



**Kuria v Karanja & another (Employment and Labour Relations Cause  
79 of 2018) [2024] KEELRC 578 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 578 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 79 OF 2018**

**HS WASILWA, J  
MARCH 13, 2024**

**BETWEEN**

**GEOFFREY NGARI KURIA ..... CLAIMANT**

**AND**

**MARTHA WANGUI KARANJA ..... 1<sup>ST</sup> RESPONDENT**

**RUTH WAMBUI CHEGE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect of the Applicants, Reference, Chamber Summons, dated 17<sup>th</sup> October, 2023 filed pursuant to Rule 11(2) of the [Advocates \(Remuneration\) Order 1962](#) and all other enabling provisions of the law, seeking for the following Orders; -
  - a. That this Honourable Court be pleased to set aside the decision of the taxing officer delivered on the 3<sup>rd</sup> October, 2023 in its entirety as far as the same relates to taxation of the claimant/ Respondent's Bill of costs dated 5<sup>th</sup> December, 2022 as the Orders given are inconsistent with the provisions of the [Advocates \(Remuneration\) Order, 1962](#) and the [Advocates Act](#).
  - b. That this Honourable Court be pleased to re-tax the said Claimant/ Respondent's Bill of costs dated 5<sup>th</sup> December, 2022.
  - c. That in the alternative to prayer 2 above, this Honourable court be pleased to remit the claimant/ Respondent Bill of costs dated 5<sup>th</sup> December, 2022, for re-taxation before a different taxing officer with appropriate directions thereof.
  - d. That the costs of the Application be provided for.
2. The Application is premised on the fact that the Ruling of the claimant/ Respondent's Bill of costs was delivered on 3<sup>rd</sup> October, 2023 by the deputy registrar whereby costs were assessed at Kshs 494,095.



- Conversely, that the correct Remuneration Order that ought to have been used in the taxation, is the [Advocates Remuneration Order](#) of 1997 as the case herein was filed in the year 1999 and instruction obtain within that period.
3. That the Respondents/Applicants are aggrieved with the decision of the taxing master as the taxing master misdirected herself and acted contrary to the established principles of taxation of Advocates-client Bill of costs.
  4. It is averred that the taxing master ignored the Applicants' submissions and judgement of the Court that clearly established the substratum and in effect awarded inordinately high amount for items 1&2 and failed to appreciate the import of schedule 6 art A (1)(b) of the [Advocates Remuneration Order 2014](#).
  5. It is averred that the taxing master awarded the Claimant items 112 to 132 as drawn despite the Applicants herein challenging the said items on account of the fact that no evidence was adduced as to the existence of the said correspondences.
  6. It is stated further that the taxing master misdirected herself in taxing all the other items as drawn yet the said items were challenged by the Applicants herein.
  7. The Affiant stated that despite sending several requests to be supplied with reasons for the said taxation to enable them raise objection to the said Bill of Costs as provided for under Rule 11 (1) of the [Advocates Remuneration Order](#), the said reasons were never supplied.
  8. That unless the Orders being sought are granted and the Bill taxed a fresh by this Court, the claimant/ Respondent is likely to proceed with execution to their detriment.
  9. He avers that the Application herein has been filed timeously and prayed that this Court sets aside the decision by the taxing master delivered on 3<sup>rd</sup> August, 2021 in its entirety.
  10. The Application herein is supported by the affidavit of the Lawrence Macharia Karanja, the Advocate seized of the conduct of this matter on behalf of the Applicants herein, sworn on 17<sup>th</sup> October, 2023. The Affidavit reiterated the grounds of the Application.
  11. The Application is opposed by the claimant/ Respondent who filed a replying affidavit deposed upon on the 5<sup>th</sup> December, 2023 by George Kirumba Mbiyu, the claimant's Advocate. The Affiant stated that the Application herein does not have merit.
  12. He gave the backgrounds of the case and stated that the suit herein was instituted by a plaint dated 3<sup>rd</sup> February, 1999 culminating to Judgement in favour of the claimant more than 23 years later.
  13. He stated that the Kshs 494,095 awarded to the claimant was a just figure and reasons for the award was given by the taxing master in her ruling. Therefore, that the taxing master did not exercise her discretion wrongly or allowed items that are not allowable under the [Advocates Remuneration Order](#).
  14. The Respondent stated that the decretal sum awarded was Kshs 871,472 and the instruction fees allowed under the Remuneration Order is Kshs 90,000. Furthermore, that enhancement of the same was because of the time taken before the matter was concluded among other factors. In any event that the taxing master used her discretion in arriving at the said assessed costs.
  15. He reiterated that the taxing master was justified in allowing for items 112 to 132 since the same are correspondences that were in the file and verified by the Court before the award was made. Therefore, that there is nothing that this Court ought to intervene on.



