



Oluga t/a Oluga & Co Advocates v Rahimkhan & another (Miscellaneous Application E007 of 2024) [2025] KEELC 5832 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5832 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
MISCELLANEOUS APPLICATION E007 OF 2024**

**LL NAIKUNI, J
JULY 28, 2025**

BETWEEN

WILLIS OLUGA T/A OLUGA & CO ADVOCATES APPLICANT

AND

ABDULKADIR AHMED RAHIMKHAN 1ST RESPONDENT

JABEEN MANAN 2ND RESPONDENT

RULING

1. This Honourable Court is called upon to make a determination onto the Chamber Summons Application dated 23rd January, 2025 by Willis Oluga T/A Oluga & Co Advocates, the Applicant herein. It was brought under the provisions of Paragraph 11 [2] of the Advocates Remuneration Order and all other enabling provisions of the law.
2. Despite of the service of the Application having been effected upon the Respondents, the said application never elicited any responses and thus deemed to be unopposed.

II. The Applicant's Case

3. The Applicant sought the following orders:-
 - a. That the taxation ruling delivered by Hon. R. K. Ogolla on 18th December 2024 be and is hereby party set aside to the extent that the amounts assessed for instructions fees and getting up fees be set aside.
 - b. That upon the setting aside as aforesaid, the Judge to independently assess the instructions fees and getting up fees
 - c. That Costs of this application.



4. The Application was based on the grounds, testimonial facts and the averments founded under the 29 paragraphed Affidavit sworn by Willis O. Oluga, the Applicant herein sworn on the same day as the Chamber Summons Application with six (6) annexures marked as “WO 1 to 5” annexed herein. The Applicant averred as follows: -
- a. The Applicant had filed a bill of costs dated 30th July 2024 which was supported by his affidavit to which he annexed a valuation report placing the value of the suit property at Kenya Shillings Two Million (Kshs. 2,000,000,000/-). Annexed in the affidavit herewith and marked as “A” being a true copy of the Bill of Costs and the Supporting Affidavit to which was attached the valuation report.
 - b. The bill of costs was opposed by a Replying Affidavit sworn by Jabeen Manan on 20th September 2024. Annexed in the affidavit and marked as “B” a true copy of the said Replying Affidavit.
 - c. The Applicant filed a further affidavit sworn on 23rd September 2024. Annexed in the affidavit and marked as “C” a true copy of the Further Affidavit and its annexures.
 - d. Vide a ruling by the Taxing Officer, Hon. R.K. Ogolla delivered on 18th December 2024 based on the Advocate’s Bill of Costs dated 30th July 2024. Annexed herewith and marked as “D” a true copy of the Ruling was made on 18th December 2024 and the same was subject of the instant application.
 - e. The Learned Taxing Officer assessed the instructions fees at a sum of Kenya Shillings One Million Seven Hundred Thousand (Kshs.1,700,00.00/=) and getting up fees at a sum of Kenya Shillings Five Sixty Six Thousand Six Sixty Six Hundred and Sixty Six cents (Kshs. 566,666.66) (1/3 of instruction fees).
 - f. The Learned Taxing Officer erred in law and fact by holding that that the value of Kenya Shillings Two Billion (Kshs. 2,000,000,000/-) could not be used for purposes of assessing instructions fee since the Respondents/clients only own a portion (1/6) of the suit property. The Taxing Officer failed to appreciate that the Applicant/Advocate was given instructions to act in respect of the entire suit property and not just the portion owned by the Respondents/ Clients. The same was confirmed by court documents signed by the Respondents’ mother, Rukia Ahmed Khan (holder of the Respondents’ Power of Attorney) as well as the other joint owners of the suit property which documents were placed before the Taxing Officer but shedeliberately ignored the same.
 - g. The Respondents gave the Applicant instructions to file the case, not only on behalf of the Respondents but also on behalf of the Respondents’ family members and in respect of the entire suit property. That is why prayer 4 of the plaint sought a declaration that the Plaintiffs (the Respondents herein) and their family members to have a right to occupy, use, cultivate, sublet, charge or transfer their rights over the suit property. That was also why prayers 6 and 7 of the plaint sought orders of permanent injunction to protect the Respondents and their family members.
 - h. Indeed, Rukia Ahmed Khan, the Respondents’ mother, confirmed on oath in her Further Affidavit sworn and filed on 23rd June 2017 that the rest of the registered owners of the suit property and/or their representatives gave the Respondents authority to file the case.



