



**Sasenyi Multipurpose Co-operative Society Limited v Rukinga Ranching Company Limited  
(Environment & Land Case 168 of 2021) [2024] KEELC 1474 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1474 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 168 OF 2021  
NA MATHEKA, J  
MARCH 19, 2024**

**BETWEEN  
SASENYI MULTIPURPOSE CO-OPERATIVE SOCIETY LIMITED .. PLAINTIFF  
AND  
RUKINGA RANCHING COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. The application is dated 25<sup>th</sup> July 2023 and is brought under Section 2 of the [Advocates Act](#), Rules 11(1) and (2) of the Advocates Remuneration Order 2006 seeking the following orders;
  1. That this Honourable Court be pleased to allow this reference against the decision on taxation of the taxing officer of this court made on the 5<sup>th</sup> July, 2023.
  2. That the Ruling on Taxation delivered by the taxing officer made on the 5<sup>th</sup> July, 2023 be set aside.
  3. That item No. 1 of the Claimant Party and Party Bill of Costs dated 6<sup>th</sup> October, 2022 be denied and or be referred back for taxation or assessed by this Honourable Court in such other terms as may appear reasonable.
  4. That in the alternative this Honourable court to remit items Nos. 1 and 2 of the Defendant's Bill of Costs dated 6<sup>th</sup> October, 2022 to another taxing Officer for taxation.
  5. That Item No. 2 of the Claimant party and party Bill of cost dated 6<sup>th</sup> October 2022 be removed and or taxed off.
  6. That costs occasioned by this reference be provided for.



2. It is based on the following grounds that the Taxing Officer assessment is manifestly too high. That his assessment has occasioned an error in items No. 1 and 2 and a need for this reference. The award is excessively high and as such punitive.
3. The Defendant opposed the Plaintiff's Chamber Summons Application dated 25<sup>th</sup> July 2023 on the following grounds that the Application is belated, ill conceived, misinformed and tainted with mala fides for the reasons that it seeks Orders that are untenable in the circumstances of this case. It is vexatious and does not meet the threshold requirements for grant of the Orders sought. It is bad in Law and an abuse of Court process in light of the Rules of Practice & Procedure as regards Taxation on party and party bill of costs. It bears grounds not supported by any facts as deponed to in the supporting affidavit. It is fatally defective. It is poorly concocted after-thought only meant to delay the defendant's access to and enjoyment of justice herein.
4. This court has considered the application and the submissions therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:

- “(1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the objects.
- (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”

5. The Plaintiff/Applicants in the instant application contend that being dissatisfied with the Taxing Officer's decision have filed this application. That the Taxing Officer erred in law and in fact by awarding getting up fees when the matter proceeded by virtue of a preliminary objection raised by the defendant. The Taxing Officer erred in law and in fact by holding that kshs. 10,125,000/= was available for taxation which figure was not awarded by the court and hence cannot form the basis of the subject matter of the suit.
6. In Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'Njuguna [2006] eKLR Ojwang, J (as he then was) expressed himself as follows:

“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, 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...The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. Needless to state not all the above factors may exist in



any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment...A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved... Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularised justification of the mode of exercise of any discretion provided for... The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs...”

7. Be that as it may, the principles of varying or setting aside a Taxing Master's decision are set out in the cases of *First American Bank of Kenya v Shah and Others* [2002] EA 64 and *Joreth Ltd v Kigano and Associates* [2002] 1 EA 92, that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law. In *First American Bank of Kenya v Shah and Others* [2002] E.A.L.R 64 the court held that;

“First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle”.

8. These principles reiterate the position of the Court of Appeal in *Joreth Ltd vs Kigano & Associates* [2002] eKLR, where the said Court held that a Taxing Master in assessing costs to be paid to an advocate in a bill of costs was exercising his judicial discretion and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously, and in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the Taxing Master is excessive to amount to an error in principle.
9. The Taxing Master in his ruling dated 21<sup>st</sup> September 2022 provided that the taxation of the matter would be based on Remuneration (Amendment) order 2014. Under Item one the taxing master based his calculations on the value of the suit property as per the plaint which was Kshs. 510,125,000/ =as per paragraph 16 and 17 and prayer (d). He taxed the item at kshs. 5,888,906.25 and taxed off kshs.465,000/-. He added getting up fees which is a third of the instruction fees as per paragraph 2 of the 2014 Advocates Remuneration Order. I find the fees awarded by the Taxing Master excessively high to amount to an error in principle.
10. With regards to Item 1(b) on getting up fees, the applicable provision of law is set out under Paragraph 2 of Schedule 6A of the Advocates (Remuneration) Order 2014 where getting up fees is one-third of



the instruction fees and chargeable once the matter has been confirmed for hearing. In the instant case, at no point did the court direct that the main suit be set down for hearing. It is this therefore court's view that the taxing master erred in principle in awarding getting up fees at kshs. 1,962,968.75 and in the circumstances, this court is bound to interfere with the same. I find that this application is merited and I grant the following orders;

1. The ruling of taxation delivered by the taxing officer made on 5<sup>th</sup> July 2023 is set aside.
2. The Defendant's Bill of Costs dated 6<sup>th</sup> October, 2022 is remitted to another taxing officer for taxation.
3. Each party to bear their own costs of this application.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19<sup>TH</sup> DAY OF MARCH 2024.**

**N.A. MATHEKA**

**JUDGE**

