

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**  
**ELCLC NO. E353 OF 2024**

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**KINJUNJE GARDENS LIMITED** - 1ST PLAINTIFF/APPLICANT  
**NDONGA LIMITED** - 2ND PLAINTIFF/APPLICANT  
**VS**  
**NCBA BANK KENYA PLC** - DEFENDANT/RESPONDENT

**RULING**

**(In respect of the Applicant's Application dated 3/11/2025)**

1. Before the Court is a Chamber Summons application dated 3/11/2025. The application is brought pursuant to the provisions of Rule 11 (2) of the Advocates Remuneration Order, Sections 1A, 1B, and 3A of the Civil Procedure Act, and Order 42 Rule 6 of the Civil Procedure Rules. The Applicant substantively seeks orders that:
  - a. The ruling of the Taxing Master Hon. Vincent Kiplagat, Deputy Registrar, delivered on 21/10/2025, regarding item No. 1 (Instruction Fees) and item No. 10 of the Defendant's Party and Party Bill of Costs dated 4/3/2025, be set aside.
  - b. The Court be pleased to remit item No.1 and 10 of the Defendant's Party and Party Bill of Costs dated 4/3/2025 to another Taxing Officer for re-taxation or, in the alternative, for the Court to re-tax the aforementioned items.
  - c. The cost of this applicant be provided for.
2. The application is based on the facts presented on the face of it and the Supporting Affidavit of Patrick Kangéthe Njuguna, the Plaintiff/Applicant's Director, sworn on 3/11/2025. The deponent states that the Defendant/Respondent filed a party and party Bill of Costs dated 4/3/2025, claiming total costs of Kshs. 4,384,574. That, via the Ruling delivered on 21/10/2025, the Bill was taxed at Kshs. 4,045,350.

3. The deponent asserts that the Applicants are aggrieved by the said decision and have submitted a Notice of Objection and the Reference herein. The Applicants argue that there are valid grounds for the Court to intervene in the Taxing Master's decision, on the basis that the Taxing Officer erred in principle by assigning the value of the subject matter for assessing instruction fees at Kshs. 378,375,474.63. This figure was never explicitly pleaded in the Plaint as representing the outstanding loan. Instead, the Plaint sought declaratory and injunctive reliefs, namely: declarations that the charge documents allegedly registered by the Defendant were not lawfully registered, a declaration that the Defendant lacked statutory power of sale, and an injunction to prevent the Defendant from exercising such powers in a manner that would lead to the unlawful sale of the Plaintiffs' properties. It is argued that these remedies are not assignable a specific monetary value.
4. It is argued that the Taxing Master made a fundamental error by not applying Schedule 6 Paragraph 1 of the Advocates Remuneration Order under the category of "other matters," as the value of the subject matter in this case could not be ascertained from the pleadings. Because of this error in principle, the instruction fees (item 1) were calculated incorrectly and were clearly excessive. In doing so, the Taxing Officer failed to exercise discretion properly when determining the appropriate instruction fees.
5. Furthermore, the Taxing Master erred in allowing item No. 10 concerning the drawing and copying of the Defendant's Replying Affidavit, as the claimed costs were not proportionate and were therefore clearly excessive. Given these errors, there are sufficient grounds for the Court to intervene and overturn the decision of the Taxing Officer. It is in the interest of justice that the orders sought be granted.
6. The application is opposed by the Defendant/Respondent via the Grounds of Opposition dated 15/1/2026. It argued that the application is incompetent and constitutes an abuse of the Court process. The

Defendant/Respondent cites the provisions of Schedule 6 Paragraph 1b of the Advocate Remuneration Order and Section 2 of the Civil Procedure Act, asserting that the Taxing Master correctly determined the value of the subject matter, which was based on the outstanding loan owed by the Applicants. The Plaintiffs' suit was a direct challenge to the legality of the Defendant's charge over the suit properties and its exercise of the statutory power of sale to recover the overdue loan.