Specifically, at paragraph 8 of the said Further Affidavit, Rukia Ahmed Khan averred on oath as follows:

- “8. For the avoidance of doubt, the other registered owners and/or their dependants/representatives expressly gave the Plaintiffs the authority to apply for extension of the lease and to bring this suit on their behalf. Annexed herewith and marked ‘A’, ‘B’ and ‘C’ respectively are affidavits of Narriman Khan, Nazir Alikhan Rahimkhan And Sultan Khan Abdulla confirming the authority.”
- i. Rukia Ahmed Khan went ahead and annexed to her said Further Affidavit the affidavits Narriman Khan, Nazir Alikha N Rahimkhan And Sultan Khan Abdulla which she said was evidence of confirmation of the authority that those other registered members had given to the Respondents to file the case on their behalf. See Annexure marked as “WO – 4” in the Applicant’s Further Affidavit which contains the affidavits of Narriman Khan, Nazir Alikhan Rahimkhan And Sultan Khan Abdulla.
 - j. The Respondents’ mother who was holder of their Power of Attorney and was their witness in the case by reason of a duly registered Power of Attorney confirmed on oath that the Respondents filed the case not just on the Respondents’ own behalf but also on behalf of the other registered owners of the suit property who are family members. Prayers 4, 6 and 7 of the Plaint included the Respondents’ family members as among those sought to be protected by the court. The orders sought in the case were not restricted/confined to the Respondents’ portion of the suit property only.
 - k. Further, the Plaint contained prayers seeking a declaration that ownership of the entire suit property had not reverted to the County Government of Kwale (prayer 2) as well as prayer seeking the renewal of the lease for the entire suit property (prayers numbers 1 and 3). If the case was only for the portion owned by the Respondents, prayers numbers 1, 2 and 3 could not have been couched in the manner they were as they sought redress for the entire suit property.
 - l. To further demonstrate that the Respondents gave him instructions to represent them in respect of the entire suit property, the Applicant pointed that the County Government of Kwale filed a counterclaim in which the County Government insisted that the lease of the entire suit property had expired and sought a declaration that the title of the suit property had reverted to the County Government of Kwale. The County Government of Kwale did not seek a declaration in respect of the portion owned by the Respondents only but in respect of the entire suit property. See Counter - Claim marked as Annexure “WO - 5” in the Applicant’s Further Affidavit.
 - m. It was not true as held by the Taxing Officer that the case only concerned the portion of the suit property owned by the Respondents. The case was brought by the Respondents on their own behalf and on behalf of the other registered owners who are the Respondents’ family members. The nature of the prayers sought clearly show that the Respondents sought to protect the entire suit property and not just the Respondents’ share. It was not possible to seek a renewal of the share owned by the Respondents only since the entire suit property was jointly owned and was inseparable.
 - n. Indeed, the Applicant obtained interim orders of injunction to protect the entire suit property. The interim orders of injunction were not just confined to the portion of the suit property owned by the Respondents.



- o. According to the Deponent in light of the foregoing, it was apparent that the nature of the instructions given to the Applicant by the Respondents was in respect of the entire suit property and therefore the Applicant was entitled to legal fees pegged on the value of the entire suit property. Therefore, the learned Taxing Officer was plainly wrong when she reached the conclusion that the Applicant was instructed only in respect of the portion of the suit property owned by the Respondents.
- p. Accordingly, the learned Taxing Officer ought to have used the figure of sum of Kenya Shillings Two Billion (Kshs. 2,000,000,000/-) indicated in the valuation report to assess the instructions fees. The value indicated in the valuation report was not contested by the Respondents and the Respondents never filed a Counter - Valuation report.
- q. However and strictly without prejudice, even if the conclusion by the Taxing Officer that he was instructed in respect of the portion of the suit property owned by the Respondents, the Taxing Officer was still wrong in her finding that the value of the portion owned by the Respondents could not be ascertained.
- r. The value of the Respondent's share was ascertainable since the uncontroverted evidence placed before court in terms of the title copy and valuation report clearly showed that the total acreage of the suit property was 413 Hectares (1,020 acres). The Respondents jointly owned 1/6 (sixth) of the suit property (Abdulkadir owned 2/3 of the sixth while JABEEN owned 1/3 of the sixth) which translates to 68.83 Hectares (170 acres). The value of the entire property was at sum of Kenya Shillings Two Billion (Kshs. 2,000,000,000.00) which translated to a sum of Kenya Shillings One Million Nine Hundred and Sixty Thousand Seven Eighty Four Hundred and Thirty One Cents (Kshs.1,960,784.31) per acre. The value of the portion owned by the Respondents (170 acres) was therefore was a sum of Kenya Shillings Three Thirty Three Million Three Thirty Three Thousand Three Thirty Two Hundred and Seventy Cents (Kshs. 333,333,332.70). The Taxing Officer's holding that the value of the portion owned by the Respondents could not be ascertained was therefore plainly wrong.
- s. The value of a sum of Kenya Shillings One Million Nine Hundred and Sixty Thousand Seven Eighty Four Hundred and Thirty One Cents (Kshs. 1,960,784.31) per acre was not very far from the minimum of a sum of Kenya Shillings Three Million (Kshs. 3,000,000.00) per acre which the Applicant agreed upon with the Respondents as per Clause 5 of the Undertaking exhibited by the Respondents in their Replying Affidavit. If the court was to use the value of Kenya million per acre as agreed by the parties, the value of the share owned by the Respondents comes to a sum of Kenya Shillings Five and ten Million (Kshs.510,000,000.00).
- t. Therefore, whether one uses the value of a sum of Kenya Shillings One Million Nine Hundred and Sixty Thousand Seven Hundred and Eighty Four Thirty One Cents (Kshs. 1,960,784.31) per acre as given in the valuation report or the value agreed upon by the parties as indicated in the Undertaking brought to court by the Respondents of a sum of Kenya Shillings Three Million (Kshs. 3,000,000.00) per acre, the value of the portion owned by the Respondents was easily ascertainable.
- u. One may argue that the Undertaking was not of any evidentiary value since it was not signed. However, the Undertaking was brought to court by the Respondents themselves to demonstrate what the parties discussed and agreed upon. The Applicant agreed that as pointed out by the Respondents, the contents of the Draft Undertaking were what was agreed upon even though the same was ultimately not signed. Both sides agree that the Undertaking contains what the parties agreed upon.



