays for the following orders;
 1. That the Honourable Court be pleased to set aside and/or review the Ruling and determination made by the Deputy Registrar of this Honourable Court on 19TH July,2024.
 2. That That the costs of the reference be awarded to the Applicant.
3. The application is brought on the grounds that the applicants filed ELCC Case no 447 of 2018 and they subsequently withdrew the matter. The applicants fault the learned Deputy Registrar for failing to consider that the suit was withdrawn and for increasing the instruction fees. The applicants also contend that disbursements were allowed though no supporting documentation was given in respect of the same.



4. In the Replying Affidavit, the Respondents pointed out that the matter proceeded for the Plaintiffs hearing before it was withdrawn. On the value of the subject matter it was the Respondents contention that the plaint was amended on 10th July 2023 to claim accrued rent of Kshs 85, 080,000. The Respondents insisted that they had defended three applications during the time the matter was in court.
5. The three matters the Applicant takes issue with are the increase of instruction fees, the getting up fees and the disbursements which will form the issues for determination by this court.
6. In that regard, the Court of Appeal in the locus classicus case of Premchand Raichand Ltd vs. Quarry Services of East Africa Ltd. (No. 3) [1972] EA 162 stated guiding principles in assessing costs under the Advocates Remuneration Order: “ a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy; b) That a successful litigant ought to be fairly reimbursed for the cost 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 award made...”
7. Courts would not generally interfere with the decision of a Taxing master. In Republic v Ministry of Agriculture & 2 others Ex parte Muchiri W’njuguna & 6 Others [2006] eKLR; the Court stated, “The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.... 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 interference 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.”
8. The Applicant argues that the instruction fees is inordinately high and does not take into account the fact that the matter was withdrawn. On the other hand the Respondent argues that the assessment was fair as the Respondent had filed an amended plaint with a claim of 85,050,000. Had the taxing master considered this, the amount awarded for instruction fees would have been higher.
9. In the case of Peter Muthoka & Another vs. Ochieng & 3 Others, Civil Appeal No. 328 of 2017; [2019] eKLR, the Court of Appeal stated: “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. Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.”
10. The emerging principles are fairly clear;



- a. The value of the subject matter is to be ascertained from the pleadings, Judgement or settlement.
 - b. In a matter that has been concluded by way of Judgement or settlement the value therein would take precedence as opposed to the value in pleadings which though pleaded might not be the final ascertained value
 - c. Where a value has not been ascertained or determined, it cannot be applied as the value of the subject matter
11. The Respondent states that the plaint was amended hence the instruction fees should have been taken into account this figure. Indeed it would have amounted to an error in principle for the taxing master to state a lower value when the amended plaint had a higher figure. However in this case there is no indication that fees was paid and the amended plaint filed after leave was granted. As such for all intents and purposes the amended plaint is not a pleading. The Taxing Officer was therefore correct to use the initial amount of Kshs 6,000,000
 12. Having found this I note that the taxing master set out the fees payable under the Remuneration order first then proceeded to consider the relevant principles and gave reasons for enhancing the instruction fees. I am unable to fault her on the exercise of discretion.
 13. On the getting up fees, I note that the taxing master considered that the matter had been confirmed for hearing and correctly awarded the fees. The disbursement most of which are court fees are easily verifiable from the system hence were proved.
 14. The upshot of the foregoing is that the reference is not merited and is dismissed with costs for the reference awarded at Kshs 20,000.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF FEBRUARY 2026.

JUDY OMANGE

JUDGE

In The Presence Of:

N/A for Applicants.

N/A for Respondents.

Peter – Court Assistant.