7. It asserts that the value of the suit properties was stated in the Statement of Defence dated 30/9/2025 and the valuation report by Dansal & Associates Ltd., which outlined the remaining outstanding loans. The Defendant/Respondent further states that although the Plaintiff/Applicants are now disputing the value of the subject matter, they themselves pleaded in their Plaint that the value of the suit properties exceeded Kshs. 400,000,000/=.
8. The Defendant/Respondent contends that Schedule 6 Paragraph 1 under the title 'other matter' is inapplicable in the present case. That the Plaintiff/Applicants have misinterpreted the import of Schedule 6 Paragraphs 4 and 5 to mislead the court. Accordingly, it requests that the application be dismissed with costs.
9. The Court directed that the application be considered through written submissions. The Plaintiff/Applicants filed their submissions dated 4/3/2026, whereas the Defendant's submissions are dated 20/2/2026.
10. I must emphasise that the written submissions, along with the numerous authorities cited and relied upon by the advocates for the respective parties, form part of the Court's Record and have been duly considered.

### **Analysis and Determination**

11. Having considered the pleadings, the rival submissions, and the record of taxation before me, the Court now proceeds to determine the substantive issues arising from this reference; the main issue being whether this Court should interfere with the decision of the Taxing Officer and, if so, to what extent.

12. Taxation of costs is primarily a matter within the discretion of the Taxing Officer. The principles on which a Judge of the High Court may interfere with that discretion are well established. The Court in *Republic v Ministry of Agriculture and 2 Others; Ex parte Muchiri W Njuguna & Others* [2006] eKLR, articulated the test in the following terms:

“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 is somewhat too high or too low; it will only interfere if it thinks the award is 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 inference 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. Needless to state, not all the above factors may exist in any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. If the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the Taxing Officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment...

A Taxing Officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved... Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorizing clause in the law, or a particularized justification of the mode of exercise of any discretion provided for.... The complex elements in the proceedings which guide the exercise of the Taxing Officer 's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated - apart, of course, from the need to show if such works have not already been provided for under a different head of costs...."

13. The foregoing decision clearly outlines the limited jurisdiction of a Judge reviewing taxation. It stresses that the Court will not intervene simply because it would have arrived at a different conclusion on quantum. The Court will only intervene where there is evidence of an error of principle, or where the taxed amount is clearly excessive or insufficient to constitute an injustice.
14. This principle has been reiterated in numerous subsequent decisions. In *KANU National Elections Board & 2 Others v Salah Yakub Farah* [2018] eKLR, the Court stated:

“...before the Court interferes with the decision of the Taxing Master it must be satisfied that the Taxing Master’s ruling was clearly wrong, as opposed to the Court being clearly satisfied that the Taxing Master was wrong. This indicates that the Court will not interfere with the decision of the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master’s view of the matter differs so materially from its own that it should be held to vitiate the ruling.”

15. The Plaintiff/Applicants have challenged the Taxing Officer’s assessment of instruction fees under Item 1, arguing that by assigning the value of the subject matter for the purposes of assessing instruction fees at Kshs. 378,375,474.63, this figure was never expressly pleaded in the Plaint as the outstanding loan. It is asserted that the Taxing Master erred in principle by failing to apply Schedule 6 Paragraph 1 of the Advocates Remuneration Order under the category of “other matters,” as the value of the subject matter in the present case could not be determined from the pleadings.
16. The Defendant/Respondent, on the other hand, argues that the Taxing Master rightly ascertained the value of the subject matter, which was based on the outstanding loan owed by the Applicants. They contend that the Plaintiffs’ suit was a direct challenge to the legality of the Defendant’s charge over the suit properties and its exercise of the statutory power of sale to recover the outstanding loan. The Respondent asserts that the value of the suit properties was stated in the Statement of Defence dated 30/9/2025 and in the valuation report by Dansal & Associates Ltd., which outlined the balance of the outstanding loans.
17. The question that then arises is what was the value of the subject matter? The Supreme Court, in the case of Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR), stated that;

“It is common ground that the subject matter of the suit in issue should be identified first, and then the value thereof determined. How is the value of the subject matter to be determined? Paragraph 1 of Schedule VIA is clear on this issue, and in point of fact stipulates that, “... where the value of the subject matter can be determined from the pleading, judgment or settlement of the parties”. This means that the value of the subject matter can be determined from the pleadings or judgment or settlement of the parties. In that regard, the Court of Appeal in the case of Joreth Ltd -vs- Kigano & Associates [2002] 1 EA 92 expressed that-

“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) ...”

