



REPUBLIC OF KENYA



**KENYA LAW**  
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**Autoports Freight Terminals Limited v Kenya Ports Authority (Civil Appeal (Application) 76 of 2018) [2025] KECA 1297 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1297 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPEAL (APPLICATION) 76 OF 2018**

**KI LAIBUTA, JA**

**JULY 18, 2025**

**BETWEEN**

**AUTOPORTS FREIGHT TERMINALS LIMITED ..... APPLICANT**

**AND**

**KENYA PORTS AUTHORITY ..... RESPONDENT**

*(Being a reference against the Ruling on Taxation  
(E. M. Mwamuye, DR.) dated 27th January 2025)*

**RULING**

1. By a judgment dated 28<sup>th</sup> July 2023 in determination of Mombasa Civil Appeal No. 76 of 2018, this Court dismissed the respondent's appeal with costs to the applicant in respect of which its Bill of Costs dated 29<sup>th</sup> August 2023 was taxed in the sum of Kshs. 131,750, inclusive of instructions fees taxed at Kshs. 120,000.
2. Dissatisfied with the decision of the Deputy Registrar (E. M. Mwamuye, SRM), the applicant (Autoports Freight Terminal Limited) filed a Reference challenging the amount awarded on taxation on the grounds that it was "manifestly inadequate".
3. In support of the Reference, counsel for the applicant, Mr. Paul Buti, filed written submissions dated 8<sup>th</sup> May 2025 citing the cases of *Kenya Revenue Authority v Universal Corporation Limited* [2024] KECA 1103 (KLR) in which Kathurima, JA. stated that the Taxing Officer should not exercise her discretion arbitrarily, capriciously, whimsically or by guesswork; and *Republic v Ministry of Agriculture ex parte Samuel Muchiri Njuguna* [2006] eKLR where the learned Judge observed that the Taxing Officer's exercise of discretion was done perfunctorily and as a mere formality; and that it was necessary to specifically, clearly and candidly show how she had exercised her discretion. Counsel urged me to allow the Reference and remit the Bill for re- taxation.



4. In rebuttal, learned counsel for the respondent, M/s. Muriu Mungai & Company LLP, filed written submissions and list of 6 authorities dated 10<sup>th</sup> June 2025. Citing this Court's decision in *Charles Onyinge Abuso v Kenya Ports Authority* [2018] KECA 374 (KLR), counsel urged me to strike out the Reference for having been filed out of time in breach of rule 117(4) of the *Court of Appeal Rules, 2022*. In the alternative, counsel urged me to dismiss the Reference for want of merit.
5. According to counsel, the impugned decision was delivered on 27<sup>th</sup> January 2025; that the Reference ought to have been brought not later than 3<sup>rd</sup> February 2025, but was brought on 4<sup>th</sup> March 2025, thirty days out of time.
6. In rejoinder, counsel for the applicant filed further submissions dated 11<sup>th</sup> June 2025 in answer to the applicant's contention that the Reference was filed out of time. According to counsel, taxation proceeded on 4<sup>th</sup> February 2025 whereupon the ruling was reserved for and delivered on 27<sup>th</sup> February 2025. Accordingly, the applicant's Reference dated 4<sup>th</sup> March 2025 was brought within the prescribed period.
7. From the scanty record as put to me, and in light of the disparity in the dates endorsed on the first two pages of the impugned Ruling, to wit, 27<sup>th</sup> February 2025 viewed against the date on which the Ruling is said to have been signed and delivered, to wit, 27<sup>th</sup> January 2025, the applicant's contention that the Reference was brought out of time remains unascertainable in the absence of independent evidence in that regard.
8. To my mind, if, as the respondent contends, the taxation took place on 4<sup>th</sup> February 2025, the Ruling could not have been dated and delivered on 27<sup>th</sup> January 2025 as contended. Be that as it may, the record does not contain a transcript of the day's proceedings from which the dates of taxation and delivery of the Ruling could be more clearly ascertained. In the circumstances, I hereby decline to strike out the applicant's Reference as sought, which leaves me with the question as to whether the applicant's Reference has merit.
9. The applicant's case is that its Bill of Costs was taxed at a manifestly inadequate amount. According to learned counsel, the Taxing Officer did not consider: the amount involved in the appeal; the nature of the appeal; the importance of the appeal; the difficulty (if any) involved; the interests of the parties; and the other costs to be allowed.
10. According to learned counsel for the respondent, the Taxing Officer would have been at fault in considering the "self-assessed sum" of Kshs. 3.4 Billion contended by the applicant to be the amount involved in the appeal. Counsel submitted that the Taxing Officer did consider the nature, importance and difficulty of the appeal as evident from her decision to increase the basic instructions fees of Kshs. 1,500 to Kshs. 120,000.
11. I take to mind the fact that the appeal in respect of which the contested Bill of Costs relates arose from judicial review proceedings in which the applicant applied for orders of prohibition, mandamus and certiorari to issue against the respondent, the details of which I need not go into. Suffice it to observe that taxation of party-and-party costs in appeals to this Court, including appeals from decisions made in judicial review as was in the instant case, is governed by the Third Schedule to the *Court of Appeal Rules*.
12. It is also noteworthy that the applicant's Bill of Costs was comprised of 2 items, namely: instructions fees charged at Kshs. 5,000,000; and other legal fees charged at Kshs. 11,310. While the Taxing Officer allowed the sum of Kshs. 11,310 on account of "other legal fees", she taxed instructions fees at Kshs.



