

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: MUMBI NGUGI  
JA)**

**CIVIL APPEAL (APPLICATION) NO. E398 of**

**2021 BETWEEN**

**CENTURION ENGINEERS & BUILDERS LTD.....APPLICANT  
AND  
KENYA BUREAU OF STANDARDS.....RESPONDENT**

*(Being a reference from the decision of the Deputy Registrar (Hon. J.N. Wambilyanga) dated 3<sup>rd</sup> April 2025 on a taxation of the Appellant's Party and Party Bill of Costs dated 25<sup>th</sup> October 2024)*

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**RULING**

1. This reference arises from a ruling of the Deputy Registrar (Hon J.N. Wambilyanga) dated 3<sup>rd</sup> April 2025. The ruling was on a taxation of a party and party bill of costs by **Centurion Engineers & Builders Ltd** (hereafter '**the applicant**'), which was undated but filed in Court on 25<sup>th</sup> October 2024. In the said ruling, the Deputy Registrar taxed the applicant's bill of costs, comprising 22 items, in which it had sought instructions fees of Kshs. 40,513,260, at Kshs. 1,455,562.50.
2. The bill of costs arose from the applicant's successful appeal to this Court in which judgment was delivered in its favour on 27<sup>th</sup> October 2023, with costs of the appeal. The appeal emanated from a ruling of the High Court at

Milimani (Tuiyott J, as he then was) dated 9<sup>th</sup> December  
2015 in **Nairobi HCCC**

**No. 506 of 2012.** In its decision, this Court set aside the decision of the High Court and upheld the arbitral award dated 5<sup>th</sup> May 2015 made in favour of the applicant, adopting it as an order of this Court. The award was in respect of a dispute between the parties regarding a contract for the construction of biochemical laboratories for the respondent.

3. Dissatisfied with the ruling of the taxing master, the applicant, by a letter dated 4<sup>th</sup> April 2025, seeks a reference from the ruling as provided under rule 117(1) of this Court's Rules. The applicant impugns the ruling on five grounds set out in the said letter, namely: that the bill as taxed is manifestly inadequate, based on all the circumstances of the case, including but not limited to the nature of the case and the value of the subject matter; that the taxing officer erred in law and principle by, without reasonable cause: departing from well-established principles of taxation and deliberately declined to consider among others, the value of the subject matter of the suit as informed by the decretal sum in assessing instruction fees; awarding instruction fees arbitrarily and without any sound legal basis and/or due consideration to the well

laid down factors and principles that inform an assessment  
of the instruction fees

due; failing to award getting up fees contrary to paragraph 9

(4) of the Third Schedule to the Court of Appeal Rules, 2022; and holding that in assessing costs, the court '*must look at the person or institution that is being condemned to pay costs*' as a factor that influences the amount to be taxed, and thereby opened a front for discrimination and unequal treatment for parties appearing before a court, contrary to Article 27 of the Constitution.

4. In support of its reference, the applicant filed submissions dated 4<sup>th</sup> October 2026 (sic). It reiterates the grounds in its letter of reference and contends that the final decretal sum under the decree was Kshs. 584,492,094.20; that the amount of Kshs 1,455,562.50 taxed by the Deputy Registrar was not only manifestly too low, but that she also erred in principle in arriving at the amount. The applicant prays for determination of the question whether there was an error in principle in the assessment of the bill of costs to warrant interference with the exercise of discretion by the Deputy Registrar.
5. The applicant submits that in considering the reference, I should be guided by the decision of this Court in **Otieno Ragot & Company Advocates v Kenya Airports**

**Authority** [2021] eKLR in which reference was made to  
the case of

**Mbogo & Another vs Shah** {1968) EA and **Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board**

{2005] eKLR for the proposition that on a reference from a decision of the taxing officer, the Judge will not normally interfere with the exercise of discretion unless the taxing officer erred in principle in assessing the costs.

