



REPUBLIC OF KENYA



**Mbelezi v Karanja & another (Environment and Land Miscellaneous.(Reference)  
Application E003 of 2023) [2024] KEELC 4902 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4902 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND MISCELLANEOUS.  
(REFERENCE) APPLICATION E003 OF 2023**

**LN GACHERU, J**

**JUNE 19, 2024**

**BETWEEN**

**RAPHAEL MBELEZI ..... APPLICANT**

**AND**

**STEPHEN JAMES KARANJA ..... 1<sup>ST</sup> RESPONDENT**

**LUCAS KAMAU KARIITHI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant herein, filed this Chamber Summons Application dated 25<sup>th</sup> October, 2023, premised on Sections 1A, 3A, 3B of the Civil Procedure Act, Rule 11 of the Advocates' Remuneration Order and Order 21 Rule 9A of the Civil Procedure Amendment Rules (2020), and sought the following orders:
  1. That the decision of the Taxing Officer as evidenced in the Ruling delivered on 5<sup>th</sup> October 2023, in Murang'a ELC No. 374 of 2017 (formerly Nairobi HC ELC No. 343 of 2012), in respect to items 1, 2, 12, 13, 18, 19, 21, 22, 23, 26, 27, 32, 33, 36, 37, 43, 44, 45, 48,, 50, 51, 52, 60, 62, 63, 64, 65, 66, 67, 68, 73, 74, 77, 79, 80, 81, 83, 84, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109 in the Bill of Costs dated 16<sup>th</sup> June 2023, be set aside and taxed afresh by this Honourable court.
  2. That in the alternative, the Honourable court be pleased to order that the Respondent's Bill of Costs dated 16<sup>th</sup> June 2023, filed in Murang'a ELC No. 374 of 2017 (formerly Nairobi HC ELC No. 343 of 2012) in respect to items 1, 2, 12, 13, 18, 19, 21, 22, 23, 26, 27, 32, 33, 36, 37, 43, 44, 45, 48,, 50, 51, 52, 60, 62, 63, 64, 65, 66, 67, 68, 73, 74, 77, 79, 80, 81, 83, 84, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109 be taxed afresh by another taxing master.
  3. That the costs of the application be provided."



2. The Chamber Summons is supported by the grounds set out on its face and on the Supporting Affidavit of Raphael Muthoka Mbelezi, sworn on 25<sup>th</sup> October, 2023.
3. The Reference arises from the decision of this Court delivered on 19<sup>th</sup> October, 2022, in ELC Case No. 347 of 2017 (formerly Nairobi HC ELC No. 343 of 2012), wherein, the Court found in favour of the Plaintiff (the 1<sup>st</sup> Respondent herein), who was awarded costs as against the 1<sup>st</sup> Defendant (the Applicant herein). For the avoidance of doubt, this Court found and held as follows:

“This Court retains its discretionary rights donated by Section 27 of the *Civil Procedure Act* to award costs. The Plaintiff is the successful party and is thus entitled to costs of this suit as there is no reason not to award him costs.

Having carefully considered the available evidence, the court finds that the Plaintiff has proved his case of trespass against the 2<sup>nd</sup> Defendant herein on the required standard of balance of probabilities. However, he has not proved his case against the 1<sup>st</sup> Defendant herein”.

4. Subsequently, the 1<sup>st</sup> Respondent filed his Bill of Costs dated 16<sup>th</sup> June, 2023, seeking the total sum of Kshs.415,072 (four-hundred and fifteen thousand and seventy-two). The aforementioned Bill of Costs was taxed by the Taxing Master on 5<sup>th</sup> October, 2023, and allowed in the sum of Kshs.231,888 (two-hundred and thirty-one thousand eight hundred and eighty-eight).
5. It is the Applicant’s case that the Taxing Officer erred by awarding basic instruction fees of Kshs.100,000/= (one-hundred thousand) to the 1<sup>st</sup> Respondent herein whereas the Taxing Officer ought to have awarded Kshs.75,000/= (seventy-five thousand), as the basic instruction fees. Further, he averred that the Taxing Officer did not specify the complex elements present in the aforesaid suit justifying the raising of instruction fees from Kshs.75,000/= (seventy-five thousand) to Kshs.100,000/= (one-hundred thousand).
6. It is further contended that the fees awarded by the Taxing Officer in respect of items 1 and 2 in the said Bill of Costs were manifestly and unreasonably high, excessive, unjustifiable and constitute an error of principle.
7. Furthermore, he contended that no reasons were indicated by the Taxing Master’s decision to anchor the increase of instruction fees from Kshs.75,000/= (seventy-five thousand) to Kshs.100,000/= (one-hundred thousand), save for the time taken in the disposal of Murang’a ELC No. 374 of 2017 (formerly Nairobi HC ELC No. 343 of 2012).
8. It was the Applicant’s further averment that the Taxing Officer did not exercise her discretion judicially in increasing the basic instruction fees from Kshs.75,000/= (seventy-five thousand) to Kshs.100,000/= (one-hundred thousand), thereby resulting in wrongful exercise of jurisdiction.
9. Further, the Applicant argued that the fees awarded by the Taxing Officer in respect of the items numbered 1, 2, 12, 13, 18, 19, 21, 22, 23, 26, 27, 32, 33, 36, 37, 43, 44, 45, 48,, 50, 51, 52, 60, 62, 63, 64, 65, 66, 67, 68, 73, 74, 77, 79, 80, 81, 83, 84, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109, in the 1<sup>st</sup> Respondent’s Bill of Costs dated 16<sup>th</sup> June 2023, were manifestly and unreasonably excessive thereby, constituting an error of principle.
10. The Reference was resisted by the 1<sup>st</sup> Respondent through the Replying Affidavit sworn by Stephen James Karanja on 29<sup>th</sup> November, 2023. He contended that the instant Reference is time-barred having been filed on 15<sup>th</sup> November, 2023, which translate to twenty-seven (27) days ,from the date of issuance



