



REPUBLIC OF KENYA



Waweru v NIC Bank Limited & 2 others (Environment & Land Case 175 of 2011) [2025] KEELC 741 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEELC 741 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 175 OF 2011
JA MOGENI, J
FEBRUARY 20, 2025**

BETWEEN

EUNICE NYAKIUMBA WAWERU PLAINTIFF

AND

NIC BANK LIMITED & 2 OTHERS & 2 OTHERS & 2 OTHERS .. DEFENDANT

RULING

1. The Ruling herein relates to two Applications. The Chamber Summons Application dated 12/08/2024, brought under the provisions of; Order Section 51 of the Advocates Act Rule 11 (2) of the Advocates (Remuneration) Order, 2014 and all other enabling provisions of the law.
2. The second Application is a Chamber Summons Application dated 15/08/2024, brought under the provisions of Paragraph 11(1) and (2) of the Advocates Remuneration Order (the Advocates Act Cap. 16) Laws of Kenya Section 3A of the Civil Procedure Act and all other enabling provisions of the law.
3. The 1st Defendant/Applicant in the Chambers of Summons Application dated 12/08/2024 is seeking for orders to stay/set aside in its entirety the Ruling and reasoning of the learned Taxing Officer Honorable of stay of execution of the Ruling delivered on 30/07/2024 taxing the Plaintiff's Bill of Costs dated 24/04/2024 at a sum of Kshs. 984,267/- by the Taxing Officer Honourable Judith Omollo (DR). In the alternative the Court do set aside the Taxing Officer's decision with respect to items 1 to 5 of the Plaintiff's Bill of Costs dated 24/04/2024. Or in the alternative the Court do remit the Plaintiff's Bill of Costs dated 24/04/2024 before a different Taxing Master for fresh taxation with appropriate directions thereof.
4. On the other hand, the Plaintiff/Applicant in the Chamber Summons dated 15/08/2024 sought the following prayers:-
 1. That the Honourable Court be pleased to allow the reference and interfere with the award of the Taxing Officer made on the 30th July 2024 because the Taxing Officer had erred in principle



by making an award which was so low as to amount to an injustice to the Applicant and therefore the award is for setting aside.

2. That upon setting aside the taxation above, this Honourable Court be pleased to tax and/or reassess upwards Items 1,2,3,4 and 5 of the Applicant Bill of Costs dated the 24th April,2024 to the sum set out in the Bill of Costs dated the 24th April,2024 and/or to make an award that is necessary or proper for the attainment of justice in the matter.
 3. That in the alternative to prayer (3) above, the Honourable Court be pleased to refer the Bill of Costs dated the 24th April,2024 for taxation before a different Taxing Officer/Deputy Registrar with the necessary and appropriate directions as the Honourable Court deems it fit and necessary.
 4. That the Honourable Court be pleased to grant any other order or orders as it deem fit and necessary to grant in the interest of justice.
 5. That costs of the Application be provided for.
5. The Court will consider both Application together starting with the first one filed in time which is the one dated 12/08/2024. I note that both Applications are seeking similar prayers. That the Court may interfere with the award of the Taxing Master/Deputy Registrar and reassessment of items 1-5. Thus my resolution of one will certainly impact the other and therefore the second Application may altogether be moot.
6. Now the 1st Chamber Summons Application is based on the grounds on the face of it and an Affidavit dated 12/08/2024, sworn by Jackson Nyaga, a Legal Counsel for 1st Defendant. He avers that, the 1st Defendant filed an Advocate-Client Bill of Costs (herein “the bill”), and the same was taxed vide a Ruling delivered by the Taxing Master on 30/07/2024. Being dissatisfied with the decision therein, the client filed a notice of motion Application dated 12/08/2024, seeking for orders that, the Ruling be stayed and/or set aside and in the alternative, the bill be referred to another Taxing Master for purposes of taking accounts on items 1 to 5 of the Bill of Costs dated 24/04/2024.
7. Upon hearing the parties on the Application, the Court delivered its Ruling on 30/07/2024 and ordered inter alia; that “I have considered that this matter was filed in 2011 and concluded in 2022 taking over 10 years in Court. I have also considered that the value of the subject matter being land has appreciated in value from the time the case was filed until determination. The complexity of the case is discernible from the number of documents perused seen from the huge size of the file, the number of interlocutory Applications filed as well as the fact that the Plaintiff was amended 4 times. I therefore exercise my discretion to increase the instructions fees to Kshs. 600,000/- Item 1 to 4 are taxed at Kshs. 600,000/- in total and the balance taxed off. Item 5 getting up fees is taxed at a third of instructions fees at Kshs. 200,000/- and the balance taxed off.”
8. The Application of the 1st Defendant is seeking to have the very items 1-5 resubmitted to a different Taxing Officer.
9. From the foregoing, the 1st Defendant prayed that the Court allows the reference herein.
10. In response, the Plaintiff/Respondent through its Replying Affidavit dated 18/12/2024, sworn by Eunice Nyakiumba Waweru averred that she was the Plaintiff/Respondent and she had equally filed a reference dated 15/08/2024 and that she adopted the contents of the reference she had filed as her response to the 1st Defendant’s Application.