- v. It meant that the Taxing Officer ought to have applied the figure of either a sum of Kenya Shillings Three Thirty Three Million Three Thirty Three Thousand Three Thirty Two Hundred and seventy cents (Kshs. 333,333,332.70) derived from the value per acre as given in the valuation report or a sum of Kenya Shillings Five Ten Million (Kshs. 510,000,000.00) derived from the value of a sum of Kenya Shillings Three Million (Kshs. 3,000,000.00) per acre agreed upon by the parties as contained in the Undertaking to assess the instructions fees and getting up fees.
- w. The Taxing Officer's holding that the value of the portion owned by the Respondents could not be ascertained was therefore plainly wrong and urged this Honourable Court to overturn the same.
- x. The learned Taxing Officer erred in law and in fact by arriving at a figure of a sum of Kenya Shillings One Million Seven Hundred Thousand (Kshs.1,700,000.00) which was way below that which is provided for in the law and which figure was plucked from the air without any basis and justification.
- y. Paragraph 11 (2) of the Advocates Remuneration Order provides that a party who objects to the decision of the Taxing Officer should move the Judge within 14 days after the reasons of the decision was given. The reasons were given by the Taxing Officer in her ruling delivered on 18th December, 2024. However, pursuant to the provision of Order 50 of the Civil Procedure Rules, 2010 the period between 21st December, 2024 and 13th January, 2025 were not considered for purposes of computing the 14 days within which this Chamber Summonsought to have been filed. The filing of this Chamber Summons was therefore within time.
- z. The Applicant faulted the Taxing officer for her reasoning and how she assessed the instructions fees and getting up fees. The Applicant urged the Honourable Judge to set aside the ruling in respect of instructions fees and getting up fees and to independently assess those items afresh using the value of the entire suit property of a sum of Kenya Shillings Two Billion (Kshs. 2,000,000,000.00). However, should the Judge find that represented the Respondents only in respect of the portion of the suit property owned by them, the Applicant urged the Judge to apply the figure of a sum of Five Ten Million (Kshs. 510,000,000.00) derived from the value of a sum of Kenya Shillings Three Million (Kshs. 3,000,000.00) per acre agreed upon by the parties as contained in the Undertaking brought to court by the Respondents or at worse to use the figure of a sum of Kenya Shillings Three Thirty Three Million Three Thirty Three Thousand Three Thirty Two Hundred (Kshs. 333,333,332.70) derived from the value per acre as given in the valuation report which was not contested.

III. The Respondent's Case

- 5. As indicated above, despite of the service having been effected upon the Respondents as evidenced by the affidavit of service alluded to by the applicant in the proceedings of 12th February 2025, the Respondents never filed any response to the application. Thus, the application remained undefended.

IV. Submissions

- 6. On 12th February, 2025 while the Applicant was present in Court, the Court directed to have the Chamber Summons Application dated 23rd January, 2025 be disposed off by written submissions and all the parties complied. Pursuant to that unfortunately both parties had not complied by the time the



Honourable Court retired to write this Ruling and the Court proceeded a ruling date was reserved on notice accordingly.

