



**Titus Otieno Koceyo t/a Koceyo & Company Advocates v Beloilco Holdings Limited
(Civil Appeal E036 of 2022) [2025] KECA 1097 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KECA 1097 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CIVIL APPEAL E036 OF 2022
LA ACHODE, KI LAIBUTA & GWN MACHARIA, JJA
JUNE 20, 2025**

BETWEEN

**TITUS OTIENO KOCEYO T/A KOCEYO & COMPANY
ADVOCATES APPELLANT**

AND

BELOILCO HOLDINGS LIMITED RESPONDENT

(Being an Appeal against the Ruling and Orders of the Environment and Land Court at Malindi (Odeny, J.) delivered on 27th September 2022 in ELC PETITION NO. 23 OF 2017)

JUDGMENT

1. This appeal arises from a Party & Party Bill of Costs dated 21st August 2019 filed by Beloilco Holdings Limited, the respondent herein, for taxation against Titus Otieno Koceyo T/A Koceyo & Company Advocates, the appellant. The bill emanated from a ruling of the Environment and Land Court at Malindi dated 28th June 2018, which dismissed the Petition with costs to the respondent.
2. The taxation was disposed of by way of written submissions. At the conclusion of the case, the respondent charged instruction fees at Kshs.8,000,000 while citing the complexity of the petition, the urgency of the matter brought about by the eviction of the respondent at night, requiring their advocate to work over the weekend, and the value of the suit property being Kshs.400,000,000.
3. The appellant opposed the bill as drawn stating: that the fee charges were grossly exaggerated; that the value of the property was not in question and does not appear anywhere in the pleadings; that the petition was determined at interlocutory stage; and that, the suit having been filed as a Constitutional Petition, the applicable scale was paragraph 1(j) of the Advocates Remuneration Order (2014), Schedule 6, which gives the basic fees as Kshs.100,000 for a defended petition.
4. Upon considering the matter before her, the taxing officer delivered a ruling on 26th January 2022 and taxed the instruction fees at Kshs.3,000,000 with V.A.T of 16%.



5. Aggrieved by the ruling, the appellant filed a Reference in the superior court by way of Chamber Summons dated 31st January 2022 seeking orders that the decision of the taxing officer be reviewed in terms of item No 1, and that it be reduced from Kshs.3,000,000 to Kshs.100,000 as provided under Schedule 6(A) 1(J) of the Advocates Remuneration Order, 2014.
6. The application was premised on the grounds set out on its face, and on the supporting affidavit of even date sworn by the appellant. He deposed that the bill of costs was taxed at Kshs.3,589,341.40, which was not in accordance with the applicable scale, and that no lawful reason was advanced by the taxing officer for overlooking the scale. The appellant deposed that the basic fees in respect of item No. 1 was increased from kshs.100,000 to Kshs.3,000,000 due to misapplication and misinterpretation of the law.
7. The respondent vehemently opposed the application by a replying affidavit sworn by D. Muyaa Advocate on 21st April 2022, and deposed that the reasoning behind the taxing officer's decision was sound; and that she considered the nature and importance of the matter, the complexity of the issues raised, the time expended and the value of the subject matter in arriving at her decision.
8. Upon considering the matter before her, Odeny, J. delivered a ruling on 27th September 2022 in favour of the respondent. She held that the taxing officer exercised her discretion correctly, and that there was no sufficient reason to interfere with the decision, save on the award of 16% V.A.T which is not applicable in Party and Party costs. The learned Judge ordered that the bill be remitted to the taxing officer to correct the anomaly identified on the inclusion of 16% V.A.T.
9. Still aggrieved by the ruling and order of the superior court, the appellant filed this appeal. In the memorandum of appeal dated 19th October 2022, he raised seventeen grounds of appeal alleging, in sum, that the learned Judge erred in her ruling by proceeding on the basis that the issue for determination was the exercise of discretion by the taxing officer in taxing off Kshs.5,000,000 from the bill of costs, while the issue in reference was whether the taxing officer correctly exercised her discretion in increasing the instruction fees from Kshs.100,000 to Kshs.3,000,000.
10. The appellant faulted the learned Judge for what he termed as failure to evaluate the totality of the evidence adduced in the Reference and the applicable law. This he said, resulted in the failure to find that no reason was advanced by the taxing officer for increasing the instruction fees from Kshs. 100,000 to Kshs. 3,000,000, and that the taxing officer misapplied and misinterpreted the law relating to taxation of bills of costs in respect of item No.1.
11. In addition, the appellant alleged that the learned Judge failed to find that, whereas the taxing officer found correctly that the suit was a Constitutional Petition, and that the applicable scale was paragraph 6(A)1(j) which gives the basic fees of kshs.100,000, there was absolutely no legal justification to deviate from the basic fees provided for in law to increase it to Kshs.3,000,000.
12. The firm of M/s Koceyo & Company Advocates filed written submissions dated 15th March, 2023 on behalf of the appellant. Counsel urged that the learned Judge misinterpreted the issue under consideration in the Reference which was the increase of instruction fees from Kshs.100,000 to Kshs.3,000,000; that she based her finding on whether the taxing officer exercised her discretion to tax off Kshs.5,000,000 from the Bill of Costs and this was neither the ground, nor the basis upon which the Reference was filed; and that the wrong interpretation of the issues for determination led to a wrong decision.
13. The appellant urged that the learned Judge upheld the increase of instruction fees by the taxing officer based on the nature and complexity of the matter, yet the taxing officer in her ruling held that the matter