16. The reference was canvassed by written submissions, with the Applicant filing on the 19<sup>th</sup> February, 2024 and the Respondent filed on 31<sup>st</sup> January, 2024.

### **Applicant's Submissions.**

17. The Applicant submitted that they opposed the Bill of costs on the basis that it was not drawn to scale and therefore was done contrary to the provisions of Advocates Remuneration Orders, 1997 which was the Remuneration order in place at the time of filing the suit herein. He thus urged this Court to interfere with the taxation having been done inconsistent with Advocates Remuneration Order and Advocates Act. In support of this, they relied on the case of Joseph Kiplangat Cheruiyot v M/S Weldon Ngetich & Co Advocates [2021] eKLR where the court held 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.”

18. Accordingly, the Applicant urged this Court to set aside the entire Ruling of the Bill of costs delivered on 3<sup>rd</sup> October, 2023 and re-tax the same afresh or remit it for fresh taxation before another taxing master.
19. On the challenged items 1 and 2 on instruction fees and getting up fees respectively, it was submitted that as per the Remuneration Order subsisting in the year 1999, for an award between Kshs 750,000 to Kshs 1,000,000, the instruction fees ought to be Kshs 55,000, and therefore the award given by the Court of Kshs 90,000 was erroneous and this Court should exercise its discretion in reducing the same as was done in the case of First American Bank of Kenya v Shab and others [2002] 1 EA 64 as cited with approval in Nyangito & Co. Advocates v Doinyo Lessos Creameris Ltd [2014] eKLR.
20. It was submitted that since the instruction fees ought to be Kshs 55,000, the getting up fees should be a third of the instruction fees, hence the getting up fees should be Kshs 18,333.
21. On items number 122 to 132 of the Bill of costs, it was submitted that no evidence was tendered, neither do copies of the said documents in the Court file, thus it was impossible to ascertain the existence of these documents, as is required under Schedule 6(6) of the Advocates Remuneration Order 2014, and therefore that these items ought to be taxed off.
22. In conclusion, the Applicant submitted that the Taxing Master assessed the Bill of costs contrary to the established principles of taxation of Advocates-Client Bill of costs. In support of this, they relied on the case of Republic v Minister of Agriculture & 2 others Ex parte Samuel Muchiri Njuguna & 6 other s [2006] eKLR where the court held that; -

“Taxation of costs as a judicial function is to be conducted regularly, on the basis of rational criteria which are clearly expressed for the parties to perceive with ease. Regularity in this respect cannot be achieved without upholding fairness as between the parties; the taxing officer is to provide only for reasonable compensation for work done; the taxing officer should avoid the possibility for unjust enrichment for any party and ought to refuse any claim that tends to be usurious...”

23. The Applicant therefore insisted that the remuneration Order that ought to be used is the Remuneration order 1997 as the instruction were given on or about 3<sup>rd</sup> February, 1999.



