



REPUBLIC OF KENYA



**Kakamega Paper Convertors Limited v Arora & 2 others (Civil Appeal
(Application) 98 of 2018) [2025] KECA 79 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 79 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 98 OF 2018
WK KORIR, JA
JANUARY 24, 2025**

BETWEEN

KAKAMEGA PAPER CONVERTORS LIMITED APPLICANT

AND

MOHANLAL ARORA 1ST RESPONDENT

SUSHILA MOHANLAL ARORA 2ND RESPONDENT

BANK OF BARODA KENYA LIMITED 3RD RESPONDENT

*(Being a reference against the rulings of the Taxing Master (Hon.
L.D. Ogombe, (DR)) at the Court of Appeal at Nairobi, made on 19th
July 2023 and 31st October 2023 in Civil Appeal No. 98 of 2018)*

RULING

1. By a letter dated 20th July 2023, the applicant, Kakamega Paper Convertors Ltd, filed a reference against the Deputy Registrar's ruling dated 19th July 2023, taxing the bill of costs of the 3rd respondent, Bank of Baroda Kenya Ltd. Similarly, through a letter dated 1st November 2023, the applicant filed a reference against the Deputy Registrar's ruling dated 31st October 2023 regarding the bill of costs of Mohanlal Arora and Sushila Mohanlal Arora, the respective 1st and 2nd respondents. The references were made pursuant to rule 117 (1), (3) & (4) of this Court's Rules, 2022.
2. The germane issue in both references is that the amount allowed by the taxing officer in respect of the instruction fees was manifestly high and unreasonable.
3. The 3rd respondent filed grounds of opposition dated 20th July 2023 opposing the reference for being mischievous and asserting that the learned Deputy Registrar properly exercised her discretion. Further, that the reference solely challenges the quantum of the costs, which is prohibited by rule 117 (3) of this Court's Rules, 2022.



4. The two references were heard together by way of written submissions.
5. The firm of L. Kimondo & Co. Advocates filed two sets of submissions dated 30th October 2023 and 7th October 2024 urging the two references. Through the submissions which are similar, counsel proffered that the learned Deputy Registrar disregarded the express provisions of the Second Schedule of the *Appellate Jurisdiction Act*, and, as a result, applied the wrong principles and provisions of the law, thereby awarding excessive costs of Kshs. 1,000,000 to the 1st, 2nd and 3rd respondents. Counsel urged that paragraph 9(c) of Part 3 of the Second Schedule of the *Appellate Jurisdiction Act* expressly provides that fees payable for a claim whose subject matter exceeds Kshs. 210,000 attracts a maximum fee of Kshs. 100,000. Counsel faulted the exercise of discretion by the learned Deputy Registrar, asserting that the appeal was straightforward and was determined and settled based on written submissions filed by the parties. According to counsel, the allowed instruction fees on both bills of costs were therefore excessive and unreasonable. Counsel referred to the case of Akhtar Shahid Butt & Another vs. David Kinisu Sifuna & Co. Advocates [2009] eKLR and Joreth Ltd vs. Kigano & Associates [2002] 1 EA 92 to outline the principles applicable to taxation of bills of costs and urged that the bills of costs are excessive and should be reduced. Counsel finally urged the Court to invoke paragraph 13 of the Third Schedule of the *Appellate Jurisdiction Act* and disallow the respondents' costs for the taxation.
6. The firm of L.G. Menezes for the 3rd respondent filed submissions dated 31st October 2023 in opposition to the reference against his client's taxed bill of costs. Counsel submitted that the applicable provision is rule 9(2) of the Third Schedule, which is grounded on rule 111(2) of the repealed Court of Appeal Rules, 2010. Counsel urged that the learned Deputy Registrar properly applied the provision and the principles for taxing bills of costs as enunciated in Joreth Ltd vs. Kigano & Associates [2002] 1 EA 92. It was also counsel's contention that the reference offended rule 112(2) of the repealed 2010 Rules and the holding in Keziah Njambi Mwangi vs Barclays Bank of Kenya Ltd [2016] eKLR because it solely challenged quantum. Counsel consequently urged for the dismissal of the reference with costs.
7. The 1st and 2nd respondents did not file submissions.
8. I have carefully considered the two references, the submissions by parties, the authorities cited, and the law. The issue for determination is whether or not there was an error of principle in the taxation rulings dated 19th July 2023 and 31st October 2023. From the references, which are similar, the applicant relies on three grounds that can be summarized as follows: that the learned Deputy Registrar departed from paragraph 9(c) of Part 3 of the Second Schedule of the *Appellate Jurisdiction Act* which expressly states that the amount of fees payable for a claim whose subject matter exceeds Kshs. 200,000 shall not be more than Kshs. 100,000; that the Deputy Registrar applied extraneous considerations in arriving at an instruction fee of Kshs. 1,000,000; and that increasing the instruction fees by 10 times was unreasonable and exorbitant.
9. Both Rule 111(2) of the repealed Court of Appeal Rules, 2010 and rule 116(2) of this Court's Rules, 2022 are couched in similar terms. According to the provision, taxation of costs is to be done in accordance with the Third Schedule. That alone disposes the applicant's first ground in that his reliance on the Second Schedule is misplaced because the Second Schedule deals with the fees payable to the Court for the filing of applications or appeals. It has nothing to do with costs payable to the advocates for services rendered. The issue of costs payable to advocates is addressed in the Third Schedule. I need say no more but to conclude that this ground of reference has no merit at all.
10. As for the remaining two grounds which focus on the quantum of the instruction fees, I note that in both rulings, the learned Deputy Registrar appreciated that in assessing instruction fees, she was guided by paragraph 9 of the Third Schedule of this Court's Rules. She also referred to the decisions



