

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC PETITION NO. 45 OF 2017**

**TERESIA WAIRIMU KIRIMA**

*Suing on behalf of the Estate of*

**GERISHON KAMAU KIRIMA (DECEASED .....**

**PETITIONER**

**VERSUS**

**CORNER PLACE INVESTMENT LIMITED ..... 1<sup>ST</sup>**

**RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 2<sup>ND</sup>**

**RESPONDENT CHIEF LAND REGISTRAR .....**

**..... 3<sup>RD</sup> RESPONDENT**

**MINISTRY OF LAND, HOUSING &**

**URBAN DEVELOPMENT ..... 4<sup>TH</sup>**

**RESPONDENT**

**RULING**

1. What is before the Court for determination is the 1<sup>st</sup> Respondent's Notice of Motion application dated 7<sup>th</sup> October 2025 where it seeks the following Orders:

**a) Spent.**

**b) That the Honourable Court do set aside the Decision of the Taxing Master (Hon. Judith Omollo, DR) delivered on 24<sup>th</sup> September, 2025, awarding the Petitioner herein Kshs. 1, 536, 418.00 as Costs for the suit.**

**c) That the Honourable Court do exercise its discretion and tax the Petitioner's Bill of Costs afresh and/or in the alternative issue an Order for the Petitioner's Bill of Costs dated 9<sup>th</sup> August, 2024, to be taxed afresh before a different Taxing Master.**

**d) That the Honourable Court do exercise its discretion to assess and apportion the exact amount of costs payable by the 1<sup>st</sup> Respondent and 2<sup>nd</sup>-4<sup>th</sup> Respondents in their individual capacity given that the Respondents were ordered to jointly and severally pay the costs**

**and 1<sup>st</sup> Respondent was exonerated from paying General damages.**

**e) That the Honourable Court do issue such further Orders as it may deem fit and just in the interest of Justice.**

**f) That Costs of this Application be provided for.**

2. The application is premised on grounds on its face and on the supporting affidavit of Abdirizak Ibrahim, a director of the Defendant. He avers that Judgment was delivered in the matter on 13<sup>th</sup> July 2023 for the Petitioner who subsequently filed her Bill of Costs dated 9<sup>th</sup> August 2023, seeking a total of Kshs.4,718,415.70 as party and party costs against the Respondents and which amount was taxed as drawn on 5<sup>th</sup> March 2024 by Hon. Vincent Kiplagat. Further, on 30<sup>th</sup> April 2025, this Court directed that the Petitioner's Bill of Costs be retaxed again before a different Taxing Master and on 24<sup>th</sup> September 2025, the Taxing Master (Hon. Judith Omollo) taxed the bill at Kshs.1,536,418.

3. He contends that the Taxing Master erred in principle by awarding instructions fees that were unreasonable, disproportionate to the suit's subject matter and very high. Further, that she also erred by subjecting the 1<sup>st</sup> Respondent to general damages and assessing costs on instructions fees when the trial court had exonerated it from general damages, adding that she also erred in awarding Kshs.1,000,000.00 on Item 1 (Instruction Fees) even after having found that the instruction fees ought to be Kshs.100,000.00 under the Advocates Remuneration Order, 2014.
4. He avers that the Taxing Master awarded getting up fees of Kshs.333,333.00, when the matter had not been certified by the trial court as being one that was proper for getting up fees. Further, that she failed to assess and apportion the exact amount of costs payable by the 1<sup>st</sup> Respondent and 2<sup>nd</sup> to 4<sup>th</sup> Respondents in their individual capacity given that the Respondents were ordered to jointly and severally pay the

costs. He also contends that by reason of the Taxing Master's errors, the 1<sup>st</sup> Respondent stands to suffer prejudice.

## **Response**

5. In opposition, the Petitioner filed a replying affidavit in which she asserts that the Taxing Master carefully evaluated all relevant factors before arriving at her decision. She points out that in awarding instruction fees of kshs.1 million, the Taxing Master correctly applied Schedule 6 (1) (i) of the Advocates (Remuneration) Order, 2014 which prescribes kshs.100,000/= as the minimum. On getting up fees, she contends that they automatically arise once a matter has been set down for hearing.
6. She also contends that being the decree holder, she is at liberty to execute against any one or more of the Judgement debtors for the full decretal amount and that there is no legal basis for any apportionment of liability as the Taxing Master cannot vary a final judgement and neither can this Court.

Further, that if the 1<sup>st</sup> Respondent wishes to pursue

contribution/indemnity as between the co-Respondents, it ought to file separate proceedings.

7. The Petitioner argues that execution of a valid decree cannot amount to prejudice as claimed by the 1<sup>st</sup> Respondent and that having failed to propose any concrete steps towards settlement of the decretal amount, the 1<sup>st</sup> Respondent's vague claims appear calculated to delay execution.
8. The 2<sup>nd</sup> to 4<sup>th</sup> Respondents did not file responses.
9. The application was canvassed by way of written submissions.

