

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
COMMERCIAL & TAX DIVISION
HCCA E035 OF 2024

**XIAO
JIANFENG.....
.1ST APPELLANT**

**HE
JIANFENG.....
....2ND APPELLANT**

VERSUS

**ZHANG
JIANFENG.....1ST
RESPONDENT**

**BROTHERS MANUFACTURING LIMITED.....2ND
RESPONDENT**

RULING

- 1.Through a ruling dated 13.5.2025, taxing officer taxed the applicants party and party bill of costs dated 16.12.2024 at **Kshs. 541,362/-**.
- 2.The applicants filed a notice of objection dated 27.5.2025 against the instruction fees and the getting up fees. They also filed written submissions dated 21.10.2025.
- 3.The applicants contended that the instruction fees ought to be taxed at Kshs. 25,200/- not Kshs. 389,334/-. The reason is that the instruction fee

was based on the value of the commercial dispute whereas the appeal was on a preliminary objection on the court's jurisdiction not the substantive judgment of the lower court.

4. The applicants noted that the taxed fee for getting up fees was Kshs. 129,778/-. They contended that there was no need for fees for getting up an appeal as the court did not certify the case as one proper for consideration of a getting up fee. They also highlighted that the appeal was disposed of by way of written submissions.
5. The applicants urged the court to review the taxation to the extent that the instruction fees be taxed at Kshs. 25,200/- and getting up fees at Kshs. 7,560/-, being 1/3 of the instruction fees, and items 3,4,5,6,7,8,9,10,11,12,13,14,15 and 16.
6. In response, the respondents filed written submissions dated 5.2.2025.
7. The respondents asserted that the instruction fees of Kshs. 389,334/- was taxed at the proper scale, **Schedule 6 of the Advocates Remuneration Order (ARO), 2014**, based on the subject value of the appeal, Kshs. 14,466,700/-.

8.The respondents also asserted that they are entitled to getting up fees of Kshs. 129,778 as **paragraph 2 of Schedule 6A of the ARO** only requires denial of liability in a case for getting up fees. They relied on **Republic v Kenya Medical Supplies Authority & Another; Medox Pharmaceuticals Limited (Interested Party); Ex parte Nairobi Enterprises Limited [2019] eKLR.**

9.The respondents urged the court to dismiss the objection for want of merit.

Analysis and Determination

10.The issue is whether the applicants have met the threshold for review of the taxation ruling.

11.The court will not interfere with a taxing officer's decision unless it is shown that there was an error of principle such as considering irrelevant factors or failing to consider relevant factors. **First American Bank Ltd v Shah & another [2002] 1 EA 64**

12.The court has considered the bill of costs and the applicant's notice of objection. The subject of the

bill of costs is an appeal against the ruling of Hon. Lucy Ambasi at **Milimani Chief Magistrates Court in MCCOMMSU E859 of 2023**. The amount charged for item 1 on the instruction fees is Kshs. 409,334/-. It is based on the plaint value of special damages of Kshs. 11,466,700/- and compensation Kshs. 3,000,000/- totaling Kshs. 14,466,700/-.

13. The amount charged for item 2, getting up fees is 1/3, being Kshs. 136,445/-.

14. The taxing officer stated as follows: -

“In this matter, the value of the subject matter is ascertainable at Kshs. 14,466,700/-. ... Kshs. 389,334/- is taxed on the instruction fee. Kshs. 20,000/- is taxed off.”

15. Getting up fees, item 2 was taxed at Kshs. 129,778/-, Kshs. 6,667/- was taxed off.

16. From the above, the taxing officer relied on the plaint to form the basis of the value of the subject matter.

17. The stage at which taxation of costs is undertaken in a suit determines whether the taxing officer should rely on the pleadings, the

judgment or settlement recorded in the matter to determine the value of the subject matter. “Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered... recourse will not be...to the pleadings’ but ‘...the judgment...’

Peter Muthoka & another v Ochieng & 3 others [2019] KECA 597 (KLR) and Kenya Airports Authority v Otieno Ragot & Co. Advocates (Petition E011 of 2023) KESC 44 (KLR)

18. Accordingly, I find that the taxing officer erred by relying on the plaint to get the value of the subject matter. She ought to have relied on the judgment.

19. From a reading of the judgment dated 13.12.2024, the subject matter of the appeal was the jurisdiction of the Chief Magistrate’s Court over the dispute. The issue emanated from a preliminary objection by the respondents on grounds that the cooperation agreement provided that any dispute would be resolved before the People’s Court in the People’s Republic of China.

The trial court upheld the objection and struck out the suit with costs to the respondents. This court set aside the trial court's decision and reinstated the suit.

20. Accordingly, I find that the value of the subject matter of the appeal was not ascertainable as the appeal did not touch on the appellant's claim for damages or compensation.

21. Therefore, the taxing officer erred on principle.

22. **Schedule 6 para. 1 of the ARO** on Appeals states that: -

“To present or oppose an appeal in any case not provided for above; such sum as may be reasonable but not less than Kshs 25,200”

23. Thus, I find that the instruction fees is Kshs. 25,200/- as prayed for by the applicants.

24. The applicants submitted that the getting up fees was not applicable. However, they also urged the court to tax getting up fees at Kshs. 7,560/-, being 1/3 of the instruction fees.

25. **Schedule 6 para. 3 of the ARO** states that: -

“Fees for getting up an appeal

In any appeal to the High Court in which a respondent appears at the hearing of the appeal and which the court at the conclusion of the hearing has certified that in view of the extent or difficulty of the work required to be done subsequently to the lodging of the appeal the case is a proper one for consideration of a getting up fee, the taxing officer may allow such a fee in addition to the instruction fee and such a fee shall not be less than one-third of the instruction fee.”

26. In light thereof, the getting up fees ought to be 1/3 of the instruction fees of 25,200/-. This amounts to 8,400.

Other heads

27. The applicants sought review of items 3,4,5,6,7,8,9,10,11,12,13,14,15 and 16. However, the applicants have not demonstrated that the charge of these items is manifestly excessive to warrant the court's interference.

Disposal

28. In the upshot, the applicants' objection is allowed in part. The taxation ruling dated 13.5.2025 is reviewed to the extent that: -

(1) Instruction fees is taxed at 25,200/-.

(2) Getting up fees is taxed at Kshs. 8,400/-.

**Dated, signed and delivered at Nairobi through
Microsoft Teams online application this 19th
day of March, 2026**

F. Gikonyo M

Judge

In the presence of: -

Ojienda for Respondent

Muia for defendant

CA - Ivan/Aggrey