



**Kihara v Kenya Revenue Authority & 2 others (Petition
E205 of 2021) [2025] KEELRC 1381 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1381 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E205 OF 2021
NJ ABUODHA, J
MAY 9, 2025**

BETWEEN

JULIUS KAIYA KIHARA PETITIONER

AND

KENYA REVENUE AUTHORITY 1ST RESPONDENT

WILSON GACONI 2ND RESPONDENT

DR. DAVID WACHIRA KINUU 3RD RESPONDENT

RULING

1. The Respondents/Applicants filed application through the chamber summons dated 29th February, 2024 brought under paragraph 11(2) of the Advocates (Remuneration) order, 2014 under the [Advocates Act](#), chapter 16 of the laws of Kenya seeking for Orders that: -
 - a. The decision of the Taxing Officer, Hon. S.O Mbeja in the ruling dated and delivered on 16th February 2024 with respect to items No.2,7,14,15,23,28,30,33,34,35,36,40,41,42,43,44,45,46,47,48,49,50 and 51 in the bill of costs dated 7th March 2023 be set aside and taxed afresh by this court.
 - b. The Petitioner's Bill of Cost dated 7th March 2023 be taxed at Kshs. 278, 937.41 or at an amount that is reasonable and fair quantum and in accordance with the provisions of the Advocates Remuneration Order.
 - c. In the alternative the court be pleased to order that the Respondent's bill of costs with respect to items No. 2,7,14,15,23,28,30,33,34,35,36,40,41,42,43,44,45,46,47,48,49,50 and 51 be taxed afresh by another taxing master.
 - d. There be a stay of enforcement of the ruling of the Honourable taxing master pending the hearing and determination of this reference.



2. The application was supported by the grounds on the face of the application and the Affidavit of Leparan Lemiso, Advocate practising within the Legal Services and Board Coordination Department of the 1st Respondent.
3. Counsel averred that vide a Judgment delivered on 29th July 2022 the Petitioner was awarded costs. That the Petitioner filed Bill of Costs dated 7th March, 2023 taxed at Kshs 1,977,817.00. That the taxing master delivered a ruling on the Bill of Cost on 16th February 2024 allowing the bill at Kshs. 1,988,792.00 which was higher than what was taxed by the Petitioner. That the taxing master failed to give specific reasons to each and every item in the Bill of costs.
4. Counsel averred that in the ruling the taxing master failed to give reasons for allowing the Bill at an amount higher than what was taxed by the Petitioner. That the Taxing officer failed to take into account relevant factors and well settled principles of law in considering the quantum pertaining to several items in Bill of Costs.
5. Counsel averred that in its ruling the taxing master allowed amounts that are contrary to the express provisions of the Advocates Remuneration Order.
6. Counsel averred on the items in the Bill of Costs that were manifestly excessive and contrary to the provisions of the Advocates Remuneration Order and thus should be reduced including item 2, 7, 28, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 in the Bill of Costs in brief:-
 - a. No. 2 on instructions fees using the subject matter of Kshs 3,870,462.87 which was net salary as per judgment the instructions fees ought to be Kshs 177,409.24 and the amount of Kshs 1,322,591 should be taxed off. If the court was to go by gross salary of Kshs 5,720,000 as the subject matter the instructions fees should be Kshs 214,000 hence Kshs 1,286,000 should be taxed off..
 - b. No. 7 on filing of documents at the court registry that the same was not provided for under remuneration order and Kshs 1,000 should be taxed off.
 - c. No. 14,15,23,30,33 and 34 on court attendances before the judge that the items should be allowed at ordinary scale of Kshs 1,100 for every attendance and not Kshs 3,500 as was proposed by the Petitioner. That Kshs Kshs 6,600 should be allowed under the items and Kshs 13,400 be taxed off.
 - d. No 28 on Getting up fees that it should be a third of instruction fees such that if the instructions fees is allowed at Kshs 177,409.24 the getting up fees should be Kshs 59,136.41 and not at Kshs 400,000 as proposed by the Petitioner hence Kshs 340,863.59 should be taxed off.
 - e. No 35 and 36 contains events post judgment and no costs should be allowed. That Kshs 9,650 should be taxed off.
 - f. No. 40, 41,42,43,44,45,46,47,48,49,50 and 51 on disbursement that for the same to be allowed they should be evidenced by way of receipts. That no receipts were attached by the Petitioner's in the bill hence Kshs 11,375 should be taxed off.
7. Counsel averred that in summary the Bill of Costs dated 7th March 2023 taxed at Kshs 1,977,7817 ought to be reduced to Kshs 278,937.41 by taxing off an amount of Kshs 1,698,879.59 and not increasing it to an amount of Kshs 1,988,792 which was erroneously done by the taxing master. That the application had been filed at the earliest opportunity and without delay.