18. The Learned Judges further cited with approval the Court of Appeal case of Peter Muthoka & Another -vs- Ochieng & 3 Others, Civil Appeal No 328 of 2017; [2019] eKLR in considering the issue of how the value of a subject matter can be determined and stated 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.”

19. The Court went on to further state that;

“a claim in a suit which is struck out at the preliminary stage does not ipso facto render that claim or amount pleaded therein without more the value of the subject matter. The position still remains that the amount therein has not been ascertained or determined, and as such, it cannot be applied as the value of a subject matter in a disputed taxation. The application of such a claim or amount as the value of the subject matter would go against the rationale that the fees/costs paid to an advocate and a successful party should be reasonable.”

20. The suit between the parties was withdrawn before it was scheduled for hearing. Therefore, the subject matter of the suit could only be determined from the pleadings filed. A review of the Plaint filed reveals that the Plaintiff/Applicants sought declaratory and injunctive reliefs, namely: declarations that the charge documents allegedly registered by the Defendant were not lawfully registered, a declaration that the Defendant lacked statutory power of sale, and an injunction to restrain the Defendant from exercising such power in a manner that would result in the unlawful sale of the Plaintiffs’ properties. Evidently, the Plaintiffs did not seek any monetary relief, but rather injunctive and declaratory orders. Furthermore, upon examining the application filed alongside the Plaint, the Plaintiffs sought an interlocutory injunction.

21. Guided by the above-cited Supreme Court decision in Kenya Airports Authority -vs- Otieno Ragot and Company Advocates (Supra), the remedies sought by the Plaintiffs are not capable of being assigned a specific monetary value. The alleged loan balance was disputed, hence

the suit. The loan balance could not be used to determine the value of the subject matter.

22. In light of the foregoing, I find that the Taxing Master erred in determining that the value of the subject matter was ascertainable. Consequently, I conclude that the Taxing Master failed to apply Schedule 6 of the Advocates (Remuneration) Order under the category of “other matters” to evaluate the Defendant’s entitlement to instruction fees.
23. The Plaintiff/Applicants have also taken issue with the Taxing Master for allowing item No. 10 which relates to the drawing and making copies of the Defendant’s Replying Affidavit. They contend that the claimed costs were not drawn to scale and thus were manifestly excessive. With reference to the said item, the same is provided for under Schedule 6 of the Order. If the Defendant/Respondent proved the document had the alleged folios (by producing the bundle), it was entitled to the statutory rate for copies necessarily made. The Taxing Master having perused the record, this Court has no basis of interfering with the award made thereof.

**24. Final orders for disposal**

In the end, this Court finds that the Chamber Summons dated 3/11/2025 partially succeeds. Accordingly, the Court makes the following Orders:

- a. The Ruling on Taxation delivered on 21/10/2025 is set aside with respect to Item No. 1 only.
  - b. The Defendant/Respondent’s Party and Party Bill of Costs dated 4/3/2025 is remitted to the Deputy Registrar for fresh taxation of Item No. 1 only before a Taxing Officer other than Hon. Vincent Kiplagat.
  - c. The Defendant/Respondent shall bear the costs of this Reference.
25. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH 2026 VIA MICROSOFT TEAMS.**

**J G KEMEI**  
**JUDGE**

**Delivered online in the presence of;**

1. Mr. Kahia for the Plaintiff
2. Ms. Kamau H.B for Mr. Swaka for the 1st Defendant
3. Mr. Muriithi H/B for Mr. Kingori for the 2<sup>nd</sup> Defendant
4. C/A - Ms. Yvette Njoroge