



**Akeli v Clerk Migori County Assembly & another (Petition
E012 of 2022) [2025] KEELRC 124 (KLR) (28 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 124 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E012 OF 2022
JK GAKERI, J
JANUARY 28, 2025**

BETWEEN

MEREZA ATIENO AKELI PETITIONER

AND

CLERK MIGORI COUNTY ASSEMBLY 1ST RESPONDENT

MIGORI COUNTY ASSEMBLY 2ND RESPONDENT

RULING

1. This is the respondent's/applicant's Chamber Summons dated 15th November, 2023 seeking Orders that:
 1. Spent
 2. The Honourable Court be pleased to review the ruling and Orders of the Taxing Officer delivered on 7th September, 2023 taxing the costs at Kshs.722,042.00.
 3. Upon hearing this application the Court be pleased to reassess and reduce the taxed amount to a reasonable figure in line with the principles of the Advocates Remuneration Order.
 4. The costs of this application be provided for.
2. The Chamber Summons is based on the grounds set forth on its face and the Supporting Affidavit sworn by Vincensia Kionge on 10th October, 2024 who deposes that the Judgment delivered on 6th October, 2022 awarded the Petitioner Kshs.177,000.00 and costs.
3. That the Bill of Costs was taxed at Kshs.722,042.00 on 7th September, 2023 and the same was not served on the applicant, requests notwithstanding.
4. The affiant deposes that he instructed the applicant's counsel to file an objection against the taxed amount but no response or action was forthcoming.



5. The affiant further deposes that the taxed amount is excessive in light of the subject matter and the Taxing Officer improperly applied the principles under Schedule 6 of the Advocates Remuneration Order.

Respondent's case

6. By a Replying Affidavit sworn on 22nd November, 2024, the respondent deposes that the taxation of the Bill of Costs was not dependent on the value of subject matter only and the Taxing Officer considered all factors that required consideration and the Advocates Remuneration Order prescribes the minimum fee only.
7. The affiant deposes that the application is frivolous, vexatious and an abuse of the court process and ought to be dismissed.

Applicant's submissions

8. The applicant submits that it did not participate in the taxation proceedings as it was not served and cites the decision in *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* [1969] EA 696, and thus its right to be heard was violated.
9. The applicant further argues that its request for reasons for the taxation was not responded to.
10. The applicant faults the taxation on the premises that the instruction fee of Kshs.500,000.00 was excessive and cites the decision in *Joreth Ltd V Kigano & Associates* [2002] 1 EA 92.
11. It also compares the amount taxed and the decretal sum and cites the holding in *First American Bank of Kenya Ltd V Shah & Others* [2002] E. A. L. R, *Raichand Ltd & Another V Quarry Services East Africa Ltd & Another* [1972] EA 162 as well as *Kipkorir, Titoo & Kiara Advocates V Deposit Protection Fund Board* [2005] 1 KLR 528 to urge the grounds under which taxation may be set aside, and submit that it had a sustainable case for reassessment of the costs.

Respondent's submissions

12. As to whether the application is merited, the respondent contends that the taxing officer did not err as she applied the principles in Schedule 6 of the Advocates Remuneration Order and the Court should not interfere with the taxation.
13. Reliance was made on the sentiments of the Court in *Kipkorir, Titoo & Kihara Advocates V Deposit Protection Fund Board* (Supra) and *Khushbir Singh Chadha V Wesley Maranga Robinson Gichaba* [2020] eKLR.
14. On costs, the respondent cites Section 27 of the *Civil Procedure Act* and the decision in *Republic V Rosemary Wairimu Munene Ex Parte Applicant V Ihururu Dairy Farmers Co-operative Society Ltd* on the Courts discretion on costs.
15. The respondent urges the Court to dismiss the application with cost.

Analysis and determination

16. The pith and substance of the applicant's case herein is that the amount taxed by the learned Deputy Registrar is excessive and ought to be interfered with.
17. It is trite law that the principles that govern interference with the exercise of discretion by a Taxing Officer or master are well settled as captured in a catena of decisions.



18. In Republic V Ministry of Agriculture & 2 Others Ex Parte Muchiri W. Njuguna & Others [2006] eKLR Ojwang J (as he then was) held as follows:

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 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 omit to consider relevant facts...