8. In reply the Petitioner/Respondent filed its Replying Affidavit sworn on 24th May 2024 by Judith A. Guserwa, Advocate on record for the Petitioner. Counsel averred that the issue of Party and Party Costs was not agreed upon hence the filing of the Party and Party Bill of Costs relating thereto.
9. Counsel averred that the Taxing Officer taxed the Party and Party Bill of Costs on the 16th of February, 2024 allowing the sum of Kshs 1, 988,792/= against the sum of Kshs 1,977,817/= as set out in the bill having successfully prosecuted the Claim that resulted in a favorable judgment for the Petitioner who was reinstated without loss of any benefits accruing in arrears in the sum of Kshs 5,720,000/=.
10. Counsel averred that whereas the Applicant reserves the right to challenge the ruling on the taxation there is no basis or justification for seeking a stay of the execution of the taxation without offering security nor justification for such an action for the costs due.
11. Counsel averred that it is not true that the Applicant will suffer any loss if execution is effected as her firm is financially able and capable of repaying the sum issued in the event of any reversal.
12. The Application was dispensed of by written submissions.

Respondents/applicants' Submissions

13. The Respondents/Applicants' Advocate Leparan Lemiso filed written submissions dated 3rd January 2025. Counsel submitted that the Petitioner was an employee of the 1st Respondent until 16th July 2021 when he was terminated; he challenged his termination and Judgment given in his favour. That the Respondent complied with the Judgment of the High Court and reinstated the Petitioner and paid him all the salaries and benefits for the period the Petitioner had been terminated.
14. On the issue of whether the taxing master erred in allowing the bill at an amount higher than the amount taxed by the Petitioner, counsel submitted that the general principle in taxation is that the bill should not be taxed at an amount that is unreasonable or disproportionately higher than what the party has proposed. Counsel relied in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai* [2013] eKLR and submitted on effect of exceeding the proposed sum.
15. On the issue of whether the taxing master erred in failing to give specific reasons to each and every item allowed in the bill, counsel submitted that it was well established principle of law that the taxing master was required to provide reasons for the decision made in the taxation of costs. That failure to do so renders the taxation process invalid and open to review. Counsel relied on the case of *Francis Nyandemo v Josephine Mukwati & Another* (2014) eKLR on this assertion.
16. On the issue of whether the taxing master failed to take into account relevant factors and well settled principles of law in considering the quantum pertaining to several items in the Bill of Costs, counsel submitted that costs should be taxed with the principle of proportionality. That the taxed amounts should be proportional to the nature and scope of the matter as well as the financial capacity of the parties involved.
17. Counsel submitted that the taxing master is obligated to apply settled principles of law in the taxation of costs. That the principles include but are not limited to ensuring that costs taxed are reasonable, proportionate to the value of the case and in accordance with established tariffs. That the taxing master failed to apply these principles in this case resulting in an unjust and excessive taxation.
18. Counsel submitted that the exorbitant taxation of costs in the current case has resulted in a bill that is significantly higher than what is considered reasonable under the applicable guidelines which undermines fundamental right to access to justice and as such must be reviewed and reduced. That the Taxing Mater's assessment appears to have disregarded the guidelines set out in the Advocates



(Remuneration) Order which provide a structured approach to the taxation of legal fees. That the order aims to avoid over-taxation and ensure that fees reflect the actual complexity of the work involved. Counsel outlined the exorbitant fees as per the supporting affidavit.

Respondent's Submissions

19. The Respondent's Advocates M/S. J.A. Guserwa & Co. Advocates filed written submissions dated 2nd December 2024. On the issue of whether the Petitioner's/ Respondent's Bill of Costs should be taxed afresh, counsel submitted that the Honourable Deputy Registrar exercised his discretion in proceeding to tax the Bill of Costs as drawn since the Respondent / Applicant neither opposed the same nor appeared before court on the day of taxation without any justifiable reason whatsoever. That the application was made in bad faith and it should be dismissed for lacking any legal basis to tax the bill afresh.
20. On the issue of whether the Respondent / Applicant will suffer any loss if execution is effected, counsel submitted that whereas the Applicant reserves the right to challenge the ruling on the taxation, it does not have any justification for seeking a stay of execution of the taxation without offering security or justification for such an action for the costs due.

