



Kenya Bureau of Standards v Kwale International Sugar Company Limited & 4 others (Civil Appeal (Application) E002 of 2020) [2025] KECA 867 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KECA 867 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E002 OF 2020
KI LAIBUTA, JA
MAY 23, 2025**

BETWEEN

KENYA BUREAU OF STANDARDS APPLICANT

AND

**KWALE INTERNATIONAL SUGAR COMPANY LIMITED .. 1ST RESPONDENT
MINISTRY OF TRADE 2ND RESPONDENT
KENYA REVENUE AUTHORITY 3RD RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATION 4TH RESPONDENT
ATTORNEY GENERAL 5TH RESPONDENT**

*(Being a reference against the Ruling on Taxation
(E. M. Mwamuye, DR.) dated 20th March 2025)*

RULING

1. By a judgment dated 29th July 2022 in determination of Mombasa Civil Appeal No. 2 of 2020, this Court allowed the applicant's appeal with costs in respect of which its Bill of Costs dated 4th July 2024 was taxed in the sum of Kshs. 632,200 inclusive of instructions fees taxed at Kshs. 500,000.
2. Dissatisfied with the decision of the Deputy Registrar (E. M. Mwamuye, SRM), the applicant (Kenya Bureau of Standards) filed
a Reference challenging the award of Kshs. 500,000 on account of instructions fees, which it contends ought to have been awarded in the sum of Kshs. 6,500,000 for reasons that the amount thereby awarded was manifestly inadequate; that the Taxing Officer failed to appreciate the value, nature, complexity and importance of the matter the subject of taxation thereby awarding instructions fees that were



inordinately low; that the basis of the award was the respondent's proposition that a reasonable amount of Kshs. 300,000 was reasonable; and that she awarded Kshs. 500,000.

3. In support of the Reference, counsel for the applicant, M/s. Wekesa & Simiyu, filed written submissions dated 8th May 2025 citing 4 judicial decisions, which we have duly considered. Counsel urged me to remit the applicant's Bill of Costs on instructions fees for re-taxation by a Taxing Officer other than Hon. E. M. Mwamuye, SRM.
4. In rebuttal, learned counsel for the 1st respondent, M/s. Tom Ojienda & Associates, filed written submissions, list of authorities and case digest dated 9th May 2025 citing 3 judicial authorities, urging me to dismiss the Reference with costs. According to counsel, the Taxing Officer correctly exercised her discretion in taxing instructions fees at Kshs. 500,000; that the value of the subject matter was not ascertainable; and that there was no novelty, difficulty or complexity involved in the appeal to warrant the grant of Kshs. 6,500,000 on account of instructions fees.
5. It is instructive that the subject appeal arose from a decision of the High Court in a constitutional petition the nature of which no particular value is assignable. Be that as it may, taxation of costs in this Court on similar appeals is governed by the Third Schedule to the Court of Appeal Rules, 2022. In particular, I take to mind paragraph 9(2) thereof, which reads:
 - 9.(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.
6. Unlike in private law cases and appeals where instructions fees are ascertainable in relation to the value of the subject matter, public law litigation, such as constitutional references and petitions, as well as appeals therefrom, are proceedings of a special nature the determination of which attracts costs to be taxed pursuant to the Third Schedule to the Court's Rules. Accordingly, paragraph 9(2) requires the Taxing Officer to consider, among other things, the nature of the dispute, the importance and difficulty of the issues in contention, the parties' interests, the general conduct of the proceedings, the fund or persons to bear the costs and other relevant circumstances.
7. In *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W'Njuguna & 6 others* [2006] eKLR, Ojwang, J. (as he then was) held:

“It is noteworthy that counsel for the respondents herein invoked many authorities from private-law claims sounding in damages and entailing pecuniary awards. Such examples do not, in my opinion, fall in the same class as most public-law claims – such as those in judicial review, in constitutional applications, in public electoral matters, etc. Such matters are in a class of their own, and the instruction fees allowable in respect of them should not, in principle, be extrapolated from the practices obtaining in the private law domain which may involve business claims and profit calculations.”
8. The applicant's grievance was essentially founded on the contention that the Taxing Officer did not expressly set out the factors considered in awarding the instructions fees in issue. Be that as it may, I do not consider it inappropriate that the Taxing Officer did not provide a detailed transcript of the reasons for her decision. Suffice it to observe that learned counsel's contention in that regard suggested that she was in error on a matter or matters of principle. I am not so persuaded.



9. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the Court of Appeal held:

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”

10. In *Thomas James Arthur v Nyeri Electricity Undertaking* [1961] EA 492, the predecessor to this Court held:

“The principles which are applied by judges upon review of taxing officers’ certificates are well known ... Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will intervene only in exceptional cases.”

11. To my mind, I find no error on any matter of principle that would justify interference with the Taxing Officer’s discretionary decision in taxation of costs in an appeal relating to a constitutional petition that did not relate to a pecuniary award. Neither has the appellant demonstrated the magnitude of the complexity alluded to, importance or other interest that would justify interference with the assessment complained of.

12. In *Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & others* [1972] EA 162, the predecessor to this Court held:

“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 officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”

13. I find nothing to suggest that the amount awarded in instructions fees was too low in the circumstances of the appeal to amount to an injustice.

14. In *Joreth Limited v Kigano & Associates* [2002] eKLR, the Court of Appeal held:

“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 officer is entitled to use his discretion to assess such 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, any direction by the trial judge and all other relevant circumstances.”

15. Having carefully considered the grounds on which the instant Reference was preferred, the impugned award of instructions fees, the principles stipulated in the Rules of this Court on taxation of costs, the rival submissions of learned counsel, and the cited authorities, I find no reason to disturb the discretionary award of the Taxing Officer in assessing instructions fees at Kshs. 500,000.

Accordingly, the applicant’s Reference fails and is hereby dismissed with no orders as to costs.

DATED AND DELIVERED AT MOMBASA THIS 23RD DAY OF MAY 2025.



DR. K. I. LAIBUTA CArb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed.

DEPUTY REGISTRAR