V. Analysis and Determination

7. I have considered the pleadings on record, the court record, and the relevant provisions of law relied upon in drafting the chamber summons application and the trial Court records, in order to arrive at an informed, fair and just decision on the matter, the Honourable Court has framed the following three (3) issues for determination;
 - a. Whether the Chamber Summons application dated 23rd January, 2025 by the Applicant has met the threshold for setting aside of the Taxing Master's ruling delivered on 18th December, 2024.
 - b. Whether the court should independently assess the instruction fees and getting up fees.
 - c. Who meets the costs of this Application/ Reference?

ISSUE A: Whether the Chamber Summons application dated 23rd January, 2025 by the Applicant has met the threshold for setting aside of the Taxing Master's ruling delivered on 18th December, 2024.

8. Under this sub – title I proceed to examine whether the Applicant has made out a case to warrant the setting aside of the ruling delivered by the Taxing Master on 18th December, 2024. It is settled law that any grievance emanating from a Ruling on Taxation can only be ventilated through Paragraph 11 of the Advocates Remuneration Order. In the case of” - “Machira & Co. Advocates – Versus - Magugu [2002]2 E.A”, Ringera J (as he then was) held as follows:-

“As I understand the practice relating to Taxation of Bills of Costs, any complaint about any decision of the Taxing officer whether it relates to a point of law taken with regard to Taxation or to a grievance about the Taxation of any item in the Bill of Costs is ventilated by way of a Reference to a Judge in accordance with paragraph 11 of the Advocates Remuneration Order.”

9. Similarly, in the case of:- “Gacau Kariuki & Co. Advocates – Versus - Allan Mbugua Ng’ang’a [2012] eKLR” it was held thus: -

“I am also of the same school of thought as the Learned Judges’ as expressed above. A reference is not an appeal although it may be in the nature of one. In a reference, the court is more concerned with whether or not the taxing master has misdirected himself on a matter of principle. If the same is found to have been the case the usual course is to remit the matter back to the taxing master with the necessary directions. The decision whether or not to proceed with taxation is an exercise of discretion and if he proceeds ex parte in circumstances in which he should not have so proceeded, in my view, that would amount to an error of principle and the Judge may remit the matter back with directions that the bill be re-tax in the presence of the parties. It is therefore my view, and I so hold, that the only recourse available to the client herein was to come by way of a reference.” [emphasis added]



10. Paragraph 11 of the Advocates Remuneration Order provides for the procedure an aggrieved party must follow in challenging taxation or assessment of costs. It provides that:

“ 11 (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.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

11. The procedure contemplated above is that:

- a. The aggrieved party issues a notice within 14 days on the items objected
- b. The Taxing Officer shall forthwith give reasons for his decision
- c. Upon receipt of the reason, the objector shall within 14 days' file an application to the High Court setting out grounds for objection
- d. If dissatisfied with the High Court, the objector shall with leave of court appeal to the Court of Appeal.

12. It is clear from the above provision that the only avenue available to a party who wishes to object to a decision following a Taxation would be to approach the Court under Paragraph 11 of the Advocates Remuneration Order. The Applicant is seeking an order that the ruling delivered on 18th December, 2024. The principles of setting aside the decisions of Maxing Master were well established in the cases of “Premchand Raichand Limited & Another – Versus - Quarry Services of East Africa Limited and Another [1972] E.A 162”, “First American Bank of Kenya – Versus - Shah and Others (2002) EA 64” and “Joreth Ltd – Versus - Kigano and Associates (2002) 1 EA 92”.

13. The Principles discussed in the authorities above included:-

- i. That there was an error of principle
- ii. The fee awarded was manifestly excessive or is so high as to confine access to the court to the wealthy
- iii. The successful litigant ought to be fairly reimbursed for the costs he has incurred
- iv. That so far as practicable there should be consistency in the award.



14. Further, in the case of:- “First American Bank of Kenya – Versus - Shah and Others [2002] E.A.L.R 64 AT 69”, the court held as follows:-

“First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle”

15. In the case of:- “Republic – Versus - Ministry of Agriculture & 20 Others Ex - Parte Muchiri W’ Njuguna [2006] eKLR”, Ojwang J. (Retired) stated as follows:-

“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 inference that it was based on an error of principle.”

16. In the South African Case of “Visser – Versus - Gubb 1981 (3) SA 753 (C) 754H – 755C”; The court stated as follows:

“The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

17. Before turning to whether the taxing officer did or did not make an error of principle, I find that the bill of costs dated 30th July, 2024 was duly served upon the Respondents and the same was unopposed. In my opinion, the Taxing Officer was well within her discretion to proceed with the Taxation as she had given the applicant more than sufficient indulgence to challenge the bill which was before her. There is only so much that a court of law can do for a party whose intention in the proceedings is, clearly, to delay the disposal of those proceedings without any justification. I find no fault on the part of the trial magistrate proceeding to assess the bill of costs that was before her as she did.

