REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC NO. E285 OF 2024

KOHLENBERG FOUNDATION - RESPONDENT

VS

LANGTON INVESTMENTS LIMITED - 1ST APPLICANT

MERON LIMITED - 2ND RESPONDENT

YASEGO SQUATTERS - 3RD RESPONDENT

THE CHIEF LAND REGISTRAR, NAIROBI - 4TH RESPONDENT

RULING

(In respect of the 1st Defendant's Chamber Summons Application dated 25/7/2025)

1. Before the court is a Chamber Summons application dated 25/7/2025, filed by the 1st Defendant. The application is said to be brought pursuant to Rule 11(2) of the Advocates Remuneration Order.
2. The Applicant prays for orders that: -
    a. The decision of the Taxing Officer made on 24/6/2025 be set aside.
    b. The 1st Defendant's Bill of Costs dated 21/2/2025 be remitted back for re-taxation.
    c. In the alternative, the court be pleased to tax the item afresh at such a sum as it deems reasonable and just.
    d. The costs of this application be provided for.

3. The application is premised on the grounds that the Taxing Officer erred in principle by assessing the instruction fees at Kshs. 900,000/= and taxing off Kshs. 4,100,000/=. It further contends that the costs awarded

are low. The Applicant faults the Taxing Officer for failing to appreciate that the agreement for sale of the suit property, annexed to the Affidavit of Evans Mwaura Githua dated 6/8/2024, sets out the value of the suit property in 1999 at Kshs. 83,700,000/=. It further contends that the Taxing Officer ought to have relied on the agreement for sale when calculating the instruction fees.

4. Further, the Taxing Officer failed to appreciate that, because the suit was filed 25 years after the purchase of the suit property, the value of the suit property had increased exponentially for over 20 years. The Applicant argues that the Taxing Officer's assessment is grossly unjust and contrary to the legal principle that an advocate is entitled to reasonable costs for work done. That the assessment should be set aside and the bill of costs remitted to a different taxing officer for re-taxation.
5. The application is further supported by the Affidavit of David Mucai Kunyiha, the 1st Defendant's Director, sworn on 25/7/2025. The deponent avers that pursuant to the Ruling delivered on 18/11/2024, the suit was struck out with costs to be borne personally by Justus Nyamu Gatondo. Subsequently, the 1st Defendant filed a Bill of Costs dated 21/2/ 2025 drawn at Kshs. 5, 127,160/=. That the Bill was taxed on 24/6/2025 at Kshs. 955, 560/=.
6. He avers that, dissatisfied with the Taxing Officer's decision, the 1st Defendant filed a Notice of Objection dated 3/7/2025. He contends that, for the reasons set out above, the Taxing Officer's decision ought to be set aside and the 1st Defendant's bill of costs be taxed afresh.
7. Despite service of the application, the Plaintiff/Respondent did not file any response. The application is therefore unopposed. The 2nd to and 4th Defendant/Respondents noted that they were not affected by the application, as the suit was struck out.
8. The 1st Defendant/Applicant, however, opted to file written submissions, which it did. The submissions are dated 30/3/2026. The court has read through the submissions and duly considered them.

Analysis and Determination

9. I have considered the substance of the reference, the supporting affidavit, and the Applicant's submissions. I have also considered the principle on which this court exercises jurisdiction to interfere with the taxing officer's exercise of discretion in the taxation of bills. The issues for determination in this reference are:
    a. Whether the Honourable Taxing Officer erred in principle in the assessment of Instruction Fees.
    b. Who should bear costs of this application

Whether the Hon. Taxing Officer erred in principle in the assessment of Instruction Fees

10. Before delving into the issue, it is important to note that the Reference before this court is competent, having been filed in accordance with Rule 11 of the Advocates Remuneration Order. I note that the 1st Defendant, aggrieved by the decision of the Taxing Master, filed a Notice of Objection dated 3/7/2025, about Nine (9) days after the Ruling was delivered. The Objection further specified the Items objected to.
11. Rule 11 of the Advocates Remuneration Order makes provision for the procedure an aggrieved party must adopt. It provides:

> (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.

12. In the case of Twiga Motor Limited -vs- Hon. Dalmas Otieno Anyango (2015) eKLR, the Court stated that;

"The time limits in Rule 11 of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance." [own emphasis]

13. This court therefore has jurisdiction to determine this Reference.
14. It is well settled that courts will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer erred in principle in assessing the costs. This was stated in the Court of Appeal case of Kipkorir, Tito & Kiara Advocates –vs- Deposit Protection Fund Board [2005] eKLR, where the Court of Appeal stated:

"The learned judge like the taxing officer was exercising judicial discretion when he allowed the reference. This Court cannot interfere with the exercise of that discretion unless it is shown that the learned judge acted on the wrong principles of law."

15. Further, in the case of Kamunyori & Company Advocates –vs- Development Bank of Kenya Limited (2015) Civil Appeal 206 of 2006, the court stated: -

"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 instructions fee is arrived at on the wrong principles, it will be set aside."

