



**Nderi v Syngenta Pollen Limited (Miscellaneous Application
E292 of 2024) [2025] KEELRC 1942 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1942 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E292 OF 2024**

BOM MANANI, J

JUNE 30, 2025

BETWEEN

SAMUEL NDERI APPLICANT

AND

SYNGENTA POLLEN LIMITED RESPONDENT

RULING

Background

1. Through a Statement of Claim dated 17th December 2021, the Applicant sued the Respondent alleging, inter alia, that the Respondent had unfairly terminated his contract of service. As a result, he sought compensation in the sum of Kshs 50,050,323.00 representing damages for unfair termination of his contract, salary for the balance of his tenure and damages for breach of his constitutional rights.
2. After hearing the parties, the trial court arrived at the conclusion that the suit was without merit. As such, it (the trial court) dismissed the cause with costs to the Respondent (see *Nderi v Syngenta Pollen Limited (Cause E009 of 2022) [2024] KEELRC 1649 (KLR) (24 June 2024) (Judgment)*).
3. Following the aforesaid decision, the Respondent filed a Bill of Costs dated 18th July 2024 claiming a global sum of Kshs 1,350,519.00 as Party and Party costs. The matter proceeded to taxation and in a ruling that was delivered on 24th September 2024, the Taxing Master of the court assessed the costs at Kshs 1,476,258.28.
4. Being dissatisfied with the said taxation order, the Applicant filed the instant Reference. From the Reference, it appears that the Applicant is challenging the Taxing Master's decision on instruction fees only. According to him, the Taxing Master committed an error of principle when she relied on the sum pleaded in the Statement of Claim to determine instruction fees notwithstanding that the suit had been dismissed.



5. The Respondent has opposed the Reference. It contends that the Taxing Master was right to take the figure pleaded in the Statement of Claim as representing the value of the subject matter notwithstanding that the suit had been dismissed.
6. According to the Respondent, the principles that govern ascertainment of instructions fees are well settled by case-law. The Respondent contends that the Taxing Master was bound by this case-law and did not have discretion to determine instruction fees without reference to the aforesaid principles.
7. The Respondent relies on the Court of Appeal case of *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR) to contend that the law requires a Taxing Master to determine instruction fees based on the pleadings filed, judgment or settlement by the parties. It contends that in the instant case, the Taxing Master considered the averments in the Statement of Claim whilst determining instruction fees. As such, it contends that the Taxing Master did not commit an error of principle as asserted by the Applicant.
8. The Respondent contends that it is only when the value of the subject matter cannot be determined from the pleadings, judgment or settlement by the parties that the Taxing Master is entitled to invoke his/her discretion to determine instruction fees. It relies on the Supreme Court decision of *Kenya Airports Authority v Otieno Ragot and Company Advocates* [2024] KESC 44 (KLR) to anchor this argument.

Analysis

9. From the Taxing Master's ruling, it is apparent that she relied on the figure which was pleaded in the Statement of Claim to determine the value of the subject matter. It is also apparent that she did not consider that despite the figures set out in the Statement of Claim, the claim had been dismissed as per the judgment on record.
10. In proceeding as she did, the Taxing Master relied on the case of *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR) in which the learned Judges of the Court of Appeal pronounced themselves on the subject as follows:-

“ We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”
11. The Taxing Master further relied on an excerpt from the Supreme Court case of *Kenya Airports Authority v Otieno Ragot and Company Advocates* [2024] KESC 44 (KLR) where the learned Judges of the court stated as follows:-

“ It is common ground that the subject matter of the suit in issue should be identified first, and then the value thereof determined. How is the value of the subject matter to be determined? Paragraph 1 of Schedule VIA is clear on this issue, and in point of fact stipulates that, “... where the value of the subject matter can be determined from the pleading, judgment or settlement of the parties.” This means that the value of the subject matter can be determined from the pleadings or judgment or settlement of the parties.”



12. The above excerpts set out the general position of the law on ascertainment of instruction fees. The Taxing Master was correct in her exposition of these general guidelines.
13. However, she did not consider whether she was entitled to rely on the pleadings on record to determine the value of the subject matter when the trial court had already rendered a judgement dismissing the cause. Had she considered this, she would have arrived at a different pronouncement on the matter.
14. Whether a Taxing Master should determine the value of the subject matter by reference to pleadings in a suit which has a judgment or where parties have recorded a settlement was considered by the Court of Appeal in the case of *Peter Muthoka & another v Ochieng & 3 others* [2019] KECA 597 (KLR). The court observed on the matter as follows:-

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.

Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.”

15. The above position was affirmed by the Supreme Court in the case of *Kenya Airports Authority v Otiemo Ragot and Company Advocates* [2024] KESC 44 (KLR) when the learned Judges of the court, whilst concurring with the Court of Appeal’s views in the cases of *Joreth Limited v Kigano & Associates* (*supra*) and *Peter Muthoka & another v Ochieng & 3 others* (*supra*) stated as follows:-

“We concur and approve of the foregoing findings by the Court of Appeal on the factors to take into consideration when determining the value of the subject matter.”

16. The suit which gave rise to the impugned taxation having been dismissed, the Taxing Master ought to have considered the judgment in the matter in determining the value of the subject matter as opposed to the pleadings. As such, she committed an error of principle when she considered the figure in the Statement of Claim as opposed to the judgment by the trial court.
17. In expressing a similar position on the subject, Ochieng’ J in the case of *D. Njogu & Company v Kenya National Capital Corporation* [2005] eKLR observed as follows:-

“ So, whilst I accept that the advocate may have been instructed to sue for not only the principal sum, but also for interest thereon, at a specific rate, that fact alone cannot mean that the claim would be successful. In other words, the court could dismiss the whole claim, or grant part of the principal sum. Alternatively, the court could grant judgement for the whole principal sum, but without interest, or even with interest at rates other than those claimed. Effectively, therefore the value of the subject matter of the suit would remain indeterminate until the court passed its verdict on the case.

However, as soon as the court did pass judgement, the value of the subject matter would have been determined. In those circumstances, I do not accept the respondent’s contention that in ascertaining the value of the subject matter, the Taxing Officer should still be guided by



the sums claimed in the Plaintiff. In my considered view, as soon as the court passes judgement on a claim, the value of the subject matter is to be ascertained by reference to the judgement, as opposed to the statement of claim.”

Determination

18. Having regard to the foregoing, I arrive at the conclusion that the Taxing Master ought to have considered the trial court’s judgment and not the Statement of Claim in determining the value of the subject matter. Since the judgment dismissed the Applicant’s suit, the Taxing Master ought to have come to the conclusion that the value of the subject matter could not be determined by reference to the pleadings, judgment or settlement by the parties. As such, she ought to have applied her discretion to determine the instructions fees to award in the matter taking into account factors such as the nature and importance of the cause or matter, the interest of the parties and the general conduct of the proceedings.
19. Accordingly, I set aside the assessment of instruction fees in the matter.
20. I order that the file be placed before another Taxing Master of the court to assess the item on instruction fees afresh.
21. There is no order as to costs of the Reference.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JUNE, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

