



**Ochola v Divine Homes Resort Ltd (Miscellaneous Application
E003 of 2025) [2025] KEELRC 1510 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1510 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E003 OF 2025
NZIOKI WA MAKAU, J
MAY 26, 2025**

BETWEEN

OSCAR MODOCH OCHOLA APPLICANT

AND

DIVINE HOMES RESORT LTD RESPONDENT

RULING

1. By way of chamber summons dated 24th January 2025 the Applicant seeks orders to set aside or vary the Taxing Master's awards in respect of items 1, 2, 3 and 4 of the Party and Party Bill of Costs dated 13th September 2024. The Applicant also seeks an order restraining the issuance of a certificate of costs or, if already issued, for it to be expunged from the record. Additionally, he prays for a re-taxation of the bill before a different taxing master, as well as costs of this application.
2. The chamber summons is supported by the Applicant's sworn supporting affidavit in which he avers that the taxing master disregarded Schedule 6, paragraph 1(b) of the Advocates Remuneration Order thereby dismissing his submissions that items 1, 2, 3 and 4 were not drawn to scale. He further contends that the taxing master relied on outdated and irrelevant precedents, particularly in assessing instruction fees, which led to awards that were exaggerated, excessive, and extortionate.
3. In response, the Respondent filed a replying affidavit dated 5th February 2025, sworn by Mr. Gabriel Wasonga Jabongo, the Respondent's director. He deposed that the taxing master exercised her discretion judiciously and arrived at reasonable figures. It contended that the Applicant had failed to demonstrate any exceptional error that would justify interference with the taxing master's discretion. Regarding instruction fees, the Respondent maintained that the taxing master correctly assessed the same based on the value of the subject matter, which stood at Kshs. 2,870,000/- as stated in the monetary claim in the Amended Memorandum of Claim. The Respondent further contended that the Chamber Summons was filed out of time without leave of court and ought to be dismissed.



4. The chamber summons was canvassed by way of written submissions.

Applicant's Submissions.

5. On the issue of timeliness, the Applicant submitted that the Chamber Summons was filed within the time limits prescribed under Paragraph 11(1) and (2) of the Advocates Remuneration Order. He asserted that he notified the taxing master of his objections within six days of the ruling and filed the Chamber Summons within eleven days of receiving the reasons. He further submitted that the period between 21st December 2024 and 13th January 2025 should be excluded from the computation of time, pursuant to Order 50 Rule 4 of the Civil Procedure Rules.
6. In respect of instruction fees the Applicant submitted that the award of Kshs. 750,000/- was excessive and exaggerated if not downright absurd. He asserted that the award contravened the principle of fair reimbursement that dictates that costs should remain reasonable so as not to limit access to justice to the wealthy. In support he cited the case of KANU National Elections Board & 2 others v Salah Yakub Farah [2018] eKLR. The Applicant further submitted that in the circumstances of this case, where the instruction fees was not ascertainable from the pleadings or the judgment, the Taxing Master should have taken into account among others; the nature of and importance of the matter, interest of the parties, general conduct of the proceedings and any relevant circumstances, as was enunciated in the case of Joreth Limited v Kigano & Associates [2020] eKLR. Moreover, he maintained that the suit was a fairly straight forward, employment matter with no novel legal issues, and therefore did not justify the award of high instruction fees. He relied on the case of Republic v Minister of Agriculture & 2 others Ex parte Samuel Muchiri Njuguna & others [2006] eKLR, which emphasized the need for complexity and substantial legal effort to be clearly demonstrated in order to warrant substantial fees.

Respondent's Submissions

7. The Respondent maintained that the Taxing Master's decision was sound and should not be disturbed. It asserted that the Applicant had failed to establish any exceptional circumstances, legal errors, or misdirection that would justify interference by the court. It relied on Peter Muthoka & another v Ochieng & 3 others [2019] KECA 597 (KLR), which held that the High Court should be slow to interfere with the taxing master's discretion on quantum, as that is her domain of expertise. The Respondent also pointed out that it was illogical to claim that instruction fees was Kshs. 750,000/= when the entire bill was taxed at Kshs. 510,000/-.
8. In response to the Applicant's claim that outdated authorities were relied upon, the Respondent asserted that the taxing master correctly applied the Advocates Remuneration Order, 2014, which was the applicable order at the time. He placed reliance on the case of Republic v Egerton University Ex parte Maulik Prasun [2020] eKLR. Additionally, the Respondent reaffirmed that the magistrate adhered to the principle of costs not being so high that they confine justice to the wealthy, as recognized in Premchand Raichand v Quarry Services of East Africa Ltd & others [1972] EA 163. On the issue of getting-up fees, the Respondent submitted that the award of one-third of the instruction fees was appropriate, as the matter had proceeded to hearing. In conclusion, the Respondent urged the Court to dismiss the chamber summons with costs for being frivolous, vexatious and an abuse of the court process.

Disposition

9. The Court is alive to the dicta that in matters of a reference on taxation, there should be no interference except on sound principles. Put another way, the Court will not interfere with the decision of the Taxing Master unless the decision is based on an error of principle or is manifestly excessive. Clearly,



this Court would defer on matters relating to the sums awarded as quantum. In taxation, such issues belong in the purview and province of a taxing master. A Court such as this one would be slow to interfere with the discretion of the Taxing Master which discretion ought to be exercised judiciously and not whimsically or capriciously.

10. In the case of KANU National Elections Board & 2 others v Salah Yakub Farah (supra) the Court held that:

“The discretion vested in the Taxing Master is to allow costs, charges and expenses as appear to him to have been necessary and proper; not those which may objectively attain such qualities, and that such opinion must relate to all costs reasonably incurred by the litigant, which also imports a value judgement as to what is reasonable. The discretion to decide what costs have been necessarily and properly incurred is given to the Taxing Master and not to the Court. This discretion must be exercised judicially, in the sense that the Taxing Master must act reasonably, justly and on the basis of sound principles with due regard to the circumstances of the case.” [Emphasis mine]

11. In the reference before me, other than suggesting that the matter subject of the taxation was not complex as it was an employment matter, there is no sound challenge to the taxation. Just because it is an employment matter it does not detract from the complexities attendant in a legal brief. In fact, because it is in a specialised area of the law and not mere civil suits as those before some other courts, it would be appropriate to issue costs in the range as was issued. The expenses allowed by the Taxing Master are reasonable and were within the discretion permitted as held in the case cited by the Applicant being the case of KANU National Elections Board & 2 others v Salah Yakub Farah (supra). The long and short of the foregoing is that the Applicant has failed to establish any exceptional circumstances, legal errors, or misdirection that would justify interference with the taxation. Having come to that determination, this Court will not delve into any other challenges to the competence of the reference as that would be a mere academic exercise. Reference contained in the chamber summons is dismissed with costs to the Respondent.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 26TH DAY OF MAY 2025.

NZIOKI WA MAKAU, MCIArb.

JUDGE