6. The applicant also relies on the cases of **Buyu v Independent Electoral and Boundaries Commission & 2 others** (Civil Appeal (Application) No. 40 of 2013) (2024) KECA 693 (KLR) and **KANU National Elections Board & 2 others v Salah Yakub Farah** [2018] eKLR to emphasise their submission with respect to the circumstances under which the Court can interfere with the exercise of discretion by a taxing officer.
7. The applicant submits that in this case, the taxing officer erred in the taxation of the instruction's fees. It submits that it is trite that instruction fees are always to be determined from the value of the subject matter of the dispute; that such value is always evident from the pleadings or from the judgment or order of the court, or will be determined upon consideration of issues, such as

the complexity of the matter.

8. It is its contention that in this case, it is not in dispute that the value of the subject matter can be readily ascertained

from the pleadings and also from the final orders of the court; that there is a final decree from the judgment of this Court dated 7<sup>th</sup> November 2023 that ascertains the decretal sum as Kshs. 584,492,094.20; and that the taxing officer awarded it Kshs 1,000,000 as instruction fees as opposed to the sum of Kshs. 30,000,000 which it had sought. The applicant submits that this amount was manifestly too low, taking into account all the relevant facts and circumstances of the case, including not only the value of the subject matter but also the nature and complexity of the dispute.

9. The applicant relies on the decision of Ngenye-Macharia JA in **Emfil Limited v Registrar of Titles, Mombasa & 2 others** (Civil Appeal (Application) 312 of 2012) [2025] KECA 1305 (KLR) in which the Court interfered with the decision of the taxing officer on instruction fees for being manifestly too low.
10. The applicant further submits that the taxing officer erred in principle by taking into account irrelevant factors, noting that the taxing officer held that in assessing the instruction fees, she considered the institution being condemned to pay the costs. According to the applicant, this opens up to

discrimination as different persons will not be treated as equal in the eyes of the law.

11. Regarding the nature and complexity of the case, the applicant submits that the dispute emanated from a contract executed by the parties in 2008; that the value of the subject matter is over half a billion shillings; involved a complex analysis of whether a procurement entity could voluntarily vary a tender document beyond the provisions of the Public Procurement and Asset Disposal Act and ultimately attempt to use the same provisions to escape liability for work done, which the applicant had successfully argued against. The applicant submits that taking the above factors into account, the sum of Kshs.1,000,000 awarded by the taxing officer was manifestly too low as to amount to an error of principle and warrant interference by this Court.
12. The applicant is also aggrieved by the decision of the taxing officer not to award getting up fees on the basis that such fees are not applicable to matters in this Court. The applicant submits that, on the contrary, paragraph 9 (4) of the Third Schedule to this Court's Rules, 2022, provides room for award of getting up fees at the taxing officer's discretion. According to the applicant, the said provision stipulates that the scale applicable to the High

Court under the Advocates Remuneration Order applies to  
any costs not provided for

under the Third Schedule. The applicant references Schedule 6 of the Advocates Remuneration Order on the scale of fees and costs applicable in the High Court, under which getting up fees on appeal is applicable where an appeal goes to full hearing before determination. It submits that there is no dispute that the matter went to hearing before the Court rendered itself on the issues in dispute; that the dispute between the parties emanated well over 10 years ago; and that this was a case in which getting up fees were applicable and justified. The applicant asks that the ruling of the taxing officer be set aside and referred to taxation before another taxing officer.

13. The respondent filed submissions dated 7<sup>th</sup> October 2025 in opposition to the reference. It asserts that the taxing officer exercised her discretion judiciously as guided by paragraph 9(2) of the Third Schedule to this Court's Rules and relevant jurisprudence. It further submits that there is no basis for interference by this Court as no error of principle has been demonstrated.
14. The respondent cites the case of ***Joreth Ltd v Kigano Associates*** [2002] KECA 153 (KLR) for the proposition that a judge sitting on a reference against a decision of a

taxing

officer ought not to interfere with the decision unless the taxing master misdirected himself on a matter of principle. It further cites the Supreme Court of Uganda decision in **Bank of Uganda v Banco Arabe Espanol SC** Civil Application No. 23 of 1999 (Mulenga JSC), cited with approval in **Andrew Mwangi Chui & Another v Hass Petroleum K Limited Another** ELC Case No. 197 of 2018 for the proposition that the court will not interfere with a taxing officer's assessment of fees save in exceptional cases as it is generally accepted that questions solely of quantum of costs are matters which the taxing officer is particularly fitted to deal. Reference is also made to the decision in **Premchand Raichand Ltd & Another v. Quarry Services of East Africa Ltd & Another** [1972] E.A. 162 in which the court set out the factors for consideration on a taxation of a bill of costs.

