



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LAND CASE NO. E068 OF 2022(OS)

(Being a Reference from the Ruling on Taxation of Party

and Party Bill of

Costs by the Learned Taxing Officer, Honourable T.E

Marienga, dated

and delivered on 26th July 2024)

ZUWENA COMPANY LIMITED.....

PLAINTIFF

VERSUS

MALDE PLEATING INDUSTRIES LIMITED.....

RESPONDENT

JUDGMENT

1. Before me for determination is the Chamber Summons dated 8th August 2024, brought under Sections 1A, 1B, and 3A of the

Civil Procedure Act and Rule 11(2) of the Advocates (Remuneration) Order, in which the Applicant seeks the following orders:

a) THAT the Honourable Court be pleased to vacate and set aside in its entirety the ruling and reasoning of the Learned Taxing Master T.E. Marienga dated and delivered on 26th July 2024 taxing the Party and Party Bill of Costs at Kshs. 4,173,105/=.

b) THAT the Honourable Court be pleased to re-assess the quantum of total costs and disbursements in the Party and Party Bill of Costs.

c) THAT in the alternative to prayer (2) above, the Honourable Court be pleased to remit the Bill of Costs dated 23rd April 2024 for re-assessment of the quantum of total costs and disbursements chargeable before the Taxing Master or a different Taxing Master with appropriate orders thereof.

d) That the costs of this application be provided for.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Sudhir Meghji Shah, the Applicant's director, sworn on even date.

THE APPLICANT'S CASE

3. The Applicant claims that, dissatisfied with the ruling issued on 26th July 2024, it filed a Notice of Objection to the taxation. The deponent stated that the total amount for Party and Party costs and disbursements is excessive and should be set aside.
4. He further asserted that the Taxing Master misdirected herself and rendered an incorrect decision. According to the deponent, the ruling is inconsistent with the well-established principles of taxation.
5. He asserted that the Taxing Officer erred by treating the claim as a liquidated claim and, accordingly, taxing the bill under Schedule 6(1)(b) of the Advocates Remuneration Order 2014 instead of under Schedule 6(j) on other matters.
6. According to the deponent, the Taxing Officer should have proceeded under Schedule 6(j) of the Advocates'

Remuneration Order since the orders sought in the suit were injunctive in nature. The deponent argued that the taxed bill of costs is manifestly excessive. Additionally, he claimed that the Taxing Officer erred in calculating the instruction fees based on the pleadings instead of the judgment delivered on 18th July, 2024. Furthermore, it was argued that the Taxing Officer failed to consider the Respondent's submissions on the bill of costs, which could have enabled her to exercise her discretion and reach a fair decision.

THE PLAINTIFF'S CASE

7. The Plaintiff filed a Notice to Show Cause dated 16th October, 2024, in opposition to the application. The Plaintiff argued that the decree was more than one year old, thereby necessitating a Notice to Show Cause.

THE RESPONDENT'S CASE

8. The Respondent filed a replying affidavit sworn by Sudhir Meghji Shah on 25th February 2025 in opposition to the Notice to Show Cause. He argued that the Notice was improperly before the Court because it was issued in disregard of the mandatory procedures governing execution proceedings. He further asserted that the Notice was premature, as there was

no subsisting decree, and that the Applicant had neither obtained a certificate of costs nor formally converted it into a decree.

9. He argued that the purpose of the Notice to Show Cause was not clearly defined.
10. The application was canvassed by way of written submissions.

THE RESPONDENTS' SUBMISSIONS

11. The Respondent filed its submissions dated 2nd May 2025.
12. On behalf of the Respondent, Counsel outlined the following issues for the Court's determination:
 - a) *Whether the orders sought in the Originating Summons are declaratory in nature, the applicable schedule was 6(j) and not schedule 6(1)(b) of the Advocates Remuneration Order.*
 - b) *Whether the application is merited.*
13. Regarding the first issue, Counsel argued that the Taxing Officer erred by proceeding under Schedule 6(1)(b) because the orders sought in the Originating Summons were declaratory in nature. To support this argument, Counsel relied

on **Singh Gitau Advocates v City Finance Bank LIMITED**
(now trading as Jamii Bora Bank Limited) 2019 eKLR,
where the Court held that:

“...the prayer in that plaintiff did not include any claim for a specific or liquidated sum. It is manifest that the suit did not involve a claim for an actual monetary award, nor did the suit involve a claim for the value of the property. Rather, it was filed for declaratory orders and for general damages. Therefore, I find that instruction fees ought to have been calculated via the provisions of ARO Schedule VII(1)...”

- 14.** Further reliance was placed on **Gecaga v Gateway Insurance Company Ltd & 2 others (Civil case No. 86 of 2018) (2021) KEHC 288 (KLR), Gitonga Muriuki & Co Advocates v Telepost Co-operatives Savings & Credit Society Ltd, Eddy Nicholas O Orinda p/aOne and Associates Advocates v Victoria Commercial Bank Limited (2020) eKLR, Meir Mizrahi & another v Nairobi**

City Council & 2 others (2014) eKLR and Kipkorir Titoo & Kiara Advocates v Deposit Protection Fund Board (2005) eKLR.

15. On the second issue, Counsel submitted that the Taxing Officer erred in principle and urged the Court to allow the reference as prayed. Counsel relied on the case of **Del Monte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI), Muranga Chapter & 2 others (2021) eKLR** to explain the principles for challenging the Taxing Officer's decision.
16. Regarding the Notice to Show Cause, Counsel argued that it is premature, defective, and incapable of being granted as it was issued unprocedurally. Counsel relied on Section 51(2) of the Advocates Act to argue the certificate of costs had not been converted into a decree for the purpose of execution.
17. Counsel pointed out that no judgment has been entered regarding the certificate of costs for which the Notice to Show Cause is sought. Counsel further argued that the Notice is premature because there is an ongoing reference against the Taxing Master's ruling. Additionally, Counsel submitted that a

Notice to Show Cause can only be issued when an application for execution is made more than one year after the date of the decree, against the legal representative of a party to the decree, or in cases of attachment of salary or allowance of any person, or where the mode of execution sought is committal to civil jail.