was neither complex nor novel; and that the taxing officer correctly found that the instruction fees for Constitutional Petitions was Kshs.100,000, but proceeded to exercise her discretion injudiciously by increasing it to Kshs. 3,000,000. Thus, it was posited that the learned Judge erred in her evaluation of the totality of the evidence adduced in the Reference and failed to find that there were no reasons advanced by the taxing officer to increase the instruction fees.

14. The appellant placed reliance on the decision in *Republic vs Minister for Agriculture and 2 Others Ex Parte Samuel Muchiri W’Njuguna and 6 Others* (2006) eKLR where the Judge cited with approval the decision in *Danson Mutuku Muema vs Julius Muthoka Muema and Others*, Civil Appeal No. 6 of 1991 in which the court held that an increase of instruction fees ten times, was excessive and unreasonable and set it aside. The appellant also relied on *DK Law Advocated v Zhong Gang Building Material Co. Ltd and Another* (2021) eKLR where it was held that doubling instruction fees without reasons amounted to an arbitrary determination of a figure and not a judicial exercise of discretion.
15. The appellant urged that, other than restating the guiding principles, the taxing officer did not give plausible reasons for the increase of instruction fees. Thus, the learned Judge erred in failing to find that the taxing officer astronomically increased the basic fees in respect of item No.1 because of misapplication and misinterpretation of the law. It was argued that, although the taxing officer found that the Petition required the advocates of the 1st respondent to work “over and above” what was expected, and that the petition had a very destabilizing impact on the 1st respondent with respect to its nature and importance, no evidence was laid before her to support such determination.
16. It was posited that the taxing officer correctly held that the matter was summarily determined at an interlocutory stage without the necessity of a full hearing but, nonetheless, she proceeded to increase the instruction fees disregarding her own finding, on the ground of the bulkiness of the record. It was urged that this was in error, since time spent on a matter is not proportionate to the bulkiness of the record.
17. The appellant faulted the learned Judge for failing to find that the taxing officer erred by correctly quoting the court findings in the case of *Joreth Limited vs Kigano & Associates* Civil Appeal Number 66 of 1999 (2002) 1EA 92, but erroneously proceeded to increase instruction fees contrary to her finding on the further complexity of issues, novelty of the questions raised and value of the subject matter.
18. The appellant further contended that the learned Judge failed to find that the taxing officer erred in failing to consider the binding precedent in *Premchand Reichand vs Quarry Services of EA Ltd & Others* EARL (1972) EA 162 where it was held that :

“.... costs be not allowed to rise to such a level as to confine access to the courts to the wealthy; the general level of remuneration of advocates must be such as to attract recruits to the profession; so far as practicable there should be consistency in the awards made; the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”
19. In rebuttal, the firm of *M/s Kinyua Muyaa & Co. Advocates* filed submissions dated 5th November 2024 on behalf of the respondent and urged that the learned Judge considered that the taxing officer had taken into account the complexity and nature of the matter in assessing instruction fees at Kshs. 3,000,000; and that, it had not been demonstrated that the taxing officer or the learned Judge exercised their discretion wrongly.