15. The respondent asserts that the taxing officer, on the authority of the above decisions and paragraph 9(2) of the Third Schedule to this Court's Rules, properly assessed the fees due and did not make an error of principle as alleged.
- 16.** Regarding the applicant's claim for getting up fees, the respondent submits that the taxing officer correctly relied

on the case of **Credit Bank Limited v Nyanza**  
**Spinning &**

**Weaving Mills Limited & 2 Others** Civil Appeal No. 233 of 2011, where it was held that getting up fees is not explicitly provided for in the Third Schedule and therefore such fee is part of works necessary and properly done in connection with the appeal and is therefore an element of instruction fees; that the taxing officer did not make an error of law or principle; that if she did, such error did not substantially affect the decision on quantum to such an extent that upholding the amount would cause an injustice to one of the parties; that contrary to the applicant's contentions, the taxing officer considered the subject matter of the suit, but had given it minimal weight; that she rightly held that while the subject matter value is a guide, it is not determinative; that the taxing officer chose instead to apportion more weight to other well accepted principles of taxation, including the nature and complexity of the suit and the principle to allow access to justice by curtailing exorbitant taxation, among others; that even if the Court were to hold that the Deputy Registrar erred, the appellant has not shown that it would face an injustice if the amount allowed is upheld.

17. The respondent asserts that the appellant has not

demonstrated that there was a manifest error of law or

principle to warrant interference by this Court. It prays that the reference be dismissed with costs.

18. I have considered the reference, the ruling by the taxing officer, and the submissions of the parties. The applicant is dissatisfied with the decision of the taxing officer in two respects. First, the amount of Kshs. 1,000,000 awarded as instructions fees; and secondly, the failure to award getting up fees on the basis that such fees are only chargeable before the High Court.
19. The applicable principles in references from a decision of the taxing officer on a taxation of a party and party bill of costs are well settled. A Judge will only interfere with the decision where an error of principle is demonstrated, or where the award is so manifestly excessive or low as to justify an inference of such error-see **Joreth Ltd v Kigano & Associates** (supra); and **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board** (supra).
20. The applicant contends that the amount awarded as instructions fees was so manifestly low as to amount to an error of principle. In particular, it is aggrieved that the taxing officer failed to consider the value of the subject matter and

misdirected herself by introducing irrelevant considerations such as the nature of the institution liable to pay costs.

21. In assessing the instructions fees, the taxing officer stated as follows:

***“6. The amount proposed by the appellant is Kshs. 30,000,000/=. The appellant submitted that they relied on the value of the subject matter which is Kshs.548,492,094.20/=. ...***

***7. I have considered the above and refer to the case of Joreth Limited v Kigano & Another [2002] E.A. 92, the court set out various factors that are to be considered in determining the instruction fee namely; ‘The importance of the matter, general conduct of the case, the nature of the case, time taken for its dispatch and the impact of the case on the parties. The cases cited also emphasize the principle that the taxing master is vested with discretion to increase or decrease instruction fees and that in exercising such discretion, the taxing officer must act judicially by considering relevant factors including importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances’***

***8. From the submissions by the appellant, I find that the amount proposed is way too high. While it is an accepted procedure that when taxing, the taxing master should consider the value of subject matter, it is not the only parameter. One must look at the person or the institution that is being condemned to pay the cost, one must not tax the bill so exorbitantly to discourage people from coming to Court... I***

***am guided by the principles outlined in the case of Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No. 3) [1972] EA 162 and agree that costs should not be allowed to***

**rise to a level that confines access to justice for the cost one has had to incur.**

**9. In this case while the value of the subject matter may be or stated by the Appellant, the most important issue is the issue that the Court was dealing. I find that complexity legal issue has not been indicated. To this end, I find that an amount of 30,000,000 is way too high for the work done by Counsel. I find that a figure of Kshs 1,000,000/= is sufficient and that is what I award for instruction fees."**

