REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KILGORIS

ELC MISC E024 OF 2025

HON. ZAKAYO CHERUIYOT..... APPLICANT

VERSUS

DAVID KIPKURUI NGENO.....1ST RESPONDENT

JONATHAN KIPNGENO MARITIM.....2ND RESPONDENT

JOHN KIPKURUI KOSKEI.....3RD RESPONDENT

JOHN KIPKEMOI SIGEI.....4TH RESPONDENT

DAVID KIPROTICH KIRUI.....5TH RESPONDENT

PAUL KIPKURUI SIGEI.....6TH RESPONDENT

RULING

1. This Ruling is in respect of the Reference against the decision of the taxing master dated 6th February 2025.
2. The chamber summons seeks two substantive orders to wit;
   (i) The Honourable court be pleased to set aside and/or revoke the taxing officer's decision and Ruling dated 6th of February 2025.
   (ii) That the Honourable court be pleased to tax afresh the Bill of costs dated 28th of November 2024.
3. An alternative prayer, being that the Bill of costs dated 28th November 2024 be remitted to the taxing officer for taxation afresh.
4. The grounds in support of the application are *interalia*, that; -

(a) The applicant is aggrieved by the entire decision of the taxing master delivered on 6th February 2025 in Kilgoris ELC No. E006 of 2023 between Hon. Zakayo Cheruiyot Vs. Koileken Ole Samurai and 15 Others.

(b) The amount awarded to the Respondents here were excessively high as to be indicative of an error in principle as to how the court arrived at the amount award hence warrants being reviewed.

(c) The taxing officer failed to consider that the bill of costs dated 28th November 2025 was not accompanied by any supporting documents as outlined under Oder 21 Rule 9A of the Civil Procedure (Amendment Rules 2020) hence no documentation supported the costs awarded to the Respondent; that the award was excessive and not commensurate to the work done having withdrawn the suit as against the Respondents prior to the hearing of the main suit.

(d) There was no basis for the astronomical amount as assessed by the taxing master from the pleadings or settlements rendering the taxed costs avaricious and unconsciable thus the costs were inordinately and unjustifiably high.

5. The reference is supported by the supporting affidavit of the Applicant who reiterates the grounds in support of the application in his depositions and has annexed a copy of the Bill of costs, copies of the impugned Ruling and certificate of costs, a copy of letter dated 13.02.2025, copies of pleadings filed by the Respondents.

6. The Bill of costs is opposed by the Replying affidavit of David Kipkurui Ngeno who deposed *interalia*, that; -

(i) Each of the Respondent had been sued in their individual capacities and retained one counsel on record, they had issued each separate and distinct instruction to the advocate, hence the court was right in awarding instruction fees to each Respondent separately and not as a single consolidated fees.

(ii) That the court was right in assessing the instruction fees as it did , under schedule 6 of the Advocates Remuneration Order as the instruction fees were based on the subject matter, the complexity of the matter, the interests of the parties, responsibility placed on counsels.

(iii) That the suit having being filed before the ELC, which has a pecuniary jurisdiction of above 20,000,000/= the Learned taxing master was justifiable to use the said pecuniary jurisdiction as the lowest figure.

(iv) That the Respondents filed their defence and the matter was ready for trial hence they were entitled to getting up fees.

7. Thus, the taxing officer properly directed his mind to the applicable law, the value and the nature of subject matter.
8. The application was argued by way of oral submissions. The counsels were directed to file their list of authorities on the CTS.

Applicant's submission

9. In a nutshell the Applicant's submission were that the Learned taxing master applied the wrong principles in assessing the instructions fees at Kshs.20,000,000/=.
10. While the suit was not based on the whole portion and only 13.0 hectares, and the instructions fees were multiplied for each defendant in the primary suit. Reliance was placed on the decision in the case of Muriti and Another Vs. Viljon and Another 2023 (eKLR) – to the effect of no multiplier of instruction fees by number of parties. Under Rule 62 of the A.R.O, costs of advocates representing several parties only possible where multiple pleadings were filed. In this case only one defence was filed. Hence no need for multiplication.
11. The Applicant equally indicated that there was no proof of suit having been ready for hearing so as to entitle an award of getting up fees.

