



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Richard & 15 others v Kotedia (Civil Suit 408 of 2017)
[2025] KEELC 5566 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5566 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT 408 OF 2017**

JG KEMEI, J

JULY 22, 2025

BETWEEN

SARAH NYAWIRA RICHARD 1ST APPLICANT
JOHNSTONE OKASIDA IPARA 2ND APPLICANT
ZIPPORAH WANGARI CHEPKWONY 3RD APPLICANT
LINUS OUMA 4TH APPLICANT
ANTHONY MUTHAMA MUSYOKA 5TH APPLICANT
ELIZABETH MULISYA MUSYOKA 6TH APPLICANT
ROBERT KARIUKI WANJIKU 7TH APPLICANT
NICHOLAS CHELIMO KANDIE 8TH APPLICANT
NELSON HABELI OPATIE 9TH APPLICANT
AUGUSTUS M. MUTUA 10TH APPLICANT
PURITY WAMUYU GATUA 11TH APPLICANT
GIDEON OMARE MBAKA 12TH APPLICANT
RICHARD KIPKOECH KORIR 13TH APPLICANT
ROSE WAKARINDI 14TH APPLICANT
SAMUEL K. TONUI 15TH APPLICANT
JOSPHAT K. MUTAI 16TH APPLICANT

AND

DINESH RAMJI KOTEDIA RESPONDENT

(In respect of the Applicant's Application dated 13/10/2024)



RULING

1. Before me is a Chamber Summons application brought pursuant to the provisions of Rule 11 of the Advocates Remuneration Order, and all enabling provisions of the Law, where the Applicant seeks for orders that:
 - a. That the Learned Taxing Master's decision dated 31/10/2024 on the Respondent's Party and Party Bill of Costs dated 23/08/2024 be set aside;
 - b. The Respondent's Party and Party Bill of Costs dated 23/08/2024 be remitted to a different Taxing Master for taxation;
 - c. The Applicant be awarded costs of this Reference.
2. The application is premised on the grounds on the face of it and the Supporting Affidavit of Kapildev Dinesh Kotedia, the Applicant's Guardian, sworn on 13/11/2024. The deponent avers that the Applicant having been granted costs vide the Judgment delivered on 25/01/2024 filed a Party and Party Bill of Cost which Bill was taxed on 31/10/2024. The deponent avers that the Taxing Master erred in failing to consider the valuation report provided and erred in assessing the instruction fees based on an unsupported value of Kshs.70,000,000/=.
3. He states that the property was valued in 2016 at Kshs. 40,000,000. That considering eight years have lapsed, it is only reasonable to apprehend that the value of the property has appreciated by Kshs.30,000,000/= making it worth Kshs. 70,000,000/=.
4. The deponent deposes that the instruction fee of Kshs. 650,000/= awarded by the Taxing Master is unreasonably low given the appreciated value of the property. That the instruction fee of Kshs. 1,570,000/= as prayed should remain and the Item No. 2 should also be adjusted accordingly. That it is therefore in the interest of justice that the Reference be allowed with costs to the Applicants.
5. The application came-up for hearing on 25/03/2025. The Respondents despite service of the application and a hearing notice did not enter appearance or respond to the application. The application is therefore unopposed.

Court's Direction

6. The Court directed that the Applicant to file his written submissions in support of the application. The Applicant complied and filed his submissions dated 10/6/2025 which I have read and considered.

Analysis and Determination

7. Having considered the Chamber Summons Application, the supporting affidavit and the written submissions filed by the Applicant thereto, it is my view that the only issue that arises for determination is; whether the Reference has merit.
8. Rule 11 of the Advocates Remuneration Order makes provision for the procedure an aggrieved party must adopt. It provides:
 - a. 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.



- b. 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.
 - c. Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subsection (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.
 - d. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other Interested Party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
9. 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].

10. From the above provisions, a party who is aggrieved by the decision of a Taxing Master, is obliged to file and/or lodge a Notice of Objection to taxation against the decision of the Taxing Master within 14 days from the date of such taxation.
11. Imperatively, the Notice of Objection to taxation must stipulate and/or contain the particular items, which the Applicant contends to be aggrieved and/or to be dissatisfied with. A Notice of Objection to taxation should not be omnibus. An omnibus notice if any, would be incompetent and incapable of grounding a Reference.
12. In the case of Machira & Company Advocates -vs- Arthur K. Magugu & Another (2012) eKLR, the Court of Appeal agreed with the findings of Ringera J who had struck out the reference for being incompetent on the finding that there was no written notice of objection under rule 11. The Court held, inter alia,

“Sub-rule (1) requires the party objecting to give notice in writing within 14 days “of the items of taxation to which he objects”. As the trial judge correctly found, the Respondents notice of 1st August, 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.

As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeal or review was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation, the Respondents notice of 1st August, 2001 was fatally defective. It follows that the Respondents' reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out.

Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master's decision



was received is immaterial and does not avail the Respondents. Under sub-rule (2), time stops running from the date a proper notice is filed, which of course must be within 14 days of taxation, until receipt of the taxing master's reasons for his decision.”