- 120,000 over and above the Kshs. 1,500 allowed pursuant to the Scale of Costs under the Third Schedule to this Court's Rules.
13. It is also instructive that the subject appeal arose from a decision of the High Court in judicial review proceedings the nature of which no pecuniary 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, paragraph 9(2) thereof 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.
14. 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 judicial review of administrative action, 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. I find nothing to suggest that she did not.
15. 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.”
16. Mention by the applicant of Kshs. 3.4 Billion as the value of the subject matter in the instant appeal from a decision made in judicial review does not convert that figure into the value of the subject matter (see: Muriu Mungai & Company Advocates v China Civil Engineering Construction Corporation (K) Limited [2019] KECA 672 (KLR); and Moronge & Company Advocates v Kenya Airports Authority [2014] KECA 816 (KLR)). In my considered view, that cannot possibly be the value of the subject matter of the appeal from a decision made on judicial review of administrative action since, as I have already observed, no pecuniary value is assignable to appeals founded on such decisions.
17. With regard to the complexity of the appeal, I find nothing on record to suggest that the matter was out of the ordinary. I am not persuaded by learned counsel's assertion that “the distinction between public law disputes and private law disputes is never that easy to determine”. To the contrary, disputes in private law involve matters whose pecuniary value is ascertainable, and on the basis of which instructions fees is assessed. The same does not hold for disputes in the realm of public law (see: First American Bank of Kenya Ltd v Gulab P. Shah & 2 Others [2002] KEHC 1277 (KLR)); and Joreth Limited v Kigano & Associates [2002] eKLR.
18. Having considered the applicant's Reference, the grounds on which it is founded and the rival submissions by counsel, I find no error in principle to warrant interference with the discretionary



decision of the Taxing Officer while mindful of this Court’s decision in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR where the Court 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.”

19. 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.”

20. 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 judicial review of administrative action that did not relate to a pecuniary award. Neither has the appellant persuasively demonstrated the magnitude of the complexity alluded to, importance or other interest that would justify interference with the assessment complained of.

21. Likewise, 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 (see: *Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & others* [1972] EA 162).

22. Having carefully considered the grounds on which the instant Reference was founded, the impugned Ruling, 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 Ruling of the Hon. E. M. Mwamuye, DR. dated 27<sup>th</sup> February 2025. Accordingly, the applicant’s Reference dated 4<sup>th</sup> March 2025 fails and is hereby dismissed with no orders as to costs.

**DATED AND DELIVERED AT MOMBASA THIS 18<sup>TH</sup> DAY OF JULY 2025.**

**DR. K. I. LAIBUTA CArb, FCIArb.**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

