



**Mwaura & 11 others v Kenya Power & Lighting Company (Cause
2575 of 2016) [2025] KEELRC 1634 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1634 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2575 OF 2016
HS WASILWA, J
MAY 29, 2025**

BETWEEN

**RAPHAEL NJOROGE MWAURA 1ST CLAIMANT
SAMUEL MIGWI THEURI 2ND CLAIMANT
MARY WAENI WAMBUA 3RD CLAIMANT
ANNE ELIZABETH OWUOR 4TH CLAIMANT
CHARLES LWANGA OOKO 5TH CLAIMANT
CHARLES THINWA MATHENGE 6TH CLAIMANT
CLEOPHAS SIMIYU WEKESA 7TH CLAIMANT
FLORENCE K OBURA 8TH CLAIMANT
GODFREY KIGARIE GATHIGE 9TH CLAIMANT
JAMES NGUGI NJUGUNA 10TH CLAIMANT
NATHANIEL WAITHAKA WANYAGI 11TH CLAIMANT
SAMUEL NJOROGE NJOGU 12TH CLAIMANT**

AND

THE KENYA POWER & LIGHTING COMPANY RESPONDENT

RULING

1. The Applicant filed Chamber Summons dated 19th November 2024 seeking orders that: -
 1. The decision of the Taxing Officer of 14th March 2023 on the Claimant's Bill of Costs dated 19th August 2022 with respect to item numbers



2,3,5,12,13,14,15,21,22,23,24,25,26,27,28,30,32,33,37,38,39,43,44,45,47,49,53,54 and 56 be set aside.

2. The court be pleased to assess item 1 on instruction fee at 2,229,484 and item 28 on getting up fees at Kshs 743,161.33.
3. The court be pleased to assess item numbers 3,5,12,13,14,15,21,22,23,24,25,26,27,30,32,33,37,38,39,43,44,45,47,49,53,54 and 56 with respect to the Claimant's Bill of Costs dated 19th August 2022 at the scale provided in the Advocates (Remuneration)(Amendment) Order, 2014.
4. In the alternative to prayer numbers 2 and 3 above, the court be pleased to remit the Claimant's Bill of Costs dated 19th August 2022 back to a different Taxing Officer for re-taxation of item numbers 2,3,5,12,13,14,15,21,22,23,24,25,26,27,28,30,32,33,37,38,39,43,44,45,47,49,53,54 and 56
5. the costs of this application be provided for.

Respondent/Applicant's Case

2. The Respondent/ Applicant avers that on 14th March 2023, the Deputy Registrar delivered her ruling on the Claimant's party and party Bill of Costs dated 19th August 2022. Subsequently, they wrote a letter dated 15th March 2023 seeking reasons for the decision on various items they were objecting.
3. The Respondent/ Applicant avers that they received the ruling of the taxing master on 17th March 2023 from the claimant's advocates and filed a reference application dated 30th March 2023. The reference application was struck out on 9th February 2024 on grounds that the Respondent filed the same without receiving reasons for the ruling dated 14th March 2023 from the taxing master.
4. The Respondent/ Applicant avers on 6th November 2024, they filed the letter dated 5th November 2024 asking for reasons for the decision. The Deputy Registrar endorsed and signed the letter on 7th November 2024 and indicated that the ruling of 14th March 2023 be typed and availed since it had the reasons for taxation alongside the taxed amounts.
5. The Respondent/Applicant avers that paragraph 1(b) of the Schedule 6 of the Advocates (Remuneration)(Amendment) Order, 2014 provides for the instruction fee where the value of the subject matter can be determined from pleadings, judgment or settlement.
6. It is the Respondent/Applicant case that the value of the subject matter can be determined from the judgment sum of Kshs 135,298,934.11, therefore, the Taxing Officer erred in assessing the instruction fee at Kshs 9,000,000 and getting up fees of Kshs 3,000,000. Under paragraph 1(b) of the Schedule 6 of the Advocates (Remuneration)(Amendment) Order, 2014 the instruction fee based on the value of Kshs 135,298,934.11 is Kshs 2,229,484 and would make the getting up fees at Kshs 743,161.33.
7. The Respondent/ Applicant avers that Kshs. 9,000,000 assessed by as instruction fees and Kshs. 3,000,000 assessed as getting up fees the Taxing Officer are unreasonable in the circumstance.
8. The Respondent/ Applicant avers that the Taxing Officer failed to give any reasons for the determination of item numbers 2,3,5,12,13,14,15,21,22,23,24,25,26,27,28,30,32,33,37,38,39,43,44,45,47,49,53,54 and 56 of the Claimant's Bill of Costs dated 19th August 2022 despite its objections in the submissions dated 5th December 2022.



9. It is the Respondent/Applicant's case that the it is fair and just that the assessment of the Taxing Officer on the objected item numbers be at the scale fee provided in Advocates (Remuneration)(Amendment) Order, 2014 or the Claimant's Bill of Cost dated 19th August 2022 be remitted back to different Taxing Officer for re-taxation.

