



**Obiero t/a C Obiero & Associates Advocates v County Government of Kisumu & another
(Miscellaneous Application E042 of 2024) [2025] KEELRC 1394 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1394 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E042 OF 2024**

**JK GAKERI, J
MAY 14, 2025**

BETWEEN

**CLIFFORD OTIENO OBIERO T/A C OBIERO & ASSOCIATES
ADVOCATES APPLICANT**

AND

**COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT
COUNTY GOVERNMENT OF KISUMU 2ND RESPONDENT**

RULING

1. Before the Court for determination is the Applicant’s Chamber Summons dated 13th March, 2025 seeking Orders that: -
 1. The certificate of costs and Ruling delivered by the Taxing Master on 20th September, 2024 regarding the Advocate – Client Bill of costs be set aside.
 2. The Advocate – Client Bill of costs be taxed a fresh before a different Deputy Registrar.
 3. Costs of this application be in the cause.
2. The application is expressed under Order 45 Rule 1, Order 49 Rule 7(3) of the Civil Procedure Rules and Section 11 and 51 of the *Advocates Act* and is based on the grounds set out on its face and the Supporting Affidavit sworn by Applicant on 13th March, 2025.
3. The applicant contends that the Taxing Master erred by failing to consider the substantial value of the claim, Kshs.396,247,822.00 when assessing the instruction fees.
4. It is the applicant’s case that although the case started of as a Constitutional Petition, it changed course and viva voce evidence was necessary with attendant preparations and documentation which required authentication and filing of bundle of documents



5. That the award by the Taxing Master was insufficient on account of complexity and value involved and the Taxing Master did not provide reasons, a formal request notwithstanding.
6. The applicant deposes that he had provided sufficient reasons for setting aside of the certificate of costs and Ruling of the Taxing Master.

Respondent' Response

7. By 7th May, 2025 when the court prepared this Ruling, the respondent had neither filed a response nor submissions having been granted 2 days on 29th April, 2025.
8. The applicant's Chamber Summons is thus unopposed.

Applicant's submissions

9. As to whether the Taxing Master erred in principle, the applicant relied on the sentiments of the court in *Joreth Ltd V Kigano & Associates* [2002] IEA 92 and *Republic V Minister for Agriculture and 2 Others ex parte Samuel Muchiri W'Njuguna & 6 others* [2006] eKLR, to submit that Taxing Master is required to ascertain the value of the subject matter, nature of the case and the interest at stake among other factors in determining the instruction fee.
10. Reliance was also placed on the decision in *First American Bank of Kenya V Shah & Others* [2002] IEA 64.
11. The applicant maintained that the sum of Kshs.900,000 was awarded by the Taxing Master yet the claim was valued at Kshs.396,247,822.00, and without due consideration of the complexity and energy expended.
12. As to whether sufficient cause had been established to warrant the setting aside of the certificate of costs and Ruling of the Taxing Master, the applicant cited the decision in *SMB Bank Kenya Ltd V Osamba Otieno & Co. Advocates* [2024] KEELRC 13510 (KLR), to urge that failure by the Taxing Master to consider value of the subject matter, complexity of the case and the tasks undertaken constituted an error of principle which justifies the court's intervention.
13. Finally, as to whether the fact that the application is unopposed entitles the applicant to the Orders sought, the applicant cited the decision in *Namai V National Bank of Kenya Ltd* [2024] KEELRC 2528 (KLR) the urge that the court may grant the reliefs if a proper legal basis had been established.

Analysis and determination

14. It requires no emphasis that the principles that govern the challenge of Bill of Costs are well settled and it is by way of reference in accordance with the provisions of the Advocates Remuneration Order as held in *Donholm Rahisi Stores (firm) V E. A Portland Cement Ltd* [2005] eKLR where Waweru J stated as follows:

"Taxation of costs whether those costs be between party and party or between advocate and client is a special jurisdiction reserved to the Taxing Officer by the Advocates Remuneration Order. The court will not be drawn into the arena of taxation except by way of reference from decision on taxation made under Rule 11 of the Advocates Remuneration Order".