18. The next question for consideration is whether sufficient grounds have been laid out to warrant the setting aside of the decision of the Taxing Officer. There are two aspects to this Reference namely, whether the applicant wrote to the taxing master asking for reasons for taxation on specific items that



the applicant was opposed to, as required by Paragraph 11 of the Advocates Remuneration Order. I dare set it aside to examine the items the Applicant is opposed to.

ISSUE No. B). Whether the court should independently assess the instruction fees and getting up fees

19. Under this sub title, the Honourable Court shall examine whether the now objected items were properly assessed and awarded to the Applicant. Under the provision of Paragraph 11 of the Advocates Remuneration Order:-

“ 11 (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.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal...”

20. From the affidavit in support of the application, the applicant indicates that the reasons for the ruling by the taxing officer were given pursuant to the provisions of Order 50 of the Civil Procedure Rules. However, the Applicant still faulted the taxing officer for her reasoning and how she assessed the instructions fees and getting up fees. It is also confirmed that the summons were filed within the stipulated time. The question therefore is whether the taxing officer erred in taxation of the instructions fees and getting up fees as alleged.

21. Courts have taken the position that they will not interfere with the Taxing Master’s discretion in taxing bills. In the case of:- “Rachier & Amollo Advocates LLP – Versus - National Hospital Insurance Fund Board of Management [2019] eKLR”, held that:

“The principle to be applied when assessing instruction fee in a suit are well settled. The Court of Appeal in the case of Joreth Limited – Versus - Kigano & Associates [2002] eKLR outlined the principle as follows:

“We would at this stage point out that the value of the subject matter of a suit for the purpose 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 ascertainable, the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances”



22. Similarly, in the case of:- “Kanu National Elections Board & 2 others – Versus - Salah Yakub Farah [2018] eKLR”, it was held that:

“The general principles governing interference with the exercise of the taxing master’s discretion were authoritatively stated by the South African court in the case of Visser – Versus - Gubb 1981 (3) SA 753 (C) 754H – 755C as follows:-

“The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

23. Based on the above cited cases and the principles governing review/setting aside of rulings on taxation, I find that the rationale behind the principle is to avoid unnecessary contests on taxation given that the taxing master has discretion in determining the award due to an Applicant under the Bill of Costs. The advocate disputes the amount the taxing master based her decision as the value of the subject matter for the purpose of calculating instruction fees.

24. In her decision the Taxing Master opined as follows on the issue of Instruction fees: -

SUBPARA 15.

The client stated that the amount under this limb was in excess and exaggerated hence should be taxed off as it is colossal cost and that the applicant has failed to justify such sums or give an account of such sums. Also, the applicant was instructed to represent only a portion of the whole parcel estimated at Kshs.2,000,000,000.

SUBPARA 16.

The Respondents went on to state that there is lack of conclusive evidence such as instructions notes to prove they were acting for the beneficiaries of the suit property. Additionally, they sought to have the bill of cost struck out after expressing their interest to hive off part pf their land should they not have finances to meet the costs awarded;

SUBPARA 17.

The applicants on the other hand stated that they are entitled to the sought amount because the value of the subject matter is Kshs. 2,000,000,0000 and they were instructed to represent client in respect of the entire suit property and not just a portion of it. The suit is jointly owned by the respondents and their family members and their instructions was to represent all of them.

SUBPARA 18.

The applicants stated they even sought prayers in respect of the respondent and their family members and the counterclaim by County Government was also in respect to the entire suit property. The suit property measures 1000 acres and the respondent owed jointly 1/6 of suit property hence they jointly



own Kshs. 166.7 acres valued at Kshs. 333,400,000. Hence if court were to agree with respondents they can use that value of Kshs. 500,100,000 as per the value of 2 million per acre in the valuation report. The applicant referred to several attachments to prove therespondents had an undertaking with them to pay then Kshs.30,000,000. I have gone through e-citizen and the physical file and I have not seen any attachments as alleged to be attached to the applicants submissions.

SUBPARA 19.

This court resonates with the principles that support any costs awarded to an advocate for services rendered ought to be commensurate to the work done. Thus, no advocate should be allowed to unjustly enrich himself or herself for work not done as was stated in the case of *Moronge & Company Advocates – Versus - Kenya Airports Authority* [2014] eKLR in this sense:-

“.....The Advocate’s pay however must be commensurate to his work otherwise shall be what is termed as “unjust enrichment”. The same must be a reasonable compensation for professional work done. The court shall interfere with the decision of the taxing master if the same was unreasonable and excessive in the circumstances.....”

SUBPARA 20.

In the case of *Joreth Limited – Versus - Kigano & Associates* [2002] eKLR, the Court of Appeal guided taxing officers as below:

“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 or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.... The court in its capacity as the Taxing Officer endeavoured to find the basis of laying the taxation of the instruction fees, provide any such figures.”

