



**Chikulolo v National Bank of Kenya Ltd (Cause 812 of 2017)
[2025] KEELRC 1821 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1821 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 812 OF 2017**

**JW KELI, J
JUNE 20, 2025**

BETWEEN

GEORGE NYOTA CHIKULOLO CLAIMANT

AND

NATIONAL BANK OF KENYA LTD RESPONDENT

RULING

1. The Claimant/Applicant herein filed a Chamber Summons Application under Certificate of Urgency dated 5th March, 2025 seeking the following Orders:-
 - (a) That the Honourable Court be pleased to review and/or set aside the decision of the Taxing Officer delivered on the 26th November, 2024 Taxing and/or certifying costs due payable to the Claimant/Applicant by the Respondents at Kshs. 637,878.32/=.
 - (b) That the cost of this application be in the cause.
2. The application was based on the g grounds stated in the application, and the annexed affidavit of JUDITH A. GUSERWA as follows:-
 - a. That judgment in the matter was delivered on 22nd day of September, 2022 in favour of the Claimant/Applicant in the sum of Kshs. 17,197,443/= with costs of the suit.
 - b. That the Taxing officer delivered her Ruling on the 26th November, 2024 and re-taxed the Party and Party Bill of Costs dated 30th June, 2023 in the sum of Kshs. 637,878.32/ in respect of the judgment sum of Kshs. 17,197,443/=.
 - c. That the Claimant/Applicant being aggrieved by the ruling of the Taxing Officer objects the decision and moves the Honourable Court to review the ruling of the Taxing Officer.



3. The respondent upon service with the Application filed their Grounds of Opposition dated 24th March, 2025, opposing the Application.
4. The Honourable Court directed parties to file written submissions on the Application. The respondent informed the court it will rely on the grounds of opposition

ISSUES FOR DETERMINATION

5. The following emerge as the issues for determination before the Honourable Court arising from the application.

(i) Whether the Claimant/Applicant's application is merited?

1. Justice Odunga (as he then was in *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* [2014] eKLR) set out the following relevant jurisprudence on the role of the judgment in reference on taxed costs which is adopted in the ruling. 'The circumstances under which a Judge of the High Court interferes with the taxing officer's exercise of discretion are now well known. These principles are, (1) that 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 inference that it was based on an error of principle; (2) it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge; (3) if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high; (4) it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary; (5) the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it; (6) the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees; (7) the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of *First American Bank of Kenya vs. Shah and Others* [2002] 1 EA 64. Further it has been held that the Court should interfere with the decision of the Taxing Officer where there has been an error in principle but should not do so in questions solely of quantum as that is an area where the Taxing Officer is more experienced and therefore more apt to the job; the court will intervene only in exceptional cases and multiplication factors should not be considered when assessing costs by the Taxing Officer or even the Judge on appeal; the costs should not be allowed to rise to such level as to confine access to court to the wealthy; a successful litigant ought to be fairly reimbursed for the costs he had to incur in the case; the general level of remuneration of Advocates must be such as to attract recruits to the profession; so far as practicable



there should be consistency in the awards made; every case must be decided on its own merit and in every variable degree, the value of the suit property may be taken into account; the instructions fees ought to take into account the amount of work done by the advocate, and where relevant, the subject matter of the suit as well as the prevailing economic conditions; one must envisage a hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particular high fee sometimes demanded by counsel of pre-eminent reputation; then one must know that what fee this hypothetical character would be content to take on the brief; clearly it is important that advocates should be well motivated but it is also in the public interest that cost be kept to a reasonable level so that justice is not put beyond the reach of poor litigants.