15. Ringera J. expressed similar sentiments in *Machira & Co. Advocates V Magugu* [2002] 2EA 248.

Under Rule 11 of the Advocates Remuneration Order



- (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection
16. In the instant case, the applicant deposes that vide letter dated 23rd March, 2024, he sought reasons for the taxation as per the Ruling of the Taxing Master dated 20th September, 2024 and no reasons were given, which precipitated the instant Chamber Summons Application.
 17. However, it is trite that the Taxing Officer is not obligated to give reasons if they are embodied in the Ruling itself. See *Ahmed Nasir V National Bank of Kenya* [2006] EA and *Bernard Gichohi Njira V Kanini Njira Kathendu & another* [2015] eKLR.
 18. The principles that govern interference with the decision of a Taxing Master are well settled.
 19. In *Republic V Ministry of Agriculture and 2 Others ex parte Muchiri W’Njuguna* (supra), 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 of 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 factors...

Taxation of costs is not a mathematics exercise, it is entirely a matter of opinion based on experience.

A court will not therefore interfere with the award of a taxing officers 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 low as to amount to an injustice to one party or the other”.
 20. Similar sentiments were expressed in *Kipkorir Tito & Kiara Advocates V Deposit Protection Fund Board* [2005] eKLR, *First American Bank of Kenya V Shah & Others* (supra) as well as *Joreth Ltd V Kigano & Associates* (supra).
 21. Based on the Supporting Affidavit and the grounds set forth on the face of the Chamber Summons the applicant is only contesting the award of Kshs.900,000 by the Taxing Master on the ground that certain parameters were not taken into consideration.
 22. 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 loosing a brief and complexity of the dispute.



In assessing an amount commensurate to the work undertaken, it is of fundamental importance to consider the value of the subject matter”

23. Similarly, in Republic V Ministry of Agriculture and 2 Others ex parte Muchiri W’Njuguna (supra), the court stated:

... 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...”

24. From the foregoing it is clear that the formula in Schedule 6 of the Advocates Remuneration Order must be adhered to as a basis for determining the basic instruction fee and other items.

25. In her Ruling delivered and dated on 20th September, 2024, the taxing master awarded Kshs.900,000.00 after having noted the importance of the matter which had 145 Petitioners and the pleadings were voluminous.

26. Clearly, the learned taxing officer does not appear to have noted or considered the enormous value of subject matter, Kshs.396,247,822.00.

27. As held by the Court of Appeal in Joreth Ltd V Kigano & Associates Ltd (supra) cited by the applicant

The value of the subject matter of a suit for purpose of taxation of a Bill of costs ought to be determined from the pleadings, Judgment or settlement but where this is not possible, the taxing officer is entitled to use his discretion to assess such instruction fee as he or she considers just having regard to all the circumstances of the case”.

28. In the instant case the value of the subject matter was easily ascertainable.

29. The respondent’s interest in the matter and complexity of the case do not appear to have been considered.

30. Flowing from the foregoing it is discernible that the court is satisfied that the taxing master’s failure to consider or note the value of subject matter as a major determinant in the assessment of instruction fees coupled with the complexity and the preparations involved, over and above the voluminous pleadings, as noted, amounted to an error of principle and justifies the court’s interference with the assessment of the Bill of costs dated 25th April, 2024 at Kshs.2,110,370.00.

31. The upshot of the foregoing is that: -

- a. the Applicant’s Chamber Summons dated 13th March, 2025 is merited; and
- b. the ruling by the Taxing Officer dated 20th September, 2024 be and is hereby set aside as regards the award on instruction fee;
- c. the Bill of costs dated 25th April, 2024 be and hereby remitted for assessment by a different Taxing Officer.

32. In the circumstances parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 14TH DAY OF MAY, 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