11. It was her contention that the increment of instruction fees from Kshs. 249,500/- to Kshs. 600,000/- cannot be attributed to error of principle and that this claim has no legal basis. That in any case Kshs. 600,000/- for instruction fees for the subject matter of the nature before the Court was so low as to amount to injustice to the Plaintiff/Respondent.
12. According to the Plaintiff/Respondent this matter commenced in 2011 and the Judgment was delivered on 29/09/2022 following numerous filings, research in to the law as evidenced in the submissions and List of Authorities filed and exchanged, all of which were necessary or proper for the attainment of justice. So the awarded/taxed sum of Kshs. 600,000/- on instruction fees was so low as to amount to an injustice to the Plaintiff/Respondent.
13. The Plaintiff/Respondent contends that from the Taxing Officer decision, it is apparent that the Taxing Officer did not take into consideration all the relevant factors including the urgency of the matter, the care and labour expended, the number and length of the papers to be perused, the research in to the law in a matter in which a land question was involved and all other relevant circumstances. That from the information given above then it is clear that the Taxing Officer discretion was not properly exercised as she mainly took into account the value of the subject matter. The Plaintiff is of the view that the Taxing Officer was clearly wrong in the exercise of her judicial discretion and as a result there has been an injustice to the Plaintiff as the instruction fees and getting up fees awarded were manifestly so low.
14. In its response the Plaintiff/Respondent stated that the total award of the Deputy Registrar on instruction fees and the getting up was too low that it fell short of the parameters necessary in the exercise of her judicial discretion. That her plea is not manifestly excessive instruction fees but for such sum as are just necessary or proper for the attainment of justice or for defending the Plaintiff's right in a land question which has been litigated for over ten years since 2011 to 2022. That a fair value would be Kshs. 6,000,000/- which would cover instructions fees and getting up being a 1/3 or such other enhanced cover for fair value.
15. Thus the Plaintiff is opposed to the Defendant/Applicant reference dated 12/08/2024.
16. The parties were directed to file their submissions on 23/10/2024.
17. I have considered the pleadings filed by the parties herein and the authorities they have relied on. This is a reference of the Taxing Master on the Advocate/Respondent's Bill of Costs dated 24/04/2024. The principle in dealing with a reference is that this Court cannot interfere with the Taxing Officer's decision on taxation unless it is shown that the decision was based on error of principle or the fee awarded was manifestly excessive as to justify interference. In the leading case of Joreth Ltd Vs. Kigano & Associates (2002) 1 EA 92 the Court of Appeal was categorical that a Taxing Master in assessing costs to be paid to an Advocate in a Bill of Costs was exercising her judicial discretion and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously and in abuse of proper Application of the correct principles of law. It was further stated that therefore this Court's work at this point is to look at the pleadings and satisfy itself that in taxing the bill and arriving at the impugned decision, the Taxing Master committed an error of principle or that the amount of fees awarded by the Taxing Master is excessive to amount to an error in principle or that the Taxing Master applied the wrong principles of law.
18. I have considered the Ruling of the Taxing Master and noticed that the Taxing Master properly applied the Advocate Remuneration Order specifically Schedule 6 Paragraph 1 (b) whereof she took the value of the suit property as being Kshs. 12,500,000/- discerned from the Valuation Report which had been



produced by the 1st Defendant. In her calculation she found minimum instruction fees to be Kshs. 249,500/- arrived at as hereunder:-

First 1 million Kshs. 77,000/-

Next Kesh 11,500,000 @ 1.5% Kshs. 172,500/-

19. Whereas I am not persuaded that the Taxing Master could speculate on the value of the suit property taking into account appreciation outside the valuation report considered by the Hon Judge, she did increase the instruction fee from Kshs. 249,500/- to Kshs. 600,000/-. This was based on what she stated “... being the complexity of the case ...” There is no doubt that the Advocate Remuneration Order provides for minimum instruction fees with discretion to the Taxing Master to increase the fees based inter alia on the complexity of the case provided the discretion is exercised in a fair and reasonable manner.
20. If however this discretion is exercised injudiciously or unreasonably then I can interfere with the award.
21. The final matter to address is whether the Taxing Master failed to apply the principles of Taxation and that the sums awarded were not justified. Under Schedule VI of the Advocates Remuneration Order Clause (1), it is provided in the proviso that:-
 - “(i) the taxing office, in the exercise of this discretion shall take into consideration the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduction of the proceedings, a direction of the trial Judge, and all other relevant circumstances.”
22. Looking at the foregoing principles, my finding is that the Taxing Officer considered the value of the subject matter as presented to her, the complexity of the matter involved and the duty and care in arriving at the figure awarded. In the circumstances, I do find that there was no error of principle committed by the Taxing Master and that the amounts awarded were reasonable and not excessive in the circumstances of the case. This finding will apply to the Chamber Summons Application dated 15/08/2024.
23. Accordingly, the upshot of this Court’s Ruling is as follows:-
 - a. The 1st Defendant’s Chamber Summons Application dated 12/08/2024 is not merited and the same is hereby dismissed.
 - b. The Plaintiff’s Chamber Summons Application dated 15/08/2024 is unmerited and the same is hereby dismissed.
 - c. Interest shall accrue at Court rates from the date of taxation until payment in full.
 - d. Each party to bear their own costs of their Application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 20TH DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Ms. Martin holding brief for Mr. Arusei for the Plaintiff



Ms. Muthoni and Ms. Mbiro for the 1st and 2nd Defendants

3rd Defendant – Absent

Ms. Lillian - Court Assistant

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MOGENI J

JUDGE