THE PLAINTIFF SUBMISSIONS

18. The Plaintiff filed its submissions dated 5th May 2025.
19. On behalf of the Plaintiff, Counsel outlined the following issues for the Court's determination:
 - a) *Whether the application dated 8th August 2024 is merited; and*
 - b) *Whether the Notice to Show Cause dated 16th October 2024 is merited.*
20. Regarding the first issue, Counsel submitted that the Reference is not merited because the Taxing Officer's decision was based on well-established principles of taxation. Counsel contended that the Respondent has not identified any principles that were either not applied or were misapplied. It was also submitted that the Respondent's assertion that the

suit is not liquidated is misconceived and a misapprehension of the principles of taxation.

21. Counsel further submitted that the Taxing Officer was correct in relying on Schedule 6 (1) (b) of the Advocates Remuneration Order, as the subject matter was ascertainable from the pleadings filed by the parties. It was submitted that the property was sold for KSHS 257,000,000/= as reflected in the memorandum of sale dated 17th August 2021 and the transfer instrument dated 17th September 2021. It was argued that the Respondent admitted in paragraph 12 of the replying affidavit sworn by Rudir Meghi Shah that the value of the suit property was KShs. 450,000,000/-, but was admittedly sold for KShs. 257,000,000/=.

Counsel further submitted that the Respondent presented a valuation report estimating the value of the property at KSHS 450,000,000/=. To buttress this argument, reliance was placed on the case of **Masore Nyangáu & Co Advocates v Kensalt Limited (2019) eKLR.**

22. Regarding the second issue, Counsel submitted that the Notice to Show Cause should be allowed. Counsel maintained that

there is no legal requirement for a party to convert a certificate of taxation into a decree, or vice versa, before proceeding with execution.

23. In conclusion, Counsel urged the Court to dismiss the reference and to allow the Notice to Show Cause to proceed.

ANALYSIS AND DETERMINATION

24. Having considered the application, the Notice to Show Cause, and the rival submissions, the main issue for determination is whether the ruling dated 26th July 2024 should be set aside.
25. The Principles of taxation were aptly stated in **Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others (1972) EA 162,** where the court noted 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 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, as far as practicable, there should be consistency in the awards made.

(g) 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.”

26. Similarly, in **Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board (2005) 1 KLR 528**, the Court of Appeal stated that:

“On a reference to a judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer erred in principle in assessing the costs- an example of an error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles.”

27. The Applicant has challenged the taxation of the Bill of costs, asserting that the Taxing Officer erred in applying Schedule 6 (1)(b) of the Advocates Remuneration Order instead of Schedule 6(j).

28. The Applicant contends that the reliefs sought in the suit were declaratory in nature and, therefore, the applicable provision

was Schedule 6(j), which applies when the value of the subject matter is unascertainable.

- 29.** Although the Applicant describes the suit as one seeking declaratory orders, the Court must look beyond the form of the pleadings and examine the substance of the dispute. The mere fact that a suit is framed as seeking declaratory relief does not, of itself, render the subject matter unascertainable. In **Joreth Ltd v Kigano and Associates [2002] 1 EA 92 (CAK)**, the Court of Appeal set out the various factors to be considered in determining the instruction fees which include the importance of the matter, the general conduct of the case, the nature of the case, the time taken for dispatch and the impact of the case on the parties.
- 30.** The Respondent relied on the Applicant's replying affidavit and the submissions to argue that the subject matter was ascertainable.
- 31.** A perusal of the replying affidavit sworn on 13th February 2023 by Sudhir Meghji Shah shows that the Applicant stated that the suit property was valued at Kshs 450,000,000/= and sold for Kshs 257,000,000/=. A valuation report presented by the

Applicant estimated its value at Kshs 480,000,000/=. Based on the foregoing, the value of the suit property was not speculative or indeterminable. It was clearly ascertainable from the documents before the Court.

32. An Applicant who produces a valuation report indicating the value of the subject matter cannot subsequently argue that the value was not ascertainable for the purpose of taxation.
33. The Applicant has not demonstrated which specific principle the Taxing Officer failed to apply. Based on the foregoing, I find no error of principle warranting the Court's interference with the decision.
34. Regarding the Notice to Show Cause, the Respondent challenged the execution process on the grounds that the Certificate of costs had not been converted into a decree in accordance with Section 51(2) of the Advocates Act. **Section 51(2) of the Advocates Act** states as follows:

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, shall be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that

judgment be entered for the sum certified to be due with costs.”

35. The provision does not specify that a certificate must be converted into a decree before it can serve as a basis for execution. It empowers the Court, upon application, to enter judgment in terms of the certificate. In the matter at hand, the omission to formally enter judgment does not invalidate the certificate of costs. Failure to enter judgment does not invalidate the execution process provided the omission is regularized. Based on the foregoing, I find no procedural impropriety was demonstrated in its issuance.
36. In light of the foregoing, I find no justification for interfering with the Taxing Master’s decision.
37. The upshot of the foregoing is that the application is without merit and is hereby dismissed with costs.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF FEBRUARY 2026.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF:

Ms Kiarie holding brief for Ms Kendi for the Respondent

Njuguna holding brief for Nderitu for the Plaintiff

Court Assistant- Ahmed

ORIGINAL