20. Counsel posited that the appellant was aware that the issue of ownership of the suit property is still pending in Mombasa HCCC No. 146 of 2015, and that the false certificate of sale and vesting orders he assisted his client to obtain in the said suit were declared to have been obtained fraudulently; that the documents were set aside and expunged suo moto by the High Court on 11th October 2016; and that the appellant waited up to 22nd November 2017 to forge the signature of another advocate and of the Petitioner and move the dispute to Malindi ELC, where he relied on the documents that had already been nullified by the High Court.
21. Further, that the appellant obtained ex-parte conservatory orders, which he interpreted to mean vacant possession orders that he proceeded to execute by evicting the respondent from the suit property. It was urged that the consequences of those actions in terms of costs cannot be Kshs.100,000. The respondent contended that, filing a suit in the Environment and Land Court at Malindi disguised as a Constitutional Petition, could not help the appellant to escape costs calculated based on the value of the subject matter.
22. It was asserted that, it is the appellant who filed Mombasa HCCC No. 146 of 2015 in which he obtained a final judgment and decree in default of defence, and upon which he appointed an auctioneer to sell the suit property in a fictitious auction; that the judgment and decree were set aside by the time he purported to claim the property under the alleged sale, pursuant to that decree; and that the pleadings filed in Malindi ELC on 23rd November 2017 by the appellant in the name of the Petitioner on documents he drew in another advocate's name was a Plaint irrespective of its description as a Petition.
23. Counsel urged that, to remove the property from the appellant and his nominees, extra ordinary steps had to be taken, including working non-stop for an entire weekend; that the appellant proceeded to oppose the application to set aside the exparte orders upon which he had relied to evict the respondent from the suit property; and that, these factors weighed on the mind of the taxing officer and the learned Judge in determining the question of instruction fees.
24. Counsel asserted further that the respondent was the victim of multiple crimes by the appellant and was forced to defend the purported Petition to recover its property. For that reason, it had to seek and obtain legal services as though the Petition was a suit commenced by a Plaint because it was; And that the respondent should not be asked to pay legal fees for services rendered in a suit but recover costs payable in a Petition.
25. On the strength of the case of Premchand Limited (supra) relied upon by the appellant, the respondent urged that there was no injustice in requiring the appellant to pay Party & Party costs in the sum of Kshs.3,000,000 instead of Kshs.8,000,000, which the respondent had justified. On the other authorities relied upon by the respondent, it was urged that they are distinguishable on the basis that what the appellant did has never happened in Kenya before; and that, he moved a dispute from the High Court to the ELC using documents which the High Court had nullified.
26. Upon considering the Reference, the affidavits on record, the submissions of the parties and the applicable law, the singular issue that arises for determination is whether the appellant has met the threshold to justify this Court's interference with the taxing officer's discretion in awarding the Party & Party costs.
27. Computation of the quantum of costs in a suit is a matter entirely under the ambit of the taxing officer, who is best suited to determine it. A judge will not interfere with the discretion of the taxing officer where the dispute is based only on quantum, unless it is shown that, in all the circumstances, the award is manifestly excessive or inadequate. The decision in the case of First American Bank Ltd V Shah &



another (2002] 1 EA 64 tells us that this Court is clothed with the power to interfere with the taxing officer's discretion on taxation if it is shown that either the decision was based on an error of principle, or that the fee awarded was manifestly excessive.

28. However, this Court has on numerous occasions cautioned against interference with the taxing officer's discretion on a reference before a single judge. In *Kipkorir, Too & Kiara Advocate v Deposit Protection Fund Board* (2005) eKLR, the Court stated as follows:

“On a reference to a judge from the taxing 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.”

29. Regarding the exercise of the taxing officer's discretion, both parties in this appeal referred us to the decision in *Joreth Ltd vs Kigano & Associates* [2002] 1 E.A. 92 where this Court held that:

“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 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.”

30. Likewise, in *Vipul Premchand Haria v Kilonzo & Co Advocates* [2020] KECA 591 (KLR), this Court outlined the nature of the taxing officer's discretion as follows:

“.....Once the client was dissatisfied with the bill, it fell upon the taxing master to tax it. Such taxation, much as it lies in the taxing officer's discretion, is governed by clear principles. In other words, the discretion is a judicial one to be judicially and judiciously exercised. It is not to be exercised whimsically or capriciously in accordance with personal inclination. And the matters the taxing officer takes into consideration should be apparent from the reasons that she gives for her decision. It is those reasons that give an indication whether or not the discretion reposed in the taxing officer was properly exercised.”

31. The grounds for consideration by the taxing officer in exercise of the discretion to set aside a Certificate of Costs were delineated in *Non-Governmental Organization Board V EG & 5 Others (Petition (Application) 16 of 2019)* [2023] KESC 102(KLR) by the Supreme Court as follows:

“A certificate of taxation will be set aside, and a single Judge can only interfere with the taxing officer's decision on taxation if;

- a. there is an error of principle committed by the taxing officer;
- b. the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy; (and I may add, conversely, if the award is so manifestly deficient as to amount to an injustice to one party).
- c. the court is satisfied that the successful litigant is entitled to fair reimbursement for the costs he has incurred, (and I may add, the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party); and



- d. the award proposed is so far as practicable, consistent with previous awards in similar cases. To these general principles, I may add that;
 - i. There is no mathematical formula to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances,
 - ii. Although the taxing officer exercises unfettered judicial discretion in matters of taxation that discretion must be exercised judicially, not whimsically,
 - iii. The single Judge will normally not interfere with the decision of the taxing officer merely because the Judge believes he would have awarded a different figure had he been in the taxing officer's shoes."