Determination

21. The court has considered the reference application, the replying affidavit by the Petitioner and submissions filed by the parties herein and observes that the law governing the taxation of costs is contained in the Advocates (Remuneration) Order made pursuant to the provisions of the Advocates Act, Chapter 16 of the Laws of Kenya. There are principles which a taxing officer is enjoined to follow while Taxing Bills of Costs.
22. In the case of Kamunyori & Co. Advocates –vs- Development Bank Of Kenya Limited [2015] eKLR the Court observed as follows concerning principles that guide taxation:

“There are principles which a taxing officer is enjoined to follow while taxing Bills of Costs. It is axiomatic that an advocate is entitled to claim instructions fee. Where an advocate is instructed by a client to sue or defend a suit, providing the advocate does the work, he is entitled to charge for the work he has done. In determining the instructions fee in an advocate/client Bill of Costs, the relevant provision in the Advocates Remuneration Order is Schedule VI B. It shows that the instructions fee is calculated on the basis of the value of the subject matter in the suit where it can be determined from the pleadings or the judgment or where parties have entered into a settlement.”[own emphasis]
23. The Applicant contends that the Taxing master erred in failing to give specific reasons to each and every item allowed in the Bill of Costs and reasons for allowing the Bill of costs at an amount higher than what was taxed by the Petitioner. The Applicant submitted that the Bill of cost dated 7th March 2023 and taxed at Kshs 1,977,781.7 ought to have been reduced to Kshs 278,937.41 by taxing off an amount of Kshs 1,698,879.59 and not increasing it to an amount of Kshs 1,988,792 which was erroneously done by the taxing master.
24. This court notes that the Bill of Costs dated 7th March 2023 was taxed by the Petitioner at Kshs 1,988,792/= and not as alleged by the Applicant and the taxing master allowed it as taxed. It is not true that the Taxing Master increased the amount upon taxation.
25. It is a settled practice that a Judge will normally remit the matter to the Taxing Officer for reconsideration where there is an error of principle. *Spry, Ag. P.* held in *Nanyuki Esso Service v. Touring*



- Cars Ltd [1972] EA 500 that an error of principle can be inferred where an award is manifestly excessive unless, in the opinion of the Judge, it has not materially affected the assessment.
26. The court notes the items in the Bill of costs that the Applicant contends to be manifestly excessive and the taxing officer did not give reasons for each item apart from stating that the bill was taxed to scale. The court also notes that it is the Applicant's case that the instruction fee as taxed was stemming from the principle that the value of the case was the gross salary owed of Kshs. 5,720,000 instead of the net salary of Kshs 3, 870,462.
27. In *Kamunyori & Company Advocates v Development Bank of Kenya Limited* [2015] KECA 595 (KLR) it was held that:
22. Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside (see *Elmandry and Others v. Salim* [1956] EACA 313). As long ago as 1961, the predecessor of this Court emphasized in *Arthur v. Nyeri Electricity* [1961] EA 492 that "where there has been an error in principle, the Court will interfere, but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the Court will intervene only in exceptional cases."
28. The applicable principles on the increase or decrease of instruction fee by a taxing master are well settled. In the case of *Kyalo Mbobu T/A Kyalo & Associates Advocates v. Jacob Juma* [2015] eKLR, the court ruled that in order to increase or decrease the instructional fees, a Taxing Officer must use the established principles and provide specific justification, not a broad one such as:-
- i. care and labour by the advocates, (ii) specify the number and length of the papers to be perused, (iii) the nature and importance of the matter, (iv) the value (where ascertainable) of the subject matter, (v) interests of the parties, (vi) novelty of the matter.
29. As to whether this court can disturb the award, in *Otieno, Ragot & Company Advocates vs. Kenya Airports Authority* [2021] eKLR Ouko, JA (as he then was) stated:
- "The High Court or even this Court will not lightly interfere with an award of quantum by the taxing officer, unless there was an error in principle or the discretion was improperly exercised, resulting in mis-justice, to borrow the phrase used in the famous *Mbogo v Shah* (1968] EA 93."
30. From the authorities cited, facts adumbrated above and arguments by counsel especially counsel for the applicant, it is reasonably clear to the court that the Taxing Officer made errors of principle both in the ascertainment of the subject matter of the suit and in the value of the subject matter thereof. No reasons were given for each item taxed hence an error in principle which should be corrected.
31. In the circumstances therefore the matter is hereby remitted back for taxation by another Taxing Master.
32. It is so ordered.

DATED AT NAIROBI THIS 9TH DAY OF MAY, 2025

DELIVERED VIRTUALLY THIS 9TH DAY OF MAY, 2025



ABUODHA NELSON JORUM
PRESIDING JUDGE-APPEALS DIVISION

