



REPUBLIC OF KENYA



**KENYA LAW**  
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**HFC Limited v Ludaava (Civil Appeal (Application)  
E062 of 2021) [2025] KECA 1321 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1321 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPEAL (APPLICATION) E062 OF 2021**

**KI LAIBUTA, JA**

**JULY 18, 2025**

**[IN CHAMBERS]**

**BETWEEN**

**HFC LIMITED ..... APPLICANT**

**AND**

**PETER ADAMS LUDAAVA ..... RESPONDENT**

*(Being a reference against the Ruling on Taxation  
(E. M. Mwamuye, DR.) dated 11th December 2024)*

**RULING**

1. By a judgment dated 23<sup>rd</sup> February 2024 in determination of Mombasa Civil Appeal No. E062 of 2021, this Court dismissed the applicant's appeal with costs to the respondent in respect of which his Bill of Costs dated 4<sup>th</sup> September 2024 was taxed at Kshs. 1,029,400, inclusive of instructions fees allowed in the sum of Kshs. 1,000,000.
2. Dissatisfied with the decision of the Deputy Registrar (E. M. Mwamuye, SRM), the applicant (HFC Limited) filed a Reference challenging the award of costs to the respondent (Peter Adams Ludaava) in the sum of Kshs. 1,029,400 on the grounds: that the instructions fees of Kshs. 1,000,000 was awarded without assigning any reason therefor; that the Taxing Officer imported the provisions of the *Advocates Remuneration Order*, 2014 applicable in the High Court in taxation of costs in the Court of Appeal; and that she refused to exercise her discretion under paragraph 14 of the Third Schedule to the *Court of Appeal Rules* (set off of costs) and, instead, directed the applicant to file a separate Bill of Costs for taxation of costs awarded to it in respect of two applications determined in its favour within the appeal.
3. In support of the Reference, counsel for the applicant, M/s. Muriu, Mungai & Company, filed written submissions dated 3<sup>rd</sup> February 2025 citing the case of *Mount Elgon Beach Properties Limited*



*v Mwanongo & Another* [2023] KECA 277 (KLR) in support of learned counsel's request that I remit the applicant's Bill of Costs for re-taxation by a Taxing Officer other than Hon. E. M. Mwamuye, SRM.

4. In rebuttal, learned counsel for the respondent, M/s. Asige Kiberenge & Anyanzwa, filed written submissions and a list of authorities dated 10<sup>th</sup> February 2025 citing 2 judicial authorities, namely: *Joreth Limited v Kigano & Associates* [2002] 1 EA 92 for the proposition that the value of the subject matter for the purpose of taxation of the Bill of Costs ought to be determined from the pleadings, judgments or settlement, but that, if the same is not ascertainable, the Taxing officer is entitled to use her discretion; and *Mount Elgon Beach Properties Limited v Mwanongo & Another* (*supra*), submitting that a Judge does not interfere with the assessment of what the Taxing Officer considers to be a reasonable fee save in exceptional cases.
5. With regard to rule 14 of the Third Schedule to the *Court of Appeal Rules*, counsel submitted that it is not mandatory but confers discretion, which the Taxing Officer judiciously and reasonably exercised. Counsel urged me to dismiss the Reference with costs.
6. To my mind, three issues commend themselves for determination, namely:
  - (i) whether the Taxing Officer was at fault in assessing instructions fees at Kshs. 1,000,000 in the respondent's favour without assigning any reason therefor;
  - (ii) whether she misapplied the provisions of the *Advocates Remuneration Order*, 2014 applicable in the High Court at the Court of Appeal; and
  - (iii) whether she was at fault in declining to set off costs recoverable by the applicant on account of two interlocutory applications against the costs awarded to the respondent in the appeal.
7. On the 1<sup>st</sup> issue, 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. In this regard, the Taxing Officer had this to say on the particular award:

“Schedule 3, paragraph 9(2) 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.

Being guided by the said rule and rule 9(3) which states as follows:

The sum allowed under sub-paragraph (2) shall include all works necessary and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondence, perusals, and consulting authorities.

I find Kshs 1,000,000/= is reasonable for item 1 and as such Kshs 4,500,000 is taxed off.”

8. Taking issue with the Taxing Officer's decision, learned counsel for the applicant proposed a sum of Kshs. 200,000 on account of instructions fees. On their part, counsel for the respondent contended that the sum of Kshs. 1,000,000 taxed in respect of instructions fees was reasonable.
9. Having considered the Taxing Officer's views, the rival submissions of learned counsel and the relevant schedule, and having regard to the amount involved in the appeal, its nature, importance and modest degree of complexity, I find that the award of Kshs. 1,000,000 was inordinately high in the



- circumstances of the case. In my considered view, Kshs. 300,000 would be reasonable on account of instructions fees.
10. I form this view 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.”
11. 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.”
12. To my mind, I find that the Taxing Officer acted in error on a matter of principle that an award of instructions fees should be proportional to the value of the subject matter. In the instant case, the subject matter of the dispute culminating in the appeal in respect of which the party-to-party costs are in issue was a secured loan of Kshs. 188,260, which had accrued to Kshs. 2,153,077/55 over a period of 25 years, and the recovery of which triggered the suit and the instant appeal.
13. I also take to mind the decision in *Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & others* [1972] EA 162 where the predecessor to this Court aptly observed:
- “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.”
14. Turning to the 2<sup>nd</sup> issue as to whether the Taxing Officer misapplied the Advocates Remuneration Order, counsel for the applicant contended that the Taxing Officer was at fault in applying the scales chargeable on perusal because the Third Schedule to the *Court of Appeal Rules* do not make provision therefor; and that rule 116(3) of the *Court’s Rules* states that the *Advocates Remuneration Order*, 2014 only applies in ascertaining costs as between an advocate and client, and not as between party and party.
15. In rebuttal, counsel for the respondent submitted that the Taxing Officer merely mentioned the two scales in comparison and that, therefore, the issue raised by the applicant in that regard cannot be the basis of interfering with the assessment made by the Taxing Officer.
16. I find nothing to suggest that the Taxing Officer applied the *Advocates Remuneration Order* applicable in the High Court for the purpose of assessing the costs in issue before this Court. Accordingly, this ground fails.
17. On the 3<sup>rd</sup> and last issue as to whether the Taxing Officer erred in failing to set off costs awarded to the applicant in two interlocutory applications as against the costs awarded to the respondent in the appeal, it is noteworthy that the Taxing Officer directed that the applicant do file a separate Bill of Costs, a decision with which the applicant took issue. However, I find nothing to suggest that any Bill of Costs in that regard had been filed and presented for taxation at that moment in time so as to facilitate a set-



off in the impugned Bill pursuant to paragraph 14 of the Third Schedule to the Court of Appeal Rules. Accordingly, this ground also fails.

18. 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 that the applicant's Reference succeeds in part and hereby order and direct that:

- a. the Taxing Officer's award on account of instructions fees be and is hereby set aside and substituted for Kshs. 300,000; and
- b. that the award on legal fees and disbursements are hereby upheld.

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