- of reasons for taxation by the Taxing Master on 19<sup>th</sup> October, 2023. Further, that the Applicant failed to attach any evidence justifying the filing of the subject Reference out of time.
11. The 1<sup>st</sup> Respondent further argued that the Taxing officer exercised her discretion judicially in taxing the impugned Bill of Costs.
  12. The Reference was canvassed by way of written submissions. On 2<sup>nd</sup> February, 2024, the Applicant filed written submissions through the Law Firm of N.M. Kamwendwa and Company Advocates, together with his Supplementary Affidavit sworn on 26<sup>th</sup> January, 2024.
  13. It is the Applicant's submission that the subject Reference was filed on 30<sup>th</sup> October, 2023, and falls within fourteen (14) days of receipt of the Taxing Master's reasons which were issued on 19<sup>th</sup> October, 2023. He explained that the Reference was filed through the Court's e-filing system on 30<sup>th</sup> October, 2023, as evidenced by the receipt of payment thereof marked "RM6".
  14. The Applicant relied on the provisions of Rule 11 of the Advocates Remuneration Order in support of the contention that a party objecting to the reasons given by the Taxing Officer is granted fourteen (14) days to challenge the aforesaid decision before the High Court.
  15. The Applicant cited the holding of the Court in the cases of Republic vs. Ministry of Agriculture & 2 others Ex parte Muchiri W'Njuguna & 6 Others {2006} eKLR; Phemchand Raichand Ltd and Another vs Quarry services of East Africa Ltd and Another {1972} EA 162; KANU National Elections Board & 2 others vs Salah Yakub Farah [2018] eKLR; and, Joreth Limited vs Kigano & Associates [2002] eKLR concerning the factors which a Taxing Officer needs to take to account in the taxation of Bills of Costs.
  16. It was submitted that the sum of Kshs.100,000/= (one hundred thousand) awarded by the Taxing Officer to the 1<sup>st</sup> Respondent as instruction fees was colossal and unjustified because the Applicant's counter-claim in Murang'a ELC No. 374 of 2017, (formerly Nairobi HC ELC No. 343 of 2012), was a general claim for Adverse Possession and the same was not a complex matter, nor did it raise novel issues requiring extraneous research or extreme labour and care on the part of the 1<sup>st</sup> Respondent's Advocates on record.
  17. With respect to "Getting-up Fees" itemized as number 2 on the 1<sup>st</sup> Respondent's Bill of Costs dated 16<sup>th</sup> June, 2023, it was submitted that the Taxing Officer should have awarded one-third of the instruction fees of Kshs.75,000/= (seventy-five thousand) which is Kshs.25,000/= (twenty-five thousand) in accordance with the provisions of Schedule VI Paragraph 2 of the Advocates Remuneration Order rather than the figure of Ksh.33,333/= (thirty-three thousand three hundred and thirty-three that was awarded.
  18. Further, it was the Applicant's submissions that the items numbered as 9, 10, 11, 13, 14, 15, 17, 18, 29, 30, 31, 33, 34, 35, 38, 60, 62, 64, 68, 69, 70, 73, 74, 78, 83, 86 and 87 appearing in the 1<sup>st</sup> Respondent's Bill of Costs dated 16<sup>th</sup> June, 2023, ought to have been completely taxed off by the Taxing Officer as the Applicant's Advocate on record was present in Court and therefore, no service ought to have been effected on the Applicant's Advocate. He submitted that the foregoing items relate to the 2<sup>nd</sup> Respondent and not to the Applicant. Further, it was submitted that the Taxing Master was misled by the 1<sup>st</sup> Respondent in entering costs on the preceding items against the Applicant.
  19. With respect to items numbered 21, 22, 24, 43, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57 and 59 on the said Bill of Costs dated 16<sup>th</sup> June, 2023, the Applicant submitted that the same were fictitious as there were no actions taken on the referred dates and no Court appearances on the various dates stated against those items.