Claimants/Respondents' Case

10. In response to the Chamber Summons, the Claimants/Respondents filed Grounds of Opposition dated 3rd December 2024 on the following grounds:
 1. The application is misplaced and unmerited.
 2. The application is belated as the matter is already concluded and the taxed costs have already been paid and disbursed.
 3. There is no error on the face of the record as alleged by the Applicant.
 4. This application is yet another attempt to frustrate and humiliate the Respondents.
 5. This application does not lie as there are no facts disclosed to warrant review of the ruling made.
 6. The application is bad in law and mischievous.

Respondent/Applicant's Submissions

11. The Respondent/ Applicant submitted the Claimant's argument that the application herein is moot as it was concluded and the taxed cost have already been paid and disbursed is untenable. They argue that they only paid the taxed costs in order to comply with the order of 22nd October 2024 and there is no authority to support the Claimant's assertion that once taxed costs are paid a reference cannot be pursued.
12. It is the Respondent/Applicant's submission that they are challenging the decision assessing the Claimant's cost at Kshs. 12,091,290; that this is still a matter in controversy and in the event the reference is successful, the Respondent will pursue the Claimants for any overpayment made.
13. The Respondent/Applicant submitted that in response to its reference application herein, the Claimant's only filed grounds of opposition, therefore, the facts in Justus Ododa's supporting affidavit are uncontroverted and accepted by all parties.
14. The Respondent/Applicant relied on the Supreme Court decision in Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR) that went in depth into the discretion in taxation of instruction fees under the Advocates Remuneration Order.
15. The Respondent/Applicant submitted by increasing the instruction fees from Kshs. 2,229,484 to Kshs 9,000,000 the Taxing Officer held that: "Even when exercising jurisdiction to increase, the taxing master has to bear in mind the care and labour necessary, the length of papers perused, the nature and importance of the subject matter to parties and other circumstances that may be deemed fair and reasonable. Justice Ojwang argued that taxation of instruction fees should seek no more and no less than reasonable compensation for work done while avoiding any prospect of unjust enrichment."
16. It is the Respondent/Applicant submission that the Taxing Officer did not specifically set out the care and labour necessary, the length of papers perused, the nature and importance of the subject matter to parties and the fair and reasonable circumstances in the proceedings to justify the increase of the basic instruction fees from Kshs. 2,229,484 to Kshs 9,000,000 which is an astronomical increase.



17. The Respondent/Applicant submitted that the responsibility entrusted on the Claimant's counsel was ordinary and called for no more than normal diligence expected of a professional and was nothing novel to justify the increase of the basic instruction fees. Despite being 13 claimants, the record shows that only the 1st, 2nd and 3rd claimants testified at the hearing indicating that they had authority to give evidence on behalf of the 4th to 13th claimants, therefore, it cannot be argued that this case require any extraordinary care and labour on the part of the Claimant's advocates.
18. The Respondent/Applicant submitted that the Taxing Officer erred in principle by increasing the basic instruction fees which was excessive, exorbitant and unjustified.
19. The Respondent/Applicant submitted that the Taxing Officer failed to give any reasons for allowing items 3,5,12,13,14,15,21,22,23,24,25,26,27,28,30,32,33,37,38,39,43,44,45,47,49,53,54 and 56 of the Claimant's Bill of Costs dated 19th August 2022 despite the Respondent's objections in its submissions dated 5th December 2022.
20. In respect to items 3,5,15 and 22, the Respondent/Applicant submitted that Schedule 6 Paragraph 4 (a) of the ARP provides for the amount chargeable for drawing pleadings, application and affidavit amongst others. For a document containing four folios or less, the amount chargeable is Kshs. 1,100 and for documents containing more than four folios, for each additional folio, the amount chargeable is Kshs. 150.
21. It is the Respondent/Applicant submission that the Claimant indicated that the statement of Claim contains 40 folios whereas it contains only 10 folios. The amount chargeable for this item is Kshs. 2,000 and the Respondent submits that an amount of Kshs. 3,420 should be taxed off from item 3.
22. The verifying affidavit contains 10 folios whereas the verifying affidavit contains 3 folios. Therefore, the amount chargeable for drawing the verifying affidavit is Kshs. 1,100 and the Respondent submitted that an amount of Kshs. 150 should be taxed off from item 5.
23. The Respondent submitted that the Claimants indicated that their reply to the statement of response contains 120 folios whereas it contains only 2 folios. The amount chargeable for drawing the reply is Kshs. 1,100 and an amount of Kshs. 4,550 should be taxed off from item 15.
24. It is the Respondent's submission that Kshs. 1,950 should be taxed off from item 33 as the Claimants charged Kshs. 3,500 for drawing the notice of motion dated 8th June 2020 together with its supporting affidavit. However, the application together with the supporting affidavit contains 7 folios and the amount chargeable for drawing the same is Kshs. 1,550.
25. For drawing submissions, Schedule 6 Paragraph 4 (d) of the ARP provides for Kshs. 180 per folio for drawing any other documents. The Claimants charged Kshs. 5,450 for drawing the submissions dated 21st September 2020, however, the submission contained 7 folios and the amount chargeable was Kshs. 1,260 and the amount of Kshs. 4,190 should be taxed off from item 39.
26. The Claimant charged Kshs. 10,640 for drawing their submission dated 5th October 2021 whereas it contained 10 folios which should be chargeable at Kshs. 1,800. The Respondent submitted that the amount of Kshs. 8,840 should be taxed off item 49.
27. For perusals under items 12,13,37 and 45, the Respondent submitted that Schedule 6 Paragraph 8 of the ARO provides for Kshs. 50 per folio for perusal of any document. For item 12, the memorandum of appearance has 2 folios and the amount chargeable should be Kshs. 100 and Kshs. 400 should be taxed off from item 12. The statement of response had 4 folios; the amount chargeable is Kshs. 200 and the Respondent submitted that Kshs. 1,050 should be taxed off from item 13. The grounds of