19. 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.”
20. Similar sentiments were expressed in First American Bank of Kenya V Shah & Others (Supra), Kipkorir titoo & Kihara Advocates V Deposit Protection Fund Brand (Supra) as well as Joreth Ltd V Kigano & Associates (Supra).
21. Significantly, the Advocates Remuneration Order sets out the factors the Taxing Officer is required to consider in assessing costs. These include; importance of the case or matter, the amount of the value of subject matter involved, the interests of the parties and the general conduct of the proceedings among others.
22. In this application, the applicant raises a peripheral, but crucial issue of service of the Bill of costs.
23. Regrettably, the respondent did not respond to or provide verifiable evidence to controvert the applicant's allegation of absence of service.
24. To buttress its case on this issue, the applicant attached text messages allegedly sent to the respondent's counsel, which the respondent did not controvert.
25. A copy of an Affidavit of service would have effortlessly established that the Bill of Costs was indeed served.
26. It is trite law that service is indispensable in cog litigation and must be effected as provided by the rules.
27. See Fillimona Afwandi Yalwala V Indimuli & Another [1989] eKLR and Gulf Fabrication V County Government of Siaya [2020] eKLR among others.
28. Strangely, neither the respondent's Replying Affidavit sworn on 22nd November, 2024, nor the submissions dated 19th November, 2024 advert to the fact that service of the Bill of costs was effected upon the applicant.
29. It would appear to follow that having failed to controvert the allegation of absence of service of the Bill of costs or avail evidence of service, the respondent exposes herself to an adverse inference that the Bill of Costs was not served, which effectively denied the applicant's right to be heard on it.
30. To that extent, the proceedings before the Taxing Officer were vitiated by procedural impropriety.
31. The applicant's case hinges on the argument that the learned, Taxing Officer breached the guidelines provided by Schedule 6 of the Advocates Remuneration Order.



32. Although the Taxing Officer took into consideration the principles enunciated in Premchand Raichand & Another V Quarry Services East Africa Ltd & Others (Supra), and made reference to Schedule 6 of the Advocates Remuneration Order and the principle in Joreth Ltd V Kigano Associates (Supra) on instruction fees, the ruling is unclear as to the relevant factors the learned Taxing Officer considered in arriving at the sum of Kshs.500,000.00 as reasonable instruction fees bearing in mind that the minimum is Kshs.100,000.00 and the Petition was opposed.
33. In her Ruling, the learned Taxing Officer makes no reference to the value of subject matter or other relevant factors such as complexity or otherwise of the Petition or conduct of the proceedings among others to buttress the award of Kshs.500,000.00 as instruction fees.
34. As correctly submitted by the respondent, the Taxing Officer is required to take into consideration all relevant factors and circumstances in exercising his/her discretion in taxation matters.
35. The foregoing is fortified by the sentiments of Ojwang J (as he then was) in Republic V Ministry of Agriculture & 2 Others Ex Parte Muchuri W Njuguga & Others (Supra) that -
- “... 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...”
36. Similarly, in Ochieng Onyango Kibet and Ohaga Advocates V Adopt Light Ltd HC Misc. 729 of 2006 the Court stated as follows:
- “...The Taxing Master must consider the case and the Labour required in the matter, the nature or importance of the matter more so the amount or value of the subject matter involved, the interest of the client in sustaining or losing a brief and the complexity of the dispute.
37. In assessing an amount commensurate to the work undertaken, it is of fundamental importance to consider the value of subject matter...”
38. It requires no emphasis that the formula in Schedule 6 of the Advocates Remuneration Order must be adhered to as a basis for determining the basic instruction fees and other items.
39. Having found that the taxing officer did not set out the relevant factors she took into consideration in arriving at the sum of Kshs.500,000.00, as claimed in the Bill of Costs, the Court is satisfied that decision of the learned Taxing Officer discloses an error of principle which justifies re-assessment of the Bill of Costs.
40. In the upshot, the Orders that commend themselves are that:
- a. The Ruling of the Taxing Officer dated 7th September, 2023 is hereby set aside.
 - b. The Party and Party Bill of costs dated 10th February, 2023 is hereby remitted to be assessed by a different Taxing Officer.
 - c. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 28TH DAY OF JANUARY, 2025.

DR. JACOB GAKERI

JUDGE

ORDER



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