20. Concerning the items numbered 22, 23, 27 and 80 on the 1<sup>st</sup> Respondent's Bill of Costs dated 16<sup>th</sup> June, 2023, it was the Applicant's submission that the reasons for Court attendance in respect of the same items were vague. Further, it was submitted that as the 1<sup>st</sup> Respondent had proposed the sum of Kshs.1,900/= for Court attendances, the taxing Master ought to have taxed foregoing items in the sum of Kshs.1,900/= per item.
21. The 1<sup>st</sup> Respondent filed written submissions on 9<sup>th</sup> February, 2024, through the Law Firm of Njoroge Kugwa & Company Advocates, and submitted that his Bill of Costs dated 16<sup>th</sup> June, 2023, was opposed by the Applicant herein and the suit proceeded by way of written submissions and thereafter, a Ruling was rendered on 5<sup>th</sup> October, 2023. It was his further submission that item 1 on the aforesaid Bill of Costs being the Instruction Fees amounting to Ksh.200,000/= (two-hundred thousand) was taxed off at Kshs.100,000/= (one hundred thousand), by the Taxing Master. Further, that item number 2 of the said Bill of Costs being Getting-up Fees of Kshs.66,667/= (sixty-seven thousand six hundred and sixty-seven) was taxed at Ksh.33,333/= (thirty-three thousand three hundred and thirty-three).
22. It was his further submission that the Taxing Officer indicated that she was satisfied of the fact that the 1<sup>st</sup> Respondent had demonstrated sufficient basis to warrant an increase of the Instruction Fees.
23. He also submitted that the items numbered 12, 18, 19, 21, 23, 32, 33, 36, 37, 43, 44, 45, 48, 50, 52, 60, 63, 64, 65, 66, 67, 68, 73, 74, 77, 79, 81, 83, 84, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109, as per his Bill of Costs were drawn to scale and the Taxing Officer taxed the same as drawn.
24. The 1<sup>st</sup> Respondent further submitted that the item numbered 13 was taxed at Kshs.500/= while the items numbered 22, 26, 27 and 80 were taxed at Kshs.1900/=. Further, that the Bill of Costs dated 16<sup>th</sup> June, 2023, was taxed at Kshs.231,888/= (two hundred and thirty-one thousand, eight hundred and eighty-eight) and Kshs.183,184 (one hundred and eighty-three thousand one hundred and eighty-four) was taxed off.
25. It was his further submission that the Taxing Officer in increasing the Instruction Fees exercised her jurisdiction judiciously and took to account the complexity of the subject matter in Murang'a ELC No. 374 of 2017 (formerly Nairobi HC ELC No. 343 of 2012) including the general conduct of the proceedings and the work involved considering that the matter was filed in year 2010.
26. He also submitted that the subject Reference amounts to forum-shopping as the Applicant is seeking for re-taxation before a different Taxing Officer.
27. The court has considered the pleadings herein, the rival written submissions and the relevant provisions of law, together with the cited authorities and finds the issues for determination are as follows;
  - i) Is the subject Reference time-barred?
  - ii). Is the Applicant entitled to the Orders sought?

#### **I. Is the subject Reference time-barred?**

28. Annexed to the Applicant's Supplementary Affidavit sworn on 26<sup>th</sup> January 2024, and filed before the Court on 2<sup>nd</sup> February, 2023, is a receipt of payment made to the Court dated 30<sup>th</sup> October, 2023, marked "RM6". The Court has perused the same and is satisfied that the foregoing receipt demonstrates that the Applicant filed the subject Reference on 30<sup>th</sup> October, 2023.
29. The Applicant has also annexed a letter authored by his Advocate and addressed to the Taxing Officer dated 18<sup>th</sup> October, 2023, seeking reasons in support of the Taxing Master's Ruling issued on 5<sup>th</sup>



October, 2023. On the face of the aforesaid letter, are found the following wordings written by the Taxing Master dated 19<sup>th</sup> October, 2023:

“The reasons are contained in the Court’s Ruling of 19/10/2023. The preceding statement is written in the Taxing Officer’s own hand in response to the Applicant’s letter dated 18<sup>th</sup> October, 2023.

