



JM Njenga & Co. Advocates LLP v Kimuri Housing Company Ltd (Environment and Land Miscellaneous Case E075 of 2024) [2025] KEELC 5938 (KLR) (14 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5938 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E075 OF 2024
CG MBOGO, J
AUGUST 14, 2025**

BETWEEN

JM NJENGA & CO. ADVOCATES LLP ADVOCATE

AND

KIMURI HOUSING COMPANY LTD CLIENT

RULING

1. Before this court for determination is the chamber summons dated 12th August 2024, filed by the advocate/applicant and it is expressed to be brought under Paragraph 11 [2] of the Advocates Remuneration Order seeking the following orders:-
 1. That the taxation orders dated 15th July, 2024 but delivered on 26th July, 2024 be reviewed and/or set aside and the matter referred back to a taxing master for re-taxation of items 1, 2, 171 and 197.
 2. That the costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of Vivian Wachanga, the learned counsel which is sworn on even date. The learned counsel deposed that the bill of costs dated 18th April, 2024 was taxed in the sum of Kshs.2,099,169.98. She deposed that they are aggrieved with part of the ruling in respect to items 1, 2, 171 and 197 which they contended that the taxing master made an error of principle thus necessitating this court's intervention.
3. The learned counsel further deposed that the taxing master failed to appreciate that the bill of costs related to two distinct matters i.e. ELC 528/14 and 592/14 and thus two instruction fees were applicable. Further, that the bill had items 1 and 2 which related to two instruction fees, and that she failed to address herself on item 2 at all in which a sum of Kshs.16,700,000/- was sought based on an estimated value of the suit property.



4. On item 171, the learned counsel deposed that the same should be $\frac{1}{3}$ of amount allowed under item 1 and 2, and further that the taxing officer failed to completely address herself on item 197 despite the same having been sought under the Remuneration Order.
5. The application was not opposed. The advocate/applicant filed their written submissions dated 6th February, 2025 where they raised the following issues for determination: -
 - a. Whether there exists any valid grounds for the setting aside of the items objected to in regard to the taxation orders made on 15/07/2024 but delivered on 26/07/2024.
 - b. Who is to bear the costs of the application.
6. On the first issue, the advocate/applicant submitted that the bill of costs related to items 1 and 2 where item 1 related to services rendered in ELC 528 of 2014 and item 2 to ELC 592 of 2014. They submitted that the client was represented in the two separate matters until consolidation, and that they are entitled to instruction fees in each file. Further, they submitted that if the sum of Kshs. 800,000/- is related to both items 1 and 2, the same is objected as the taxing officer erred in principle by failing to consider what was sought in each item. They submitted that item 2 ought to be assessed independently. To buttress on this issue, the advocate/applicant relied on the cases of Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR, First American Bank Ltd v Shah & Another [2002] 1 EA 64, Ochieng, Onyango, Kibet & Ohaga Advocates v Adopt Light LTD HC Misc 729 of 2006, Orion East Africa Limited v Permanent Secretary Ministry of Agriculture & Another [2013] eKLR, Kiamba v Kimanthi & Another [Environment and Land Miscellaneous Application 13B of 2014, Ambwere T.S & Associates v Frank Nyambu Wafukwa & Others [2020] KEELC 2709 [KLR] and Peter Muthoka & Another v Ochieng & 3 Others [2019] eKLR.
7. The advocate/applicant further submitted that the taxing officer had three options to guide in the taxation which included the amended plaint, the valuation report and the average figure between Kshs.780,000,000 and 580,000,000/-.
8. On item 171, the advocate/applicant submitted that the taxing officer awarded a sum of Kshs.263,666.67 being a third of the amount allowed in items 1 and 2. They urged the court to hold as such. On item 197, the advocate/applicant submitted that the taxing officer is silent on the issue, and her reasons for not granting the same are not satisfactory since there was sufficient evidence to show when the bill was delivered. Reliance was placed in the case of Kanu National Elections Board & 2 Others v Salah Yakub Farah [2018] eKLR. On the second issue, the advocate/applicant submitted that costs follow the event and the reference should be allowed with costs.
9. I have considered the chamber summons and the written submission filed by the advocate/applicant. The issue for determination is whether the taxing officer fell into error in terms of items 1, 2, 171 and 197 as contained in the Bill of Costs.
10. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case of Premchand Raichand Ltd Another v Quarry services of East Africa Ltd and Another No. 3 [1972] EA 162. The principles laid out are: -
 - i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal;
 - ii. The taxing master was expected to tax each bill on its merits;
 - iii. The value of the subject matter had to be taken into account;



- iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;
 - v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy;
 - vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference." with emphasis.
11. In applying the above principles to the circumstances of this case, the advocate/applicant contended that the taxing officer failed to consider that there were two separate matters where the client/respondent was represented. As a result, the taxing officer fell into error in taxing the bill of costs at Kshs.2,099,169.98/-. I have looked at the pleadings filed and the impugned ruling. From the ruling, and while I note that the taxing officer acknowledged that there were two files which were consolidated, it is only item 1 that was taxed. The taxing officer was silent on item 2 which had a ripple effect on items 171 and 197.
12. In the interest of justice, it is only fair that the matter is referred back for re-taxation of items 1, 2, 171 and 197 before a different taxing master. I thus find merit in the chamber summons dated 12th August, 2024 in terms of prayer 1. I make no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY

THIS 14TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

14/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Kimani holding brief for Ms. Wachanga for the Advocate/Applicant