SUBPARA 21.

In the case of *Insurance Regulatory Authority – Versus - Waweru Gatonye & Company Advocates* [2021] eKLR Justice Majanja discussing taxation was of the view that:

Paragraph 25- “The Authority’s position is that the Deputy Registrar ought to have taken into account the stage where the case had reached. It has been settled that instruction fees are earned when the Advocate acts on the Client’s instructions to defend the suit by filing the defence and a matter does not have to be set down for hearing for an advocate to earn instruction fees. On this issue, the Court of Appeal has pronounced itself in several decisions including in *Joreth Ltd Case (Supra)* where it observed that that:

By the first ground thereof the respondent states that Instruction Fee is an independent and static item, is charged once only and is not affected or determined by the stage the suit has reached. In principle that is correct. There is nothing however to suggesting the ruling of C.K. Njai, Esq., that he had considered the Instruction Fee on the stage the suit had reached. It was the learned judge who so considered the matter. The learned judge was clearly wrong in saying that one-half the work done qualifies for one-half Instruction Fee. As we are agreeing with C.K. Njai, Esq., we need not consider the said first ground. The other two grounds in the said notice have already been dealt with by us when we referred to what



C.K. Njai Esq., said in regard to the importance of the suit to the parties and the exceptional dispatch. As we agree with what Mr. Njai said those grounds do not fall for consideration.

SUBPARA 22.

I have appreciated the ELCLC 4 of 2024 (formerly Mombasa ELC 137 of 2017) together with all the documents filed herein. I have also gone through the valuation report and I note it makes reference to the entire suit property being Kwale/Mgandia/4659-Kwale County and it states its registered owners are the 1st respondent, the 2nd Respondent, Abdullakhan Rahimkhan, Abdulkadir Ahemedkhan, Hawabai Daughter of Juma and Narriaman Khan Abdullah as tenants in common. The size is 1020 acres and the value of the entire land is Kshs.2,000,000,000. From the valuation report which the applicant has relied on it is confirmed that indeed the said property is not only owned by the respondents herein thus it is not accurate to advance the use of Kshs. 2,000,000,000 will not also be accurate. The amount covers the entire parcel and the applicant confirms that.

SUBPARA 23.

The argument that the rest of the owners are family members of the respondents is not proved and as per the suit they did not come out to seek prayers in the matter. They would have been at least joined in the matter or there would be proof that they are acting on their behalf and that of their family members.

SUBPARA 24.

In the pleadings I note that at paragraph 8 of the plaint the respondents stated that: "At all material time preceding the 1st of January 2013, the plaintiffs were the leasehold title holders of a share of the property they inherited from their father..."

SUBPARA 25.

The above document was drafted by the applicant for the Respondents herein therefore the applicant should be aware that the respondents own a part or a portion of the suit property and using Kshs. 2,000,000,000 will be misguided. The Applicant has also in their own submissions stated that the Respondents own a portion of the land and from the lease and pleadings the size owned by the plaintiffs has not come out clearly and even if the same is provided to the size stated by the applicant the value of the same is not provided. I cannot thus estimate the said value or work with speculations.

SUBPARA 26.

Be that as is, it is thus proper to state that the value of the subject matter is part of the suit property being land and it could not be ascertained from the pleadings, Judgement or settlement the exact value of the share of the Respondents herein. Guided by the above case of Joreth Limited, this court will now consider:

the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances

SUBPARA 27.

I have considered the nature of the suit and the court record generally to determine the interest of the parties and taken into consideration the proceedings of this matter until the applicant ceased acting. I have also appreciated the photos of the said land and noted it is located in a prime place of access and the total value of the property even though I cannot ascertain the exact value of the respondents portion of the land.

SUBPARA 28.



Based on the above together with the land appreciation rate in Kenya, I believe the share/portion of the respondent's land is of reasonable value. The nature of suit considered is one that is just like any other suit that required a standard advocate's professional expertise. There was nothing novel or complex in making the rulings or pleadings the advocates filed before ceasing to act. Although the case has been in court since 2017 hence I note time the advocate used.

SUBPARA 29.

From the foregoing, I am persuaded that an instruction fee of Kshs. 1,700,000 is fair and reasonable in the circumstances. Kshs. 28,000,000/- is taxed off.

25. The approach in determining the value of the subject matter for purposes of determining instruction fees was clearly outlined by the Court of Appeal in the case of "Peter Muthoka & another – Versus - Ochieng & 3 others [2019] eKLR", thus: -

"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 judgement, it is the pleadings that form the basis for determining subject value. Once judgement has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgement 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."

26. The approach to be adopted in taxing instruction fees lies in the principles in the case of "Jorerth Limited – Versus - Kigano Advocates (Supra)" where the court held inter alia that: -

"The instructions fee is an independent and static item it is charged once only and it is not affected or determined by the stage the suit has reached."

