



**Kemboy Law Advocates v Njonjo & 3 others (Miscellaneous Application E041 of 2024) [2025] KEELRC 442 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 442 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E041 OF 2024  
L NDOLO, J  
FEBRUARY 20, 2025**

**BETWEEN**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**AND**

**PETER NJONJO ..... 1<sup>ST</sup> APPLICANT**

**JUSTINE WANJIKU OGWAPIT ..... 2<sup>ND</sup> APPLICANT**

**GRANT EARL BROOK ..... 3<sup>RD</sup> APPLICANT**

**NEO KENYA LIMITED (SUED THROUGH TWIGA FOODS LIMITED, ITS  
SUCCESSOR IN TITLE) ..... 4<sup>TH</sup> APPLICANT**

**RULING**

1. This ruling determines the Chamber Summons dated 8<sup>th</sup> October 2024, by which the Applicants seek stay of execution and setting aside of the decision of the Deputy Registrar dated 24<sup>th</sup> September 2024, with respect to items 1 and 2 on instruction fees and getting up fees, in the Advocate-Client Bill of Costs dated 16<sup>th</sup> February 2024.
2. The application is supported by an affidavit sworn by the 4<sup>th</sup> Applicant's Legal Officer, Beatrice Maiyo and is premised on the grounds that:
  - a. The Advocate filed an Advocate-Client Bill of Costs dated 16<sup>th</sup> February 2024 in which they sought payment of the total sum of Kshs. 43,593,382 as against the 1<sup>st</sup>-4<sup>th</sup> Applicants. The Bill was consequently taxed in the sum of Kshs. 5,299,779 on 24<sup>th</sup> September 2024;
  - b. The Court then appropriated Kshs. 1,300,000 from the taxed amount of Kshs. 5,299,779 being the legal fees paid to the Advocate on 4<sup>th</sup> March 2024, leaving a balance of Kshs. 3,999,779 payable to the Advocate;



- c. By the Deputy Registrar’s ruling on taxation, it is evident that while he appreciated the fact that instruction fees could not be assessed against the value of the 4<sup>th</sup> Respondent Company as pleaded by the Advocate, in exercising his discretion, he still awarded the Advocate manifestly excessive costs in the sum of Kshs. 3,000,000 as instruction fees;
  - d. In awarding the excessive costs, the Deputy Registrar failed to exercise his discretion judiciously by:
    - i. Failing to consider that there existed an agreement between the parties, on legal fees payable;
    - ii. Failing to consider that the Advocate had issued the 1<sup>st</sup>-4<sup>th</sup> Applicants with a final fee note of Kshs. 2,459,200 dated 5<sup>th</sup> January 2024 and the 1<sup>st</sup>-4<sup>th</sup> Applicants had paid Kshs. 1,300,000 on 4<sup>th</sup> March 2024;
    - iii. Failing to consider that the Advocate only made one attendance in court on 21<sup>st</sup> March 2023 when the matter came up for Notice to Show Cause before Mwaure J who dismissed the suit for want of prosecution;
    - iv. Failing to set out with specificity and in detail the complex elements in the proceedings that he considered, the novel issues that arose in the proceedings, the specific interests and the extra labour and responsibility placed on the Advocate to justify the award on instruction fees at Kshs. 3,000,000.
  - e. The Deputy Registrar improperly applied the law to award getting up fees notwithstanding that the suit was not confirmed for hearing;
  - f. The Deputy Registrar failed to consider the provisions of Schedule VI Paragraph 1(b) which provides that instruction fees ought to be reduced to 75% in case the suit is determined in a summary manner;
  - g. The colossal amount of money awarded to the Advocate as costs in a matter that was determined summarily is excessively high and amounts to an injustice to the Applicants;
  - h. The wider interests of justice will be best served if the orders sought by the Applicants are granted.
3. The Advocate opposes the application by a replying affidavit sworn by Ruth Wainaina-Kemboi, Advocate on 18<sup>th</sup> October 2024.
  4. Counsel takes issue with the decision taken by the Applicants to bring an omnibus application seeking both stay of execution and setting aside of a taxation award.
  5. According to Counsel, there is no proper reference on taxation before the Court; she states that the Applicants have failed to observe the timelines provided under Paragraph 11 of the [Advocates Remuneration Order](#).
  6. The parties took divergent views regarding the format adopted by the Applicants in bringing the application. In the interest of substantive justice however, I have chosen to sidestep arguments with respect to form to give way to a merit review of the award by the Taxing Master.
  7. With regard to instruction fees, the Applicants submit that the Taxing Master failed to take into account that the matter giving rise to the Bill of Costs was determined in a summary manner. It is not disputed that the subject matter was dismissed for want of prosecution.



8. Relying on the decisions in *Njue Njagi v Ephantus Njiru Ngai & another* [2016] eKLR and *Cooperative Bank of Kenya v Cosmas Mrombo Moka & Legacy Auctioneering Services* [2019] eKLR the Advocate submits that dismissal of a matter for want of prosecution is akin to final judgment and cannot therefore be said to be a summary determination.
9. The principles for setting aside the decision of a Taxing Master are well established. In *First American Bank of Kenya v Gulab P. Shah & 2 others* [2002] eKLR it was held that a decision by a Taxing Master should not be interfered with unless it is demonstrated that either the decision was based on an error of principle, or the fee awarded is so manifestly excessive as to justify an inference that it was based on an error of principle.
10. The other instance in which a decision by a Taxing Master may be set aside is where it has been shown that the Taxing Master failed to exercise discretion judiciously or failed to take into account relevant considerations, thus committing an error of principle (see *Lucy Waitthera & 2 others v Edwin Njagi t/ a E.K Njagi & Company Advocates* [2017] eKLR)
11. This position was affirmed by the Court of Appeal in *Peter Mutboka v Ochieng & 3 others* [2019] eKLR in the following terms:

“...matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the...Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in injustice...then the decision though discretionary, may properly be interfered with...”
12. The Applicants’ assertion that there was an agreement on fees between the parties was not supported by any evidence. Further, the Court having duly considered the ruling by the Taxing Master, did not find anything to cause it to interfere with the award.
13. In the result, the application dated 8<sup>th</sup> October 2024 is disallowed with costs to the Advocate.
14. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kere for the Advocate

Mr. Moenga for the Applicants