22. Paragraph 9(2) and (3) of the Third Schedule to this Court's Rules provides as follows with respect to the matters to be considered on a taxation:

**(2). The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.**

**(3) The sum allowed under sub-paragraph (2) shall include all works necessary and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondence, perusals, and consulting authorities. (Emphasis added)**

23. Weighing the ruling of the taxing officer against the authorities cited and the provisions of paragraph 9 of the Third Schedule set out above, I find that the taxing officer correctly applied her mind to the applicable principles and

the

factors to be considered on a taxation, including the subject

matter and **'the fund or person to bear the costs'** as provided in paragraph 9(2). I find, therefore, that the taxing officer did not consider irrelevant matters in considering the party that would be liable to pay the costs, in this case, a public entity.

24. While this was a relevant consideration which would have a bearing on the costs awarded, and the taxing officer found, correctly in my view, that the amount of Kshs. 30,000,000 charged in the bill of costs as instructions fees was inordinately high, the taxing officer was required to give due consideration to the value of the subject matter. In its decision in **Joreth Limited v. Kigano & Associates** (supra), this Court stated:

***"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 ascertainable the taxing officer is entitled to use his discretion to assess 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, and direction by the trial judge and all other relevant circumstances."*** (Emphasis added).

25. While the taxing officer properly addressed her mind to the applicable principles in assessing the instruction fees, she

did

not consider the value of the subject matter, a critical component in taxation, making only a passing reference to it. The value of the subject matter was stated as Kshs. 584,492,094.20. The appeal before this Court related to an arbitral award in which the said amount had been awarded by the arbitrator, but which had been set aside by the High Court in the ruling impugned in the appeal before this Court. While the amount of Kshs. 30,000,000 claimed by the applicant as instructions fees does appear, on the face of it, manifestly excessive, the amount of Kshs 1,000,000 awarded by the taxing officer as instructions fees is so manifestly low as to lead to an inference of an improper exercise of discretion.

26. The applicant is also aggrieved that the taxing officer failed to make an award of fees for getting up. In her ruling, the taxing officer stated that:

***“On item no. 2 which is on getting up fees to appeal, the Appellant has proposed getting up fee in the sum of Kshs. 10,000,000/=. Getting up fees is ordinarily one third of the instruction fees for matters before the High Court. This fee is discretionary and applicable only in the High Court. I am guided by the decision in Civil Appeal No. 233 of 2011 Credit Bank Limited vs. Nyanza Spinning & Weaving Mills Limited & 2 others. The Court of Appeal held that as the Third Schedule does not***

***expressly provide for getting up fees, such fee is part of works necessary and properly done in connection with the appeal and is therefore an***

***element of instruction fees. I therefore decline to grant getting up fee.”***

27. Having considered the reasoning of the taxing officer and the authorities cited, I am satisfied that she exercised her discretion properly in declining to make an award of getting up fees. A reading of paragraph 9 of the Third Schedule shows that no such fees is awardable on an appeal, all such charges being subsumed under instructions fees. It is my finding, therefore, that the taxing officer properly exercised her discretion in this regard, and I find no reason to interfere with her exercise of discretion with respect to the claim for getting up fees.
28. Accordingly, I find that the applicant has demonstrated an error of principle in the manner in which the taxing officer dealt with the issue of instruction fees, and that the sum of 1,000,000 awarded is manifestly low in light of the value of the subject matter. I accordingly allow the reference in so far as it relates to the taxation of the instruction's fees, and I set aside the ruling of the Deputy Registrar dated 3<sup>rd</sup> April 2025 with respect thereto. That element of the Party and Party Bill of Costs filed in Court on 25<sup>th</sup> October 2024 is hereby remitted for fresh taxation before a taxing officer other than Hon. J.N.

Wambilyanga.

29. As the applicant only partially succeeds on the reference, I direct that each party bears its own costs of the reference.

**Dated and delivered at Nairobi on this 30<sup>th</sup> day of April 2026.**

**MUMBI NGUGI**

.....  
**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**Signed**

**DEPUTY**

**REGISTRAR.**