27. In the present case, the Taxing Master awarded a sum of Kenya Shillings One Million Seven Hundred Thousand (Kshs. 1,700,000/-) having taxed off the same from the amount of a sum of Kenya Shillings Twenty Eight Million (Kshs 28,000,000/-). The taxing master in her reasons for granting the said amount stated that any costs awarded to an advocate for services rendered ought to be consummate with the work done. The Applicant was seeking to unjustly "enrich himself with the amount sought".

28. The taxing master stated that the valuation report referred to by the Applicant referred to the entire suit parcel. It was further stated that the Applicant could not thus use the amount indicated for the whole suit parcel as the value of the property. Further that the property had several owners under as tenants in common. Indeed, from the pleadings and which the Applicant has also referred to in this application, the suit property is owned jointly by all the respondents. I have further perused the pleadings on record relied upon as attached in the supporting affidavit, from the same, it is clear that the Respondent was simply demonstrating that the suit property was owned as family property having been passed on from one generation to the other from his great grandfather.

29. The Respondent was interested in his portion of the same and not the entire parcel as alluded to. I also further note that this portion has not been clearly identified. Like it was not clearly stated that the Respondent's portion is this amount of acreage. It is thus difficult to determine the portion in terms of acreage and the Applicant cannot convince the court otherwise.

30. The taxing master appreciated the fact that the suit property was prime property but was not complex so as to need the professional expertise of an advocate. It is noteworthy that the bill of costs was filed



after an application to cease acting was filed by the Applicant. Thus, the suit was not prosecuted to completion.

31. The principles for Taxation are well settled. In assessing instruction fees, the Taxing Officer ought to consider the value of the subject matter as the basis of her award for instruction fees. The value of the subject matter may be ascertained from the Pleadings, Judgment or Settlement by the parties. Where the material before the Taxing Officer is not sufficient to show the value of the subject matter, the Taxing Officer will then apply his or her discretion in arriving at the instruction fees. Where the value of the subject matter is unascertainable, the Taxing Officer should use his or her discretion to assess instruction fees. In this regard, the discretion of the Taxing Officer ought to be exercised judiciously by considering among other matters, the nature and importance of the suit, parties' interest and other relevant matters.

32. In the case of "Joreth Limited – Versus - Kigano & Associates (Supra)", the court held 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 the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances.”

33. Taxation of Costs is within the competence and judicial discretion of the Taxing Officer and therefore this court will not ordinarily or lightly interfere with the exercise of that discretion unless it is demonstrated clearly that the Taxing Officer erred in principle and failed to properly exercise his or her discretion. In the case of "Kamunyori & Company Advocates – Versus - Development Bank of Kenya Limited (2015) eKLR", the court held as follows: -

“Failure to ascertain the correct subject matter in a suit for the purpose of Taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on Taxation show that a Judge will normally not interfere with the Taxing Officer's decision on Taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instruction fee is arrived at on the wrong principles, it will be set aside.”

34. In the instant application, the Applicant argues that he stated in the Bill of Costs that the value of the subject matter was approximately a sum of Kenya Shillings Two Billion (Kshs. 2,000,000,000/-) because it is in respect of land in which he had represented the Respondents in respect of. I have gone through the Plaintiff and I do find that in the prayers sought, the Applicant on behalf of the Respondents sought declaration in favour of the Respondents and their families. The Applicant further stated that the learned taxing officer erred in law and in fact by holding that the value of the share/portion of the suit property owned by the Respondents could not be ascertained. The value of the Respondent's share was ascertainable since the uncontroverted evidence placed before court in terms of the title copy and valuation report clearly showed that the total acreage of the suit property was 413 Hectares [1,020] Acres and the Respondents owned 1/6 of the same which was a sum of Kenya Shillings Two Billion (Kshs. 2,000,000,000.00/=) which translates to a sum of Kenya Shillings One Million Nine Sixty Thousand Seven Eighty Four Hundred and Thirty One Cents (Kshs. 1,960,784.31/=) per acre. The value of the portion owned by the Respondents [170] acres was therefore a sum of Kenya Shillings



Three Thirty Three Million Three Thirty Three Thousand Three Thirty Two Hundred and Seventy cents (Kshs. 333,333,332.70/-). The taxing officers holding that the value of the portion owned by the respondents could not be ascertained was therefore plainly wrong. Going by the suit value of 1/6 of a sum of Kenya Shillings Two Billion (Kshs. 2,000,000,000.00) which makes the suit value at a sum of Kenya Shillings Three Thirty Three Million Three Thirty Three Thousand Three Thirty Two Hundred and Seventy cents (Kshs 333,333,332.70/-). I will proceed to be guided by Para 1(b)(ii) of Schedule 6 of the 2014 Advocates Remuneration Orders being that the matter was instituted in 2017 which I calculate as follows: -