opposition dated 21st June 2022 are 3 folios and the replying affidavit sworn on 21st June 2022 is 18 folios and the amount chargeable for perusal is Kshs.1,050 and Kshs. 150 should be taxed off item 37. For perusal of the Respondent's submission dated 30th September 2020 contains 10 folios hence the amount chargeable is Kshs. 500 and Kshs. 700 should be taxed off item 45.

28. The Respondent submitted that there was no court attendance on 23rd February 2017, 13th May 2017, 17th May 2018 and 5th November 2021 and items 14, 21, 26 and 53 on court attendances should be taxed off completely from the Claimant's bill of costs.
29. The Respondent submitted that the Claimant did not file any agreed issues and items 22,23,24 and 25 should be taxed off from the Claimant's bill of costs.
30. The Respondent submitted that Kshs. 1500 should be taxed off item 27 as the Claimants charged Kshs. 2,500 for court attendance for pre-trial directions on 28th May 2017 whereas Schedule 6 Paragraph 7 (a) of the ARO provides for Kshs. 1,000 for any necessary attendances on the registrar or deputy registrar.
31. The Respondent submitted that Kshs. 1400 should be taxed off from item 30,43,44,47,54 and 56 as the Claimants charged Kshs. 2500 for court attendance on diverse dates between 2018 to 2021. Schedule 6 paragraph 7(d) of the ARP provides for Kshs. 1,100 for attendance before a judge that lasts for half an hour or less.

Claimants/Respondents' Submissions

32. The Claimants/Respondents submitted that they obtained a ruling in their favour on 30th April 2021 for a total sum of Kshs. 135,298,934.11. subsequently, they filed their Party & Party Bill of Costs which was taxed on 14th March 2023 in the sum of Kshs. 12,091,290 which monies has since been paid to the Claimants/Respondents' on 5th November 2024.
33. The Claimants/Respondents submitted that the Applicant attempted to challenge the taxed amount vide an application dated 30th March 2023 which was struck out vide a ruling dated 9th February 2024 on the grounds set out in therein.
34. The Claimants/Respondents submitted that despite paying the taxed mount, the Applicant files an application dated 26th June 2024 seeking stay of the payment which was dismissed on 22nd October 2024. The Applicant has again filed the application herein which according to the Claimants/ Respondents is an abuse of the court process and moot as the taxed cost have already been paid and disbursed.
35. It is the Claimants/Respondents submission that there is no matter in controversy as the issue of costs had been settled by the court and paid. Therefore, the Applicant's failure to file a reference when it ought to have done so is not to be blamed on the Claimants as litigation must come to an end.
36. The Claimants/Respondents submitted that the arguments advanced by the Applicant in their submissions in respect on the objected items are misplaced and of no consequence to the status of the mater now. They further submitted that as to what the Taxing Master did or failed to do is of no consequence as the matter is finalised and rested.
37. The Claimants/Respondents submitted that the specific items in the Bill of Costs from paragraph 34 to 80 are belated and even they formed part of the Respondent's submissions on the filed Bill of Costs that were considered by the Taxing Master when he delivered his ruling and overruled the same.



38. I have examined all the averments and submissions of the parties herein. From the proceedings herein, the Respondents herein challenged the taxation herein vide an application dated 30th March 2023. Vide this court's ruling of 9.2.2024 (Mwaure, J), the reference was struck off.
39. Vide another application dated 13/5/2024, the applicant sought for an order for the release of the taxed amount which had been deposited in a joint interest earning account and vide a ruling of this court (Mwaure, J), on 22/10/2024, the court directed release of the said money to the Claimant Applicant.
40. On the other hand, an application filed by the Respondents for stay was denied by the same court. The court in its ruling found the failure on the part of the Respondent to file a reference following court's ruling on 9/2/2024 was inordinate and therefore unreasonable and probably an afterthought.
41. The issue now being litigated upon the Applicant's in filing a fresh reference is a matter already determined by this court in its ruling of 22/10/2024 where Hon. Judge Mwaure found the delay in filing a reference inordinate and dismissed the Respondent's application.
42. It is therefore my finding that the issue of the reference to this court has already been litigated upon and the court determining it vide the ruling of 22/10/2024 and so is res judicata and is therefore dismissed accordingly. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH OF MAY, 2025.

HELLEN WASILWA

JUDGE

