



**Kenya Sugar Board v Otieno (Miscellaneous Case E295 of 2024)  
[2025] KEELRC 731 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 731 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CASE E295 OF 2024**

**MN NDUMA, J  
MARCH 6, 2025**

**BETWEEN**

**KENYA SUGAR BOARD ..... APPLICANT**

**AND**

**ANDREW OLOO OTIENO ..... RESPONDENT**

**RULING**

1. The chamber summons application was brought under paragraph 4(2) of the [Advocate's Remuneration Order](#) seeking an order in the following terms:
  - a. Spent
  - b. Spent
  - c. That the decision of the Deputy Registrar dated 12/10/2017 in respect of items No. 14, 15 and 91 on the Respondent's Bill of costs dated 7/2/2024 be set aside and taxed a fresh by the court.
  - d. That in the alternative to (i) above, the court refer the Bill of Costs to be taxed a fresh by a different taxing master
  - e. That the costs of the application be granted
2. The application is premised on grounds (a) to (f) set out on the face of the chamber summons application and buttressed in the supporting affidavit of one Andrew Osodo, Director of Legal Services and Company Secretary of the Applicant the crux of which is that the taxing master wrongly awarded the Respondent Kshs. 450,000.00 as getting up fees and an additional Kshs. 800,000.00 as instruction fees to prepare for trial.
3. That the taxing master allowed the costs to rise to such a level as to amount to unjust enrichment and confine justice to the wealthy.



4. That it is absurd to award the Respondent Kshs. 800,000.00 as fees for preparation for trial under paragraph 91 of the bill of costs yet he had already awarded Kshs. 150,000.00 under paragraph 15 as getting up fees.
5. The error meant that the Respondent was awarded twice under the same heading and there was no basis for this decision.
6. That the instruction fees awarded is manifestly excessive being close to three (3) times the instruction fees prescribed by the [Advocates Remuneration Order](#).
7. That the orders sought be granted.
8. That by a letter dated 30/9/2024 the Applicant sought a certified copy of the said ruling which decision was uploaded on the platform on 1/10/2024 and this reference was filed timeously on 14/10/2024. That the total bill off costs amounts to Kshs. 1,575,218.00 against a judgment sum of Kshs. 2,607,600.00 delivered by this court.

### **Replying Affidavit**

9. The Respondent deposes that the Deputy Registrar gave a ruling in accordance with the Renumeration Order due to the voluminous documentation in preparing for prosecution of the case, time and years spent to handle the matter and that the instruction fees awarded is awarded to scale. That the taxing master awarded ksh. 800,000 as fees for preparation which is not similar to getting up fees as alleged by the applicant.

### **Determination**

10. The parties filed written submissions which the court has carefully considered. The court has in particular considered the Ruling of the court visa vis the relevant provisions of the Advocates Remuneration (Amendment) Order 2009 and 2014.
11. The Claimant presented party and party bill of costs dated 7/2/2024 and written submissions dated 7/5/2024 claiming Kshs. 7,853,722.80. The Respondent filled written submissions dated 28/3/2024 to oppose the bill.
12. The Taxing Master decided to tax the bill under Schedule VI of the [Advocates Remuneration Order 2009](#) which was applicable law at the time the claim was filed in 2012. Under Schedule VI Rule 1(b) of the said order, instruction fees on a litigated claim is determined on the basis on the value of the subject matter ascertainable from pleadings, judgment or settlement between parties. In this matter the Respondent was awarded Kshs. 2,607,600.00 which the Taxing Master rightfully determined to be the ascertained value of the subject matter for purposes of determining the instruction fees payable.
13. The Taxing Master calculated the instruction fees as follows:-
  - i. Fees for the 1<sup>st</sup> 1 million Kshs. 77,000.00
  - ii. Fees for the balance of Kshs. 1,607,600 x 1.5% = 24,114.00Total for (i) and (ii) above Kshs. 101,114.00.
14. The Taxing Master then proceeded to make other considerations including the care and labour required and time spent to peruse and sample the voluminous document in preparation for prosecution of case and submission; the nature of the case and the time taken to determine the case from 2012 to 2017 and the general conduct of the case and decided to increase instruction fees to



- Kshs. 450,000.00. Accordingly, the Master taxed off Kshs. 2,499,550.00 from the Kshs. 2,500,000.00 claimed under item 14 instruction fees and awarded Kshs. 450,000.00.
15. Under item 15 on getting up fees, the Claimant had charged Kshs. 825,000.00. The Taxing Master applying Schedule VI Rule 2 of the Advocates Remuneration Amendment Order 2014, determined that an award of not less than 1/3 of the taxed instructions fees is allowable from getting up and preparing for the case, where liability is denied and issues for trial are joined by the pleadings. The court therefore relied on the allowed instruction fees of Kshs.450,000.00 as getting up fees times 1/3 (1/3 x 450,000) and allowed Kshs. 150,000.00 thereby taxing off Kshs. 375,000.00.
  16. The court first notes that the reasoning used to increase the instruction fees from Kshs. 101,114 to Kshs. 450,000.00 comprises getting up and preparation of the case in a contested suit, which is the same criteria applicable in determining getting up fees. It was erroneous therefore to apply getting up criteria to triple the instruction fees and then apply the same criteria to award a further Kshs. 150,000.00 as getting up fees. The additional allowance of Kshs (450,000 – 101,114) of Kshs 348,886 is therefore set aside for this was done out of misdirection by the Taxing Master.
  17. It follows that the getting up fees should be calculated on the basis of Kshs. 101,114 and not Kshs. 450,000.00).
  18. The Taxing Master awarded Kshs. 800,000.00 as a fees for preparation of trial under paragraph 91 of the bill of costs yet he had already awarded Kshs. 150,000.00 under paragraph 15 as getting up fees. This award under paragraph 91 is an obvious misdirection by the Taxing Master and is set aside.
  19. Accordingly, the court reviews the allowed amounts in the Ruling of the Taxing Master as follows:-
    - i. Instruction fees Kshs. 101,114 (item 14)
    - ii. Getting up fees (1/3 x 101,114) Kshs. 33,704 (item 15)
    - iii. Item 91 of Kshs. 800,000.00 set aside.
  20. The rest of the allowed amounts are not affected by this decision.
  21. In the final analysis, the court allows the application and sets aside the amounts under items No. 14, 15 and 91 and replaces them with the following:

Item 14: Kshs. 101,114.00

Item 15: Kshs. 33,704.00

Item 91: Nil

22. Parties to bear their own costs of the application

**DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Rono for Applicant

Mr. Namude for Respondent

Mr. Kemboi – Court Assistant