30. The Court holds and finds that the Taxing Officer gave reasons for her Ruling in the preceding single sentence on 19<sup>th</sup> October 2023. Consequently, it is the holding and finding of this Court that the subject Reference is not time-barred having been filed on 30<sup>th</sup> October 2023, which is within fourteen (14) days from 19<sup>th</sup> October 2023, the date when the Taxing Officer stated her reasons as prayed for by the Applicant.

## **II. Is the Applicant entitled to the Orders sought?**

31. The Court of Appeal in the case of Joreth Limited v Kigano & Associates [2002] eKLR, set out the principles that guide the assessment of instruction fees which include: the general conduct of the proceedings, the care and labour required on the part of counsel, the length of the trial, the number and length of papers to be perused, the nature and importance of the matter to the parties, the amount and value of the subject-matter and all other circumstances as may be fair and reasonable. In the foregoing case, the Court underlined the following;

“What the learned Judge did not appreciate was that sitting on a reference against the assessment of instruction fees by the taxing officer he ought not to have interfered with the assessment of costs unless the taxing officer had misdirected himself on a matter of principle”.

32. Further, the Court in the case of KANU National Elections Board & 2 others v Salah Yakub Farah [2018] eKLR, held as follows:

“It is a well-established principle of review that the exercise of the Taxing Master’s discretion will not be interfered with ‘unless it is found that he/she has not exercised his/her discretion properly, as for example, when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.’”

33. In the case of Bank of Uganda vs. Banco Arabe Espanol SC Civil Application No. 23 of 1999, the Court proclaimed as follows:

“Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently, a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.

Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a



wrong principle. In this regard, application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.

Thirdly, even if it is shown that the taxing officer erred on principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties."

34. In the case of Republic vs. Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others {2006} eKLR, the Court held that:

"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 interference 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."

35. The point which emerges from the preceding review of decisions of the Courts is that, the Courts will not interfere with the amount awarded by the Taxing Officer as costs unless an error of principle was committed.

36. This Court is alive to the fact that the matter in question was filed in Court in year 2010. The aforesaid matter was resolved with finality vide a Judgment delivered by this Court on 29<sup>th</sup> October, 2022. The Court has perused the Ruling of the Taxing Master dated 5<sup>th</sup> October, 2023, issued in respect of the 1<sup>st</sup> Respondent's Bill of Costs dated 16<sup>th</sup> June, 2023, wherein, the Court held as follows:

"I have considered the fact that this matter was filed in the year 2010 and determined in 2022. I have perused the file and it is clear that the 1<sup>st</sup> Defendant did attend Court. I am therefore satisfied that the Applicant has granted the Court a basis upon which instruction fees ought to be increased and the instruction fees is therefore taxed at Kshs.100,000/=."

37. Following the reasoning adopted by the Court in the case of Joreth Limited v Kigano & Associates [2002] eKLR, the Court finds and holds that the length of the trial is one of the circumstances which merit consideration by the Taxing Officer in the taxation of costs.

38. The Court finds and holds that the Taxing Officer did not misdirect herself by taking into account the period of about 12 years during which the matter was being prosecuted before the Courts in enhancing the Instruction Fees from Kshs.75,000/= (seventy-five thousand) to Kshs.100,000/= (one hundred thousand). In any event, the Court holds that the increase of Instruction Fees by the Taxing Master by a sum of Kshs. 25,000/= (twenty-five thousand), was not whimsical and did not amount to wrongful exercise of judicial discretion.

39. Having determined that the award of Kshs. 100,000/= (one hundred thousand) as Instruction Fees by the Taxing Officer was lawful, the Court holds and finds that the award of Ksh.33,333/= (thirty-three thousand three hundred and thirty-three) as Getting Fees is equally lawful as it does not exceed one-third of the Instruction Fees and the same complies with the provisions of Schedule VI Paragraph 2 of the Advocates' Remuneration Order.



40. Having considered the available evidence and having considered the Ruling of the taxing master, this court finds and holds that there are no good reasons advanced to warrant this court to interfere with the said award and/ or set it aside. This court upholds the award of the taxing master as contained in the taxed Bill of costs dated 16<sup>th</sup> June 2023.

41. For the above reasons, the court finds and holds that the instant Reference is not merited and the same is dismissed entirely with costs to the 1<sup>st</sup> Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF JUNE, 2024.**

**L. Gacheru**

**Judge**

**Delivered online in the presence of:**

Joel Njonjo - Court Assistant

Absent - Applicant

Ms. Kabata for the 1<sup>st</sup> Respondent

Absent - 2<sup>nd</sup> Respondent

**L. Gacheru**

**Judge**

**19/6/2024**