## Respondent's Submissions.

24. The Respondent submitted on two issues, whether this Honourable Court should set aside the decision of the taxing officer delivered on the 3<sup>rd</sup> October, 2023 and or submit the Bill of costs for re-taxation and who should bear costs of the Application.
25. On the first issue, it was submitted that the Applicant has not shown that the taxing master erred in principle in assessing the said Bill of cost as is required in law and reiterated by the case of *Kipkorir, Tito 7 Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR where the Court of Appeal held that;-
- “On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”
26. The Respondent also relied on the case of *Del Monte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Murang'a Chapter & 2 others* [2021] eKLR, where the Court held that;-
- “It must be emphasized that matters of quantum of taxation are matters purely within the province, competence and judicial discretion of the taxing officer. 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 injustice.”
27. The Respondent in buttressing its argument that the Court should not interfere with the taxing master ruling, cited the case of *First American Bank of Kenya v Shab and other* [2002] EA LR 64 at 69, *Joreth Ltd Kigano & Associates* [200] 1 E.A 92 and the case of *Kanu National Elections Board & 2 others v Salab Yakub Farah* [2018] eKLR where the Court held that;-
- “This Court in the performance of its supervisory function, is entitled to and will interfere with the Taxing Master's rulings: 'If (a) he has not exercised his discretion judicially, that is if he has exercised it improperly; (b) he has not brought his mind to bear upon the question or (c) he has acted on a wrong principle. Justice Maritz expressed this principle as follows:-
- ‘It should be borne in mind, however, that the review of the Taxing Master's decision on taxation is one going beyond the rather narrow common law parameters of judicial review applicable to the acts or omissions of public bodies. It is by its nature a review denoting 'a wider exercise of supervision and a greater scope of authority than those which the Court enjoyed' under either the review of the proceedings of lower courts or of public bodies acting irregularly, illegally or in disregard of important provisions of statute.’
28. Accordingly, it was submitted that the Kshs 90,000 awarded assessed for instructions fees is justified considering that the matter herein has been in Court from the year 1999 to 2023, a period of 23 years. Furthermore, that no reasons have been adduced to necessitate the intervention of this Court. In any event that the decision of the taxing master is neither excessive nor unreasonable.
29. On items 112 to 132, the Respondent submitted that all these documents are verifiable, a fact that the taxing master satisfied herself before allowing the Bill as such, the Court should not interfere with these items.



30. On costs of the Application herein, the Respondent cited the case of *Del Monte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Murang'a Chapter & 2 others* [2021] eKLR, in which the court held that; -

“his Court has discretion to grant costs. However, it is trite that costs usually follow the events unless special circumstances present themselves.’

31. Similarly, the Respondent prayed to be awarded costs of this Application.

32. The reference herein is filed by the applicants on the ground that the taxation was not drawn to scale and was done contrary to provisions of the Advocates Remuneration orders 1997 where the claim was filed.

33. I have looked at the ruling of the taxing mistress and she indicated that the applicable schedule is schedule V1 of the Advocates order. When this claim was filed in 1999 at High Court Cause 43 of 1999, the applicable schedule for taxation of this cause was Legal Notice No 550 of 1997, whereas the instructions fees then varies from the current one applied by the Hon. Deputy Registrar herein.

34. It is indeed true that the Deputy Registrar applied a wrong schedule in time when conducting the current bill and this was therefore an error. The error resonates thereafter in the entire bill as taxed.

35. The Taxing Master may consider enhancing certain items in the bill whilst exercising his or her discretion and the High Court cannot interfere with the exercise of discretion unless there is an error in principle. The Deputy Registrar did not however explain why she decided to vary if at all any item is in the bill.

36. Having considered the fact that the taxing mistress applied a wrong schedule in time whilst taxing this bill, I find the process was done in error and I therefore set aside the bill as taxed and remit it back to the taxing mistress for fresh taxation under the proper schedule.

37. Costs in the cause.

**RULING DELIVERED VIRTUALLY THIS 13TH DAY OF MARCH, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of: -

Mbiyu for Respondent – Present

Karanja for Applicant – Absent

Court Assistant - Fred