12. Submissions were made by Mr. Kipkoech who argued the application alongside Mr. Njogu for the Applicants, to the effect that the certificate of costs should not be allowed to stand as it will extinguish access of justice, as the taxed amount is excessive and less than 20% of Kenyans would afford legal costs. He submitted that the amount already paid to be sufficient.

Respondents' Submissions

13. The Respondent submitted placing reliance on Kithi and Co. Advocates Vs. Greenwood Limited.
14. On the proposition that when parties are distinct persons instruction fees should be compensate each person.
15. That the costs awarded consumerate to the word done, Reliance was placed in Nairobi Bottlers Vs. Mark Ndungu once when getting up fees would be payable, as well as C. N. Kihara Vs. Maendeleo ya Wanawake.
16. Reliance was equally placed on the decision in Joreth Limited Vs. Kigano Associates on the proposition that instruction fees are static and do not depend on the stage of the case.
17. The Respondent argued that no error of principle was demonstrated as Reliance was placed on the decision in Peter Muthoka Vs. Ochieng, Onyango, Kibet and Ohaga Advocates, where subject matter could not be ascertained the court properly used jurisdiction to determine the subject matter.
18. That the pecuniary jurisdiction of ELC starts from Kshs.20,000,000.
19. The court was argued to dismiss the reference.
20. Arising from the application the rival affidavits, and submissions the court shall frame only one issue for determination whether or not the reference is merited, in deciding this issue, the court shall determine whether the taxing master used to correct principles;

(a) Ascertaining the instruction fees?

(b) In multiplying the instruction fees for every Respondent?

(c) In allowing getting up fees?

Analysis and Determination

21. It is the Applicant's position that instruction fees were ascertained erroneously, not from the pleadings and/or subject matter, but from the pecuniary jurisdiction of the court. The issue in dispute was also not the whole suit property but only 13.0 Hectares.

22. In the impugned Ruling at paragraphs 9 to 14 the Learned taxing master observed that,

9. "each applicant separately instructed the firm of Mireri and Co. Advocates to represent them herein".

10.The Plaintiff/ Respondent moved the Superior court because the value of the subject matter was beyond Kshs 20,000,000/=

11.Schedule 6(1) (b) of the Advocates Renumeration orders sets the instruction fees applicable for suit whose subject matter is Ksh.20,000,000 and above.

12.This court is guided by the said schedule.

13.Based on the calculations therein each client's instruction fees amount to Ksh.820,000/=.

14.However, the matter did not proceed to full hearing. Thus, each client is entitled to half the amount being Kshs. 410,000/="

23. The court awarded Ksh.2,460,000/= in view of fact that there were 6 Applicants.

24. Was there an error of principle in assessing the instructions?

25. The principles of assessing instruction fees as stated in the Joreth Ltd Vs. Kigano Associates, have been agreed by the counsels herein. The principles were held to be as follows; -

"We would at this stage point out that the value of the subject matter of a suit for purposes of taxation of a Bill 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 on the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances…"

26. In the Bill of costs before the taxing master, the value of subject of the suit was not ascertainable from the pleadings, there was neither a settlement of the matter nor a judgment thereof, and the taxing officer in his discretion applied the Minimum subject value provided for under schedule V1(i) (b) which is 20,000,000/= being the minimum pecuniary jurisdiction of the superior courts, the matter having being filed at the ELC.

27. The court finds no error of principle attributable to the taxing master in placing reliance on the minimum value of suit under schedule VI (i) (b) since the value of the suit could not be ascertained from the pleadings, and there being no judgment and/or settlement.