16. Again in the case of Peter Muthoka & another -vs- Ochieng' & 3 Others [2019] eKLR, the Court of Appeal held: -

"It is not lost to us that matters of quantum of taxation properly belong within the province and competence of taxing masters. They

fall within their discretion, and so the High Court, upon a reference, will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is, at its core and by definition, a judicial discretion to be exercised, not capriciously or at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in mis-justice, to borrow the holding in MBOGO -vs- SHAH (Supra),"

17. The persuasive decision of First American Bank of Kenya Ltd -vs- Gulab P. Shah & 2 others [2002] KEHC 1277 (KLR), which this court adopts, states that a court is restrained from intervening in the decisions rendered by the taxing officer concerning taxation, unless it can be demonstrated that the decision was founded on an error of principle or that the fee awarded was so clearly excessive as to suggest a mistake of principle.
18. It is trite that the courts will not interfere with the exercise of the taxing master's discretion unless it appears that such discretion has not been exercised judicially, or was exercised improperly or wrongly, by disregarding factors which he should have considered, by considering matters which were improper for him to consider, by failing to bring his mind to bear on the question in issue, or by acting on a wrong principle. The court will, however, interfere where it is of the opinion that the taxing master was clearly wrong, or in circumstances where it is in the same position as, or a better position than, the taxing master to determine the very point in issue. See the case of Fredrick Otieno Outa -vs- Jared Otieno Odoto & 3 Others, SC Petition No. 6 of 2014 [2023] KESC 75 (KLR).
19. With these principles in mind, I will proceed to determine whether the taxing officer rightly exercised her discretion in determining the Appellant's instruction fees.

20. The Applicant contends that the Taxing Master ought to have used the purchase price stated in the Agreement for Sale to determine the value of the suit property. It argues that the Agreement for Sale sets out the value of the suit property in 1999 at Kshs. 83,700,000/=, which has since increased exponentially 25 years later. In assessing the instruction fees, the Taxing Master noted that the Plaintiff sought several orders, including a declaration that the Plaintiff is the registered proprietor of the suit property. She held that the value of the subject matter was not ascertainable from the pleadings, since the Agreement for Sale was attached to the application seeking to strike out the suit. She therefore exercised her discretion in assessing the same.
21. It is not in dispute that the suit was struck out before it was set down for hearing. Therefore, the subject matter of the suit could only be determined from the pleadings filed. A review of the Plaint reveals that the Plaintiff/Applicants sought declaratory orders confirming it was the rightful owners of the suit property, the cancellation of the Defendants' title on the ground that it had been acquired fraudulently, and injunctive relief. Evidently, the Plaintiffs did not seek any monetary relief, but rather injunctive and declaratory orders.
22. 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 its value 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, the judgment, or the parties' settlement. 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) …"

23. 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."

24. 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."

25. Guided by the Supreme Court decision cited above in Kenya Airports Authority –vs- Otieno Ragot and Company Advocates (Supra), the remedies sought by the Plaintiff were not capable of being assigned a specific monetary value. The value of the suit property was not indicated in the pleadings. Further, given that ownership of the suit property was disputed and claims of fraudulent acquisition were raised, the alleged purchase price could not be used to determine the value of the subject matter. The value of the subject matter was therefore unascertainable.
26. When the value of the subject matter is unascertainable, the taxing master has discretion to award reasonable instruction fees. The Respondent had sought instruction fees of Kshs. 5, 000, 000/=. In her findings, the taxing master, while relying on the case of Premchand Raichand –vs- Quary Services EA Ltd (1972) EA 162, exercised her discretion and taxed the instruction fees at Kshs. 900,000/= as a reasonable reimbursement. She based her decision on the importance of the matter to the parties, the time the matter had taken in court, and the size and location of the property.
27. It is therefore my finding that the value of the suit property was not ascertainable, and thus the taxing master judicially exercised her discretion in assessing the instruction fees at Kshs. 900,000/=. This court finds no reason to interfere with that amount.
28. In the case of KANU National Elections Board & 2 Others –vs- Salah Yakub Farah [2018] eKLR, the Court held as follows:

"It is trite that the court will not interfere with the exercise of the taxing master's discretion unless it appears that such has not been

exercised judicially or it was exercised improperly or wrongly, for example, by disregarding factors which she should have considered, or considering matters which were improper for her to have considered, or she had failed to bring her mind to bear on the question in issue, or she had acted on a wrong principle. The court will however interfere where it is of the opinion that the taxing master was clearly wrong or in circumstances where it is in the same position as, or a better position than the taxing master to determine the very point in issue."

29. Based on the foregoing, the Chamber Summons application dated 25/7/2025 is unmerited and it is hereby dismissed with no orders as to costs.
30. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF APRIL 2026 THROUGH MICROSOFT TEAMS.

J G KEMEI
JUDGE

Delivered in the presence of;

1. N/A for the Plaintiff
2. Mr Muriithi HC Kiragu Kimani SC
3. N/A for the 2nd -3rd Defendants
4. C/A – Ms Yvette Njoroge