### **Submissions**

10. The 1<sup>st</sup> Respondent submits that the matter was neither complex in nature nor did it involve very many parties. Further, that the value of the suit property was not pleaded in the Petition and that it was a straightforward normal petition that was concluded within a reasonable time. It argues that there were no novel issues that would necessitate above

normal preparations to attract the exorbitant instruction fees awarded at kshs.1,000,000, considering that the Advocates Remuneration Order, 2014, has prescribed Kshs.100,000.00 as instruction fees. To this end, it relied on the following decisions: **Republic v Minister for Agriculture; W' Njuguna & 8 others (Ex parte) (Miscellaneous Civil Application 621 of 2000) [2006] KEHC 3504 (KLR) (Judicial Review) (28 April 2006) (Judgment); Soni v Shabbir & 2 others; Ophthalmological Society of Kenya & another (Interested Parties) (Petition 128 of 2019) [2024] KEHC 11739 (KLR) (Constitutional and Human Rights) (4 October 2024) (Ruling) and Prof Tom Ojienda & Associates v City Council of Nairobi (Miscellaneous Application E022 of 2021) [2024] KEHC 16499 (KLR) (Constitutional and Human Rights) (31 December 2024) (Ruling).**

11. It insisted that the Taxing Master erred in principle by failing to assess and apportion the exact amount of costs it ought to

pay and amounts payable by the 2<sup>nd</sup> to 4<sup>th</sup> Respondents in their individual capacity given that the Respondents were ordered to jointly and severally pay the costs, while it was exonerated from paying General damages of Kshs.5,000,000.00 awarded to the Petitioner.

**12.** On getting up fees, it submits that this was not proved therefore the award of Kshs.333,333.00 was devoid of legal and factual justification. Further, that since getting up fees is pegged on instruction fees, then if the Court finds that the Petitioner deserves it, the same should be calculated at 1/3 of kshs.100,000/=. To this end, it relied on the case of **Ngatia & Associates Advocates v Interactive Gaming & Lotteries Limited [2017] KEHC 2789 (KLR)**.

**13.** The 1<sup>st</sup> Respondent also relied on the following decisions: **Evans Thiga Gaturu Advocate v Kenya Commercial Bank Limited [2012] eKLR; Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] KECA 325 (KLR) and Samuel Mwamba Ambundo 387**

**others v Spell Investment Company Limited & 4 other  
[2021] KEHC 12757 (KLR).**

**14.** On her part, the Petitioner submits that the Taxing Master properly exercised her discretion in awarding instruction fees, having taken into account all relevant factors prescribed by law, and that no error of principle has been demonstrated to warrant interference by this Court.

**15.** She points out that under Schedule 6 (1) (i) of the Advocates (Remuneration) Order, 2014, the minimum instruction fee is Kshs.100,000/-, with discretion left to the Taxing Master to increase fees depending on the complexity, importance, and duration of the matter. Further, that Rule 50A of the Advocates (Remuneration) Order 2014, allows the Taxing Master to tax on a higher scale for cases, which fall under Schedule 6 and that the Taxing Master considered the suit property which stood at Kshs. 70,000,000/= as at the date of the valuation report of 26<sup>th</sup> January 2016, which is annexed to

the Petitioner's affidavit in support of the Petition thus forms part of the pleadings herein.

- 16.** She also submits that the Petition raised a novel legal issue concerning transition from the Registration of Titles Act to the Registration of Lands Act and that the pleadings including accompanying documentation were voluminous and required substantial effort, including extensive legal research to prosecute the matter.
- 17.** On getting up fees, she submits that under Schedule 6A of the Advocates (Remuneration) Order, a fee for getting up and preparing the case for trial is awarded where liability is denied and the same is in addition to the instruction fee, thus it was properly awarded. To this end, she relied on the decisions of **Ngati & 3 Others v Embakasi Village Craft Curios & Jua Kali Association & 7 Others [2023] KEELC 21068 (KLR)** and **Nairobi v Standard Group Limited [2025] KEHC 14899 (KLR)**.

**18.** On the 1<sup>st</sup> Respondent's invitation to this Court to apportion costs between the 2<sup>nd</sup> to 4<sup>th</sup> Respondents and itself, it submits that doing so would require this Court to sit on appeal over its own final judgement. Further, that the 1<sup>st</sup> Respondent's averment that the award of Party and Party Costs in addition to the general damages amounts to double taxation is untenable under Order 21 of the Civil Procedure Rules and Section 27 of the Civil Procedure Act, since general damages form part of the decree, while costs are separate and quantified under the Advocates (Remuneration) order.