28. On sub issue 2, as to whether there was an error of principle, in multiplying the instruction fee per Applicant.

29. It is the Applicants position that instruction fees ought not to have been awarded to each party, the parties instructed one Advocate.

30. The Respondent submits that Advocate is entitled to charge fees for every party that he represents even though it is a single suit. Reliance was placed on the decision in the case of Kithi and company Advocate vs Greenwood Limited.

31. I have perused various court decisions in respect of this matter and I agree with the Respondent's Advocates as this issue was raised and settled in the decision in the case of Nguraman Limited vs Kenya Civil Aviation and 3 others which decision is

quoted in the Kithi and company Advocate as well as Desai, Sarvia and Pallan Advocates vs Tausi Assurance company Limited(2015) KEHC 3488 KLR where the court observed as follows ***"The Applicant maintained that it is entitled to cost against each of the Defendants and therefore at liberty to file a separate Bill of cost against each of the Defendant. The Applicant relied on the case of Re: Ali Bin Hamed (deceased) (1909-1910)3 KCR 74 and Nguraman Limited vs Kenya civil Aviation and 3 others, High court Petition No. 143 of 2011(2014) EKR…. Where the principles of law enumerating is an Advocate is entitled to a separate fee in respect of every party that he represents in a suit notwithstanding that he acts for then only in a single suit or proceeding…"***

32. In the matter before the taxing matter, the Advocate filed a single Bill of costs as opposed to a separate Bill of costs for each party that he represented, the Learned taxing master applied the instructions fees he had ascertained from to every party in the matter. In that regard, the court finds there was no error of principled.

33. With regard to the third sub issue, the getting up fees, the Applicant position, is that the Respondents' suit against them was discontinued by way of an Amendment to the pleadings, hence it had not been certified as ready for hearing.

34. The Respondent's position is that having filed a defence as joinder of issues and issues for determination, the matter was ready for hearing. Various dictas of the court has addressed the issue of getting up fees. Nyamweya J. as she then was in Republic Vs. Kenya Medical Supplies Authority and Another; Medox Pharmaceuticals Limited (Interested party) Ex party Nairobi Enterprises Limited 2019 held as follows; -

"As regards the taxation on getting up fees and award of Khs.166,666.66/= by the taxing master for this item, paragraph 2 of schedule 6A of the Advocates Renumeration

***order (2014) only requires a denial of liability in a case for getting up fees to be payable. In addition, a close reading of the paragraph shows that contrary for the Expartes Applicant's arguments, the matter, need not proceed to full hearing, and it is sufficient that it is ready for and has been confirmed for hearing. It is not disputed that* the present application was contested and proceed to hearing…."**

35. Ngugi J in Republic Vs. Egerton University Exparte Patel Maulik Prausun (2020) eKLR equally observed similarly at paragraph 13.

"The taxing master taxed off the entire sum claimed as getting up fee. Her reasoning is that this was a judicial review Application that did not require preparation for trial involving witnesses. However, getting up fees are payable even for trials or court cases which do not require preparation of witnesses. For example, the schedule envisages getting up fees for appeals which obviously do not involve preparation of witnesses.

There is no good reason why getting fees should not be payable for preparing for trial for judicial review applications."

36. It was submitted that the matter was ready for hearing, issues having been filed by the parties, this reference having been commenced by a Miscellaneous application is not able to verify whether the matter was indeed ready for trial.

37. Having found that there was no error of principle in assessing the instructions fees, and there also being no error of principle in respect of the multiplication of the instruction fees to each party, the reference does not succeed in respect of the said grounds, as there is no basis for this court to interfere.

38. The court however remits the Bill of costs to the taxing master only in respect of getting up fees, for the taxation master to confirm whether or not the matter was ready for hearing and accordingly the tax the same in that respect.

39. Each party shall bear its own costs in respect of this reference.

Dated at Kilgoris this 27th day of April, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA – Sylvia/Sandra

Ms. Mukundi h/b for Ms. Njogu for the Applicant

Ms. Mireri for Respondents