in *Joreth Ltd vs. Kigano & Associates - Civil Appeal No. 66 of 1999* [2002] 1 EA 92 and *Premchand Raichand Ltd and Another vs. Quarry Services of East African Ltd and Another* [1972] EA 162 to highlight the applicable principles. Save for the variance in the “value of the subject of the matter”, with the ruling of 19th July 2023 indicating the value as Kshs. 120,000/00 and that of 31st October 2023 referring to a value of Kshs. 120,000, 000/00, the Deputy Registrar, in both rulings, arrived at the following conclusion:

“I have considered the value of the subject matter herein which is ascertainable from the Judgment in the sum of Kshs. As required under the Rules, I have considered the importance and difficulty, interest of the parties, other costs to be allowed, general conduct of proceedings, and all other relevant circumstance.

Bearing these in mind and in exercise of my discretion, I hereby award Kshs. 1,000,000/00 as instruction fees. The balance is taxed off.”

11. Paragraph 9 (2) of the Third Schedule of the 2022 Rules is a replica of the same rule in the repealed 2010 Rules and provides as follows:

“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.”

12. The discretion of determining the instruction fees lies in the province of the Deputy Registrar as was held in *Peter Muthoka & Another vs. Ochieng & 3 Others* [2019] eKLR that:

“It is not lost to us, as we address that single issue, that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in mis-justice, to borrow the holding in *MBOGO -vs- SHAH* (Supra), then the decision though discretionary, may properly be interfered with. See also *ATTORNEY GENERAL OF KENYA -vs- PROF. ANYANG’ NYONG’O & 10 OTHERS*, EACJ App. No. 1 OF 2009.”

13. Although the Deputy Registrar referred to the value of the subject matter as Kshs. 120,000/00 in the first ruling, the correct value as can be gleaned from the submissions of the parties was actually Kshs. 120,000,000/00 as stated in the second ruling. The applicant contends that the appeal was simple and was heard based on submissions filed by the parties. I hear counsel’s argument to be that the appeal was not complex and had minimal difficulty. However, having gone through the two rulings, I am satisfied that the learned Deputy Registrar was alive to the applicable principles in determining the instruction fees. She considered the importance and difficulty of the matter, the interests of the parties, other costs to be allowed, the general conduct of proceedings, and all relevant circumstances in arriving at her conclusion. No error on the part of the Deputy Registrar has been pointed out by the applicant. My interference with her discretion can only be warranted if I am satisfied that there is an error that substantially affected the decision on the instruction fees awarded. From the materials



and arguments before the Court, I am unable to conclude that the Deputy Registrar erred in awarding Kshs. 1,000,000/00 to the 1st and 2nd respondents, and a similar amount to the 3rd respondent, as instruction fees.

14. In the circumstances, I find no merit in the two references before the Court. The 1st and 2nd respondents having not filed any submissions or participated in respect to the reference dated 1st November 2023 against their taxed bill of costs, that reference is dismissed with no order as to costs. However, the reference dated 20th July 2023 against the 3rd respondent's taxed bill of costs is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY, 2025.

W. KORIR

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JUDGE OF APPEAL

I certify that this is a true copy of the original,

Signed

DEPUTY REGISTRAR.