**19.** The court was urged to consider costs awarded in the following decisions: **Republic v University of Nairobi & another Ex Parte Nasibwa Wakenya Moses [2018] eKLR; Rose Wangui Mambo & 2 others v Limuru Country Club & 15 others; Federation of Women Lawyers (FIDA) & another (Interested Parties) [2020] eKLR and Okware v Ndolo [2025] KEHC 7762.**

### **Analysis and Determination**

**20.** Upon consideration of the instant Notice of Motion application

including the respective affidavits and rivaling submissions, the following are the issues for determination:

- **Whether getting-up fees and instruction fees were properly awarded.**
- **Whether costs should be apportioned among the Respondents.**

**21.** I wish to point out that this is the second Reference filed by the 1<sup>st</sup> Respondent in respect to the Petitioner's Bill of Costs. The 1<sup>st</sup> Respondent contends that the Taxing Master committed several errors of principle in the course of taxing the Petitioner's Bill of Costs dated the 9<sup>th</sup> August 2024, being errors in the assessment of instruction fees, getting-up fees, and failure to apportion costs between the Respondents, which fact is opposed by the Petitioner.

**22.** It is trite that a Court can only interfere with the decision of a Taxing Master if it is demonstrated that the said Taxing

Master erred in principle. In **Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR**, it was stated that:

*“On 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.”*

23. On assessment of instruction fees, the 1<sup>st</sup> Respondent contends that despite the Taxing Master acknowledging that the minimum instruction fee under Schedule 6(1)(i) of the Advocates Remuneration Order, 2014 is Kshs.100,000, she proceeded to award Kshs.1,000,000/= as instruction fees, which is excessive considering that the value of the suit property was not pleaded in the Petition. Further, that she factored in general damages when assessing instruction fees payable, yet the 1<sup>st</sup> Respondent was exonerated from paying the same.

**24.** On her part, the Petitioner insists that the instruction fees was reasonable given that the value of the property land stood at Kshs.70,000,000/= as at the date of the valuation report of 26<sup>th</sup> January 2016, which was annexed to the Petitioner's affidavit

**25.** The Court of Appeal stated as follows in **Peter Muthoka & another v Ochieng & 3 others [2019] KECA 597 (KLR)**:

*“It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the*

***statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.”***

**26.** On perusal of the Petition including the supporting affidavit and annexures, I note there was a valuation report, which valued the suit property at Kshs.70,000,000/=.

**27.** On the issue of the instruction fees, Schedule 6 of the Advocates Remuneration Order 2014 provides that:

***‘The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it—(a) To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defense or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or***

*settlement between the parties and.....*  
*(b)To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties..'*

28. In the case of **Joreth Limited V Kigano & Associates**  
**[2002] eKLR** the court held inter alia:

*“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.”***

**29.** Based on the facts as presented and in relying on the legal provisions, I have cited while associating myself with the quoted decisions, I find that the Applicant has failed to demonstrate that the calculation of instruction fees was erroneous. Further, I find that the Taxing Master did not err in principle by determining the instructions fees as it was based on value of suit property. In the circumstances, I will decline to set aside the award of instruction fees but proceed to uphold the determination of the Taxing Master as regards the Item in the Bill of Costs in respect to the said instructions fees.

**30.** On getting up fees, Schedule 6 Paragraph (2)(i) of the Remuneration Order provides as follows:-

***“In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the***

*case for trial shall be allowed in addition to the instruction fee and shall not be less than one-third of the instruction fee allowed on taxation provided that this fee may be increased as the taxation officer considers reasonable but it does not include work comprised in the instruction fees...”*

**31.** With regard to the 1<sup>st</sup> Respondent’s contention that getting-up fees are not automatic, that they must be justified, Paragraph 2 of Schedule 6A of the Advocates (Remuneration) Order 2014, only requires denial of liability in a case, for getting up fees to be payable. On perusal of the Court record, I note the Petition was defended. Further, I note the Taxing Master calculated the getting up fees at one-third of the instruction fees. I hence find that the Taxing Master did not err in principle in awarding the getting up fees as one third of the instructions fees and will decline to set it aside.

**32.** It is the 1<sup>st</sup> Respondent’s contention that the Taxing master ought to have apportioned what was payable from it, since

the Court found the Respondents jointly and severally liable. In the case of **Hellen Njenga v Wachira Murage & another (2015) eKLR** cited in **Dubai Electronics v Total Kenya & 2 others Civil Case No. 870 of 1998**, the concept of joint and several liability was explained as follows;

*“Clearly therefore, where you have joint liability all the tortfeasors are and each one of them is liable to settle the full liability. However, in a purely several liability, each tortfeasor is only liable to settle the sum due to the tune of his liability. When, however, the liability is joint and /or several the plaintiff has the option either directing his claim against any one of the tortfeasors or making his claim against each one of the tortfeasors according to their individual liability. Either way he cannot recover more than the total sum decreed. However, the defendants are entitled to reimbursements from the co-defendants in the event that the Plaintiff only opts to recover from one of them...”*

**33.** In the foregoing, I find that this was not an issue that the

Taxing Master should have dealt with during taxation of

costs but this will be dealt with at the point of calculation of the decretal sum.

**34.** It is against the foregoing that I find this Reference unmerited and will proceed to dismiss it with costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS  
13<sup>TH</sup> DAY OF APRIL, 2026**

**CHRISTINE OCHIENG  
JUDGE**

**In the presence of:**

Muuo for Petitioner

Wafula for Applicant

Court Assistant: Joan