1st Kshs 1,000,000/- Kshs 120,000/-

2nd Kshs 19,000,000/- * 2% Kshs 380,000/-

Bal Kshs 313,333,332.70/- * 1.5% Kshs 4,699,999.99/-

Total Kshs 5,199,999.99/-

35. I proceed to tax the item at Kshs 5,199,999.99/-. Kshs 24,500,000.01/- is taxed off which amount is to be adopted as the Instruction Fees payable to the Applicant. Having changed the instruction fees automatically being an advocate client bill of costs, the getting up fees, ½ advocate client fees, VAT and the grand total changes as follows:-

a.

Getting up fees

These are charged at the rate of a third of the instruction fees under Schedule 6[2] of Advocates Remuneration Order which in this case would be 1/3 of a sum of Kenya Shillings Five Million One Ninety Nine Thousand Nine Ninety Nine Hundred and Ninety Cents (Kshs. 5,199,999.99/-) taxing the item at a sum of Kenya Shillings One Million Seven Thirty Three Thousand Three Thirty Three Hundred and Thirty Three cents (Kshs. 1,733,333.33/-). A sum of Kenya Shillings Eight Million One Sixty Six Thousand Six Sixty Six Hundred and Sixty Seven Cents (Kshs. 8,166,666.67/-) is taxed off.

b.

Half (½) Advocate Client fees

This item is taxed at the rate of ½ the instruction fee which in this case I tax the item at a sum of Kenya Shillings Two Million Six Hundred Thousand (Kshs. 2,600,000/-). A sum of Kenya Shillings Twelve Million Two Hundred and Fifty Thousand (Kshs. 12,250,000/-) is taxed off.

c.

Grand Total

Thus, the grand total amount will be a sum of Kenya Shillings Nine Million Six Fourty Four Thousand Eighty Fifty Three Hundred and Thirty Two Cents (Kshs. 9,644,853.32/-).

36. Having regard to the contents of the impugned ruling and the reasons advanced by the Taxing Master, I find that the Taxing Master can be said to have adopted the wrong principles in coming up with the amount due to the Applicant herein.
37. Consequently, for the reasons and computation above done by this Court I find basis of the grounds upon which the Reference herein has been filed merited, and proceed to vary and set aside the ruling by Hon. R. K. Ogolla; I also take note that the Honourable Taxing Master awarded VAT which had



not been pleaded for by the Applicant. I find the Chamber summons Application dated 23rd January, 2025 merited and allowed with no orders as to costs.

ISSUE No. C. Who meets the costs of this Application/ Reference?

- 38. It is trite law that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of any legal action or proceeding in any litigation. The provision of Section 27 (1) of the Civil Procedure Rules, 2010 holds that costs follow the event. By event it means the result or out come of the legal action.
- 39. In the instant case, having held that the Chamber Summons Application dated 23rd January, 2025 as merit and taking cognisance of the fact that the Respondents did not participate in the Application in the Application therefore I shall not award Costs.

VI. Conclusion and Disposition

- 40. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, the Court arrives at the following decision and make below orders:-
 - a. That the Chamber Summons application dated 23rd January, 2025 is found to have merit is hereby allowed in its entirety in the following terms: -
 - i. the Taxation ruling delivered by Hon. R. K. Ogolla on 18th December 2024 be and is hereby party set aside to the extent that the amounts assessed for instructions fees and getting up fees be set aside.
 - ii. upon the setting aside as aforesaid, I have independently assessed the instructions fees and getting up fees which also adjusted the amounts as follows:-
 - a. Getting up fees - These are charged at the rate of a third of the instruction fees under Schedule 6[2] of Advocates Remuneration Order which in this case would be 1/3 of Kshs 5,199,999.99/- taxing the item at Kshs 1,733,333.33/- Kshs 8,166,666.67/- is taxed off.
 - b. Half (½) Advocate Client fees - This is item is taxed at the rate of ½ the instruction fee which in this case I tax the item at Kshs 2,600,000/- Kshs 12,250,000/- is taxed off.
 - c. Grand Total - The grand total amount will be Kshs 9,644,853.32/-.
 - b. That there shall be no orders as to costs.

It Is So Ordered Accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT KWALE THIS28THDAY OFMAY.....2025.

.....
HON. JUSTICE L. L. NAIKUNI,

Environment And Land Court

At

Kwale

Ruling delivered in the presence of:



- a. Mr. Daniel Disii, the Court Assistant.
- b. M/s. Machogu Advocate holding brief for Mr. Oluga Advocate for the Applicant.
- c. No appearance for the Respondents.