2. Further guidance may be obtained in the case of *Joreth Limited vs. Kigano & Associates Civil Appeal No. 66 of 1999 [2002] 1 EA 92* where the Court of Appeal held that the value of the subject matter for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement 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 the 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. It is not really in the province of a Judge to re-tax the bill. If the Judge comes to the conclusion that the taxing officer has erred in principle he should refer the bill back for taxation by the same or another taxing officer with appropriate directions on how it should be done. The Judge ought not to interfere with the assessment of costs by the Taxing Officer unless the officer has misdirected himself on a matter of principle.
6. The court noted that there was an initial ruling of the taxing master (Hon Mbeja) dated 2nd September 2024 for the sum of Kshs. 1,125,205 which was set aside, the application was not opposed by this court on application by order of the court dated 28th October 2025. The basis of that application was lack of reason on taxed amount.
7. The new taxing master was Hon E. Riany who taxed the costs for Kshs. 637,878.32 vide ruling dated 26th November 2024 which the subject of this ruling. The court on perusal of the grounds of the application did not find the reason why the applicant was seeking for the review. The court discerned from the supporting affidavit of Judith Guserwa that the law firm of the applicant had written a letter dated 28th November 2024 seeking for the reasons for what the advocate called low amount and had not received a response.
8. The court on perusal of the ruling found the taxing master had given reasons for the taxed amount.
9. In submissions the applicant stated as - The Advocates Remuneration Order under the 6th Schedule, Paragraph 1(b) provides for instruction fees as follows:"1. Instruction fees- Subject as hereinafter provided, the fees for instructions shall be as follows-
 1. To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties and-⁶⁹ That in ELRC No. 198 of 2019 between Lucy Rimanto Molonket vs East African Portland Cement Limited, the Claimant filed a reference citing that the Taxing Officer had erred in principle in



calculating the instruction fees and the Honourable Court in its Ruling dated 24th October, 2024 allowed the Claimant/Applicant's Reference Application and the Learned Judge in his ratio decidendi as follows;"7. Paragraph 1(b) of Schedule 6 of the Advocates Remuneration Order sets out the scales of fees applicable. The fees are computed on a graduated basis at the levels of Kshs. 500,000/-, Kshs. 750,000/-, Kshs. 1,000,000/- and ultimately 2% of the balance decretal sum." That in this matter the Taxing Officer erred in principle in awarding instruction fees at Kshs. 443,949,992/- and did not consider the graduated levels as provided in the Advocates Remuneration Order and that under the scale, the fees of Kshs. 748,948.86/- may be allowed as instruction fees since the Taxing Officer erred as follows;

- a. The decretal sum stands at Kshs. 17,197,443/-
- b. The fees payable as per the scale on the first level of between Kshs. 0 and Kshs. 500,000/- amounts to Kshs. 75,000/= which is due as costs on this first level.
- c. After the first level, we ought to deduct the fees of Kshs. 500,000/- from the decretal amount before calculating the costs payable at the second level and to further determine whether the balance falls within the second graduated level
- d. 17,197,443-500,000 16,697,443/- (being the balance after deduction of Kshs. 500,000/- from the decretal amount at the first level)
- e. It is evident that Kshs. 16,697,443/ falls within the second graduated level under the ARO of between Kshs. 500,000-750,000 and therefore Kshs. 90,000/ is also due as costs at the second graduated level.
- f. After the second graduated level, we ought to deduct the cost cap of Kshs. 250,000/ = (which is the amount between kshs. 500,000/- and 750,000/- at the 2 level) from the balance of the decretal amount before calculating the costs payable on the third graduated level in order to check whether the balance fills within the third graduated level.
- g. 16,697,443-250,000 16,447,443/- (being the balance after deduction of Kshs. 250,000/- from the balance of the decretal amount at the second level)
- h. That Kshs. 16,447,443/- falls within the third graduated level under the ARO of Kshs. 750,000 1,000,000 and therefore the 120.000/ is also due as costs at the third graduated level. After the third graduated level, we ought to deduct the cost cap of Kshs. 250,000/- (which is the amount between kshs. 750,000/- and 1,000,000/- at the 3rd level) from the balance of the decretal amount before calculating the costs payable at the found graduated level in order to check whether the balance falls within the third graduated level. 16,447,443-250,000-16,197,443/- (being the balance after deduction of Kshs. 250,000/- from the balance of the decretal amount at the third level). After the 3 graduated level, the balance of the decretal amount is KShs. 16,197,443/- falls within the 4th graduated level of between Kshs.1,000,000 to Kshs, 20,000,000/-. The costs payable at the 4 graduated level as indicated under Schedule 6 of the ARO are fees as for Kshs. 1,000,000 plus an additional 2%. The fees payable for Kshs, 1,000,000 is Kshs. 120,000. 2% of the decretal amount of Kshs. 17,197,443 amounts to Kshs. 343,948.86/. The fees payable in the 4 graduated level is calculated as follows, 120,000.343,948.86463.948.86. The total instruction fees is the sum total of the fees payable on the 1st, 2nd 3rd and 4th levels. 75,000 90,000 120.000+463,948.86 thus