32. We took the liberty to quote the taxing officer's ruling dated 26th January 2022 in extensu as follows :

- “(i) Nature and Importance of the Matter I have considered the nature of this suit and the submissions by the Petitioner that this was a matter which requires them to work over and above what is expected from an advocate. A perusal of the Petition and the Applications filed in the matter together with the ruling of the Hon. Judge show that the Petitioner using the Orders of the court which pursuant to the Ruling of the judge were obtained through false information, went ahead and evicted the 1st respondent.

The nature of the matter was such that it was going to have an impact on the ownership of the suit premises and would also render the 1st respondent's investments to waste. It not only had a huge financial impact on all the parties but had the 1st respondent evicted which is very destabilizing and its impact cannot be gainsaid.

The petition therefore had an economic and financial impact on the 1st respondent and the advocates had a heavy burden on their shoulder to try and protect the 1st respondent's interest under much pressure and at the earliest.

- ii. Complexity of the matter

A perusal of the record shows that this was not a complex matter despite the issues of fraud raised therein and as it was determined summarily. Further the Court did not certify the matter complex.
- ii. Difficulty & Novelty of the Questions raised

Just as complexity of the matter, the matter did not raise difficult or novel questions of law.
- ii. Time Expended

From the record it is clear that the advocates expended much time on the matter. The bulkiness of the record, yet the matter was determined summarily show that much time was put in the matter by the advocates. I am satisfied that much time was put into this matter.



ii. Value of the subject matter

The value of the subject matter indicated in the Petition is kshs.200,000,000. The 1st respondent filed a valuation report showing that the value of the suit property is Kshs.400,000,000. Whereas neither the value of Kshs.200 million nor 400 million will be used in calculating the instruction fee, what comes out is that the value of the subject matter was big. Given the value of over kshs.200,000,000 the interest of the parties to the suit was great as what was at stake was big. With such an interest and the stakes being high despite the matter being a constitutional petition, much burden lies on the shoulders of counsel.

From the foregoing, given the nature and importance of the matter together with the time expedited, and the value of the subject matter, I increase the basic instruction fee from Kshs.100,000 to Kshs.3,000,000.

33. The record indicates that the appellant was aware that the issue of ownership of the suit property was live in Mombasa HCCC No. 146 of 2015, and that the certificate of sale and vesting orders he assisted his client to obtain in the said suit, had been declared to have been obtained fraudulently, and were set aside and expunged suo moto by the High Court on 11th October 2016. On 22nd November 2017, the appellant is said to have forged the signatures of another advocate and the Petitioner and moved the dispute to Malindi ELC, relying on the very same documents that had been nullified by the High Court.
34. The appellant obtained ex-parte conservative orders and used them to execute the eviction of the respondent from the suit property. The appellant had obtained a final judgment and decree in default of defence in Mombasa HCCC No. 146 of 2015, upon which he appointed an auctioneer to sell the suit property in a fictitious auction. The judgment and decree had been set aside by the time he purported to claim the property under the alleged sale pursuant to that decree.
35. The respondent urged that, to extract the property from the appellant and his nominees, extra ordinary steps had to be taken, including working non-stop for an entire weekend. With all the foregoing, the appellant still proceeded to oppose the application to set aside the ex-parte orders upon which he had relied to evict the respondent from the suit property.
36. We agree with the respondent that the consequences of those actions in terms of costs could not be Kshs.100,000; and that, further, that filing a suit in the Environment and Land Court at Malindi disguised as a Constitutional Petition could not aid the appellant to avoid costs calculated on the basis of the value of the subject matter. The pleading filed in Malindi ELC on 23rd November 2017 by the appellant in the name of the Petitioner, on documents he drew in another advocate's name, was a Plaint irrespective of its description as a Petition.
37. Upon considering the chronology of events in this appeal, we are fully persuaded that the appellant was the author of his own misfortune. We therefore find no basis to dislodge the learned Judge's finding that the taxing officer had exercised her discretion correctly. The foregoing excerpt from the taxing officer's ruling shows that she considered all the pertinent elements in in her findings.
38. Consequently, this appeal has no merit and is hereby dismissed in its entirety with costs to the respondent.

It is so ordered.



DATED AND DELIVERED AT MALINDI THIS 20TH DAY OF JUNE, 2025 DR. K. I. LAIBUTA
CARB, FCIARB.

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

G. W. NGENYE - MACHARIA

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JUDGE OF APPEAL

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

Deputy Registrar

