



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ELC MISC. CAUSE NO. E007 OF 2024**

**J.M. NJENGA & CO. ADVOCATES  
LLP.....ADVOCATE/APPLICANT**

**VERSUS**

**KIMURI HOUSING COMPANY  
LTD.....CLIENT/RESPONDENT**

**RULING**

- 1) The matter for determination is the Chamber Summons dated 30/07/2024, by the Advocate/Applicant seeking for orders that;
  1. THAT the taxation orders made on 22<sup>nd</sup> July, 2024 be reviewed and/or set aside and the matter referred back to a Taxing Master for re-taxation of items 1 and 30.
  2. THAT the costs of this application be provided for.
- 2) The Application is premised on the grounds that the Advocate/Client Bill of Costs dated 14/02/2024 was taxed on 22/7/2024 in the sum of **Kshs. 2,950,729/-** but the Advocate/Applicant is aggrieved by the taxation orders issued in respect of items 1 and 30. That the Taxing Master misdirected herself and erred on principle and therefore the

taxation orders ought to be set aside and/or reviewed with the Court giving clear guidelines of re-taxation of the said items.

- 3) The Summons is supported by the Affidavit of Vivianne Wachanga. When served, the Client/ Respondent never filed a response therefore the Summons is unopposed.
- 4) The Advocate/Applicant filed submissions dated 23/01/2025 which I have considered including the grounds stated on the face of the Chamber Summons and the facts deponed in the Supporting Affidavit. The main item which was being contested is the award on the instructions fees and the getting up fees where the Taxing Officer awarded the Respondent Kshs. 2,950,729/- vide her Ruling delivered on 22/07/2024. The Bill of Costs claimed Kshs. 4,700,000/- for item 1 based on an estimated value of the suit property at Kshs. 300,000,000/- but the valuation report dated 18/03/2024 had placed the value of the property at Kshs. 500,000,000/-.
- 5) It is the Applicant's argument that the Taxing Officer misdirected herself and erred on principle by failing to consider the valuation report. That she chose not be guided by the valuation report and invoked her discretionary powers. That whereas the value of the suit property was not in issue as the Taxing Officer observed, the Applicant contends that it is the ownership of the land that was in dispute. And therefore the taxation orders ought to be set

aside and/or reviewed with the Court giving clear guidelines of re-taxation of the items 1 and 30.

- 6) As already stated the application is unopposed. The client despite being served several times did not file any response.

### **Determination**

- 7) The main issue that arises for determination in the application dated 30/07/2024 is whether the Taxing Master applied the correct principles in taxing items 1 and 30 of the Bill of Costs.
- 8) It is a well-established principle of review that the exercise of the Taxing Officer's decision will not be interfered with *"unless it is found that he/she has not exercised his/her discretion properly."* See the case of **Kanu National Elections Board & 2 Others Vs. Salah Yakub Farah 2018 eKLR.**
- 9) **Schedule 6 A paragraphs 1 (a) and (b)** of the **Advocates Remuneration Order** stipulates that the instruction fees are to be calculated on the basis of the value of the subject matter, which is to be determined from the pleadings, Judgment or settlement between the parties. The Taxing Officer in the instant case considered the fact that value of the property had been placed at approximate cost of Kshs. 300,000,000/- but also noted that the matter is part heard.

Further that whereas the value of the suit property is not in issue, but that the size and approximate value of the suit property is of importance.

- 10) It is therefore not right to say that the Taxing Officer overlooked the value she indeed recognized the importance of the proximate value as being a factor but she also was cognizant of the fact that the matter was part-heard. The Taxing Officer thus resorted to the principles set out in **Joreth Limited vs. Kigano and Associates (2002) E.A 92**. She then proceeded to use these principles as a basis to tax the Bill of Costs.
- 11) The Applicant has averred that the Taxing Officer in using her discretion misdirected herself since the valuation report was on record and she overlooked it. It was the Advocate/Applicant contention that this approach by the Taxing Officer greatly prejudiced him. While placing reliance on several cases including **Ochieng Onyango, Kibet and Ohaga Advocates vs Adopt Light Ltd. HC Misc 729 of 2006, Orion East Africa Limited v Permanent Secretary Ministry of Agriculture & Another [2013] eKLR. , First American Bank Ltd vs Shah & Another [20021 EA 64 ,Joreth Limited vs Kigano Associates [supra]** among others submitted that the Taxing Officer in the instant case ought not to have considered whether the previous Advocate had raised or taxed his Bill of Costs because in so doing she wrongly exercised her discretion.

Further that the issue of having other Advocates tax their bills curtailed the discretion of the Taxing Officer and in his submissions he relied on the case of **Kenya Tea Development Agency Ltd vs. J.M Njenga Advocates [2008]eKLR**. Thus the figure arrived at using her discretion was punitive to the Advocate/Applicant.

- 12) The point of departure is whether or not the Applicant was entitled to Kshs. 4,700,000/- as opposed to Kshs. 1,200,000/- on item 1 which has a bearing on item 30. There is no doubt that the client withdrew instructions from the Advocate midstream and this is a factor that the Taxing Officer also considered. What is not clear is whether or not the Taxing Officer took into consideration the amount of work done by the Advocate/Applicant by the time the client withdrew instructions to the Advocate.
- 13) Therefore in addition to the value of the suit property which information was available to the Taxing Officer, she should also have considered the extent or amount of work done. The award on instructions fees was therefore an erroneous estimate.
- 14) Consequently and in the premises, the Chamber Summons Application dated the 30/07/2024 is meritorious and same is hereby allowed in the following terms:
  - i) The Taxing Officer's award on instructions fees and on getting up fees is set aside.**

**ii) The bill on item 1 and 30 to be remitted for a fresh taxation by another Taxing Officer other than Hon. Kurumbu.**

**iii) Each party to bear its own costs.**

Orders Accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS ON THIS 5<sup>TH</sup> DAY OF MARCH 2025.**

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**MOGENI J**  
**JUDGE**

**In the presence of:**

Ms. Wachanga for the Advocate/Applicant

No appearance for the Client/Respondent

Melita - Court Assistant

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**MOGENI J**  
**JUDGE**