Kshs. 748,948.86/-. That the fees payable as instruction fees is Kshs. 748,948.86/- and therefore the Taxing Officer erred in awarding instruction fees at Kshs. 443,949.92.

Item No. 17-Getting un fees- The fees chargeable as getting up fees is calculated as of the instruction fees. That since the instruction fees are Kshs. 748,948.86, 1/3 of the instruction fees amounts to Kshs. 249,649.62-

Other items- the Taxing Officer properly taxed all the other items in the Bill.

Grounds of opposition

9. In grounds of opposition the respondent stated, that following earlier application and the new ruling, the Applicant in such circumstances ought to have sought reliefs via an Appeal and not a Review pursuant to Rule 11 of the Advocates Remuneration Order. That the Ruling dated 2 September 2024 having been set aside and the matter directed for Taxation, the Applicant cannot purport to have the same reviewed by a Court of law when a subsequent Ruling dated 26 November 2024 had already been issued. That the Taxing Officer furnished the parties with the cogent reasons for the many decisions within her Ruling dated 26th November 2024 and as such would be procedurally redundant to offer any further reasons.
10. That the Advocates Remuneration Order in Schedule 6, Paragraph 1 provides that the subject value matter may be derived from the Judgement, which the taxing Officer correctly used to reach her Ruling dated 26 November 2024. There are no new facts or apparent error on the record to warrant this case review the impugned Ruling

Decision

11. I find the application is properly before this court. The applicant relied on the decision in *Molonket v East Africa Portland Cement* [2024] KEELRC 2573 (KLR). Justice Radido in the reference held as follows:-
 1. The Court has considered the Reference, affidavits and submissions.
 2. It is not in dispute that the Court awarded the Claimant Kshs 15,165,782/-.
 3. Paragraph 1(b) of Schedule 6 of the Advocates Remuneration Order sets out the scales of fees applicable. The fees are computed on a graduated basis at the levels of Kshs 500,000/-, Kshs 750,000/-, Kshs 1,000,000/- and ultimately 2% of the balance decretal sum.
 4. While taxing the Claimant's Bill of Costs, the Taxing Officer appears to have simply arrived at the sum of Kshs 403,315/- without any explanation (2% of the Kshs 15,165,782/- awarded in the judgment is Kshs 303,315/-).
 5. The Taxing Officer then calculated 1/3 of Kshs 403, 315/- to get the getting up fees of Kshs 134,438/-.
 6. This Court, therefore, finds that the Taxing Officer fell into an error of principle."
12. The court found a misapprehension of the wording of paragraph 7 of the ruling by the applicant. The court found that if it was to accept the tabulation on graduated scale from 0 to 1,000,000 and then award 120,000 for the 1st one million as suggested by the applicant, that would be tantamount to double award of costs on the first 1 million shillings of the judgment sum. The court on perusal of the ruling



found that the taxing master rightly applied the 6th Schedule of the Advocates Remuneration Order and gave reasons on each of the items under the bill of costs. The court found no basis to interfere with the ruling on taxation of costs dated 26th November 2024. The application is dismissed with costs to the respondent.

13. It is so Ordered.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF JUNE 2025.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

COURT ASSISTANT: OTIENO

APPLICANT/ MS OKONDO H/B GUSERWA

RESPONDENT: ABSENT