13. In the instant case, I have perused the Court record, no Notice of Objection to taxation was ever filed by the Applicant herein; not even an incompetent one. In the absence of a Notice of Objection to taxation, properly identifying the items objected to and filed within the statutory timeframe, the Reference before the Court would be termed incompetent. However, I have carefully read the Chamber Summons and find that the only grievance of the Applicant is the manner in which the instruction fee was assessed. The purpose of an objection is to point out to the Taxing Master and the other party in the case what the Applicant is objecting to so as to enable the Taxing Master render his reasons for the assessment. That being so, I find that there is no vagueness in the Chamber Summons as to what has aggrieved the Applicant. For that reason, I am prepared to take the Chamber Summons as properly before the Court.

Whether the Honourable Taxing Officer erred in principle in the assessment of Instruction Fees

14. I am well aware of the limitations of this Court in an appeal of this nature. The generally laid down principle is that this Court cannot interfere with the decision of the Taxing Master unless there is an error of principle, or unless it finds that the fee awarded was manifestly excessive or high to warrant such interference.
15. The guiding principles of setting aside the decisions of a Taxing Master were well established in the cases of Premchand Raichand Limited & Another Vs. Quarry Services of East Africa Limited and Another [1972] E.A 162, First American Bank of Kenya Vs. Shah and Others (2002) EA 64 and Joreth Ltd Vs. Kigano and Associates (2002) 1 EA 92. These include;
- a. That there was an error of principle;
 - b. The fee awarded was manifestly excessive or is so high as to confine access to the Court to the wealthy;
 - c. That the successful litigant ought to be fairly reimbursed for the costs he has incurred;
 - d. That so far as practicable there should be consistency in the award.
16. In First American Bank of Kenya –vs- Shah and Others [2002] E.A.L.R 64 at 69, the Court held as follows;
- “First, I find that on the authorities, this Court cannot interfere with the Taxing Master’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.”
17. The Applicant’s contention is that the Taxing Master misapprehended the ascertainable value of the subject-matter. That whereas the pleadings placed the 2016 market value of LR No. 9042/143 at Kshs. 40 Million, the Taxing Master disregarded both this valuation and the intervening appreciation to Kshs. 70 Million, thereby awarding an instruction fee Kshs. 650,000—a figure grossly out-of-step with Schedule 6 of the Remuneration Order.
18. There is a plethora of authorities including the Court of Appeal decision in Joreth Limited –vs- Kigano & Associates, [2002] eKLR and Peter Muthoka & Another –vs- Ochieng’ 3 Others [2019] eKLR, both of which cement the fact that instruction fees are based on the value of the subject matter. The value of



the subject matter should be ascertained from the pleadings, judgment or any settlement, depending on the stage at which the fees are being taxed.

19. The Taxing Officer in her ruling delivered on 31/10/2024, indicated that the value of the subject matter could not be ascertained from the pleadings, neither was a Valuation Report availed for the proposed figure of Kshs. 70,000,000/=. She therefore exercised her discretion and granted a sum of Kshs. 650,000/= as instructions fees after considering the importance of the subject matter to parties and the length of the time the matter has been in Court.

20. In the case of Joreth (supra), the Court of Appeal addressed the issue of subject value thus;

“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 Master is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

21. In the case of Republic –vs- Ministry of Agriculture and 2 Others; Ex-parte Muchiri W Njuguna & Others NRB HC Misc. Civil Appl. No. 621 of 2000 [2006] eKLR the Court held as follows:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a Taxing Master, particularly where he is an officer of great experience, merely because it thinks the award is somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other.... The Court cannot interfere with the Taxing Master’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.”

22. The apex Court in Kenya Airports Authority vs Otieno Ragot and Company Advocates (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) (Judgment) upheld the Court of Appeal decision in Peter Muthoka & Another –vs- Ochieng’ & 3 Others, Civil Appeal No. 328 of 2017; [2019] eKLR, where the Court 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.”



23. I have perused the record herein. The impugned Bill of Costs emanates from the proceedings in ELC 408 of 2017 and ELC E161 of 2021 which were determined together in the Judgment delivered on 25/01/2024. In ELC 408 of 2017, the cause of action was adverse possession by the Respondents. On the other hand, the Applicant's cause of action was trespass and sought eviction orders against the Respondents herein. It is evident that the value of the subject was not indicated in the pleadings neither was it determined in the Judgment.
24. It is the finding of this Court that the value of the subject matter was not ascertainable. The proposed figure of Kshs. 70 Million is speculative. I also note from the Applicant's Replying Affidavit to the Originating Summons sworn on 28/05/2021 that the Respondents offered to purchase the suit property at Kshs. 27 Million; which offer was declined for being too low and a figure of Kshs. 40 Million proposed. The negotiations were done prior to the filing of the suit and the figure of 40 Million was equally not determined in the Judgment of the Court. The Taxing Master could not equally rely on it.
25. Faced with this scenario, the Taxing Officer was therefore justified to exercise her discretion as she did within the laid down principles. I am therefore unable to fault the decision of the Taxing Officer. As stated in Premchand and Ranichand Limited and Another v Quarry Services of East Africa Ltd & Another (Supra), questions solely of quantum are matters with which the Taxing Officers are particularly suited to deal. This Court will interfere only in exceptional circumstances and this case has not, in my view, raised such exceptional circumstances.
26. In my considered view and for the reasons given this Court shall not interfere with the Taxing Officer's decision for the reasons stated above.
27. Consequently, the Application erroneously dated 13/10/2024 instead of 13/11/2024 is hereby dismissed with no orders as to costs.
28. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JULY, 2025
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered Online in the Presence of;

NA for the Respondents

Mr. Tirop for the Applicant

CA – Ms. Yvette Njoroge

