



**Stratman v Putzker (Environment & Land Case 3 of 2022)
[2025] KEELC 681 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 681 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 3 OF 2022
LL NAIKUNI, J
FEBRUARY 18, 2025**

BETWEEN

MANUELA SABINE URSULA STRATMAN PLAINTIFF

AND

STEFFEN PUTZKER DEFENDANT

RULING

I. Introduction

1. The Honourable Court is tasked with making a determination on the Chamber Summons application dated 27th August, 2024 by Steffen Putzker, the Defendant/Applicant herein. The application was brought under the provisions of Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Cap. 21 and Rule 11 of the *Advocates Act*, Cap. 16 of the Laws of Kenya.
2. Upon service, the Respondent opposed the said application by filing Grounds of Opposition dated 2nd September, 2024.

II. The Defendant/Applicant's case.

3. The Defendant/Applicant sought for the following orders: -
 - a. That this court be pleased to set aside the Deputy Registrar's Hon R.K. Ogolla's ruling that was delivered on 7th August 2024 on the Respondent's party and party bill of costs dated 18th October 2022
 - b. That in the alternative, the bill of costs dated 18th October 2022 be reviewed and taxed off or remitted with appropriate directions before a different taxing master as the court shall deem fit for consideration
 - c. That costs of this application be in the cause.



4. The application is based on the grounds on the face of the application and the averments of made out under the 16 Paragraphed supporting affidavit of Stefen Putzker together with One (1) annexure marked as “SP – 1” annexed hereto. He averred as follows that: -
- a. He was an adult male and Applicant herein hence competent to swear this affidavit
 - b. The Taxing Master delivered a ruling on 7th August 2024 in which she assessed the Defendants instruction fees at a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/-) and getting up fees at a sum of Kenya Shillings One Sixty Thousand Six Sixty-Six Hundred and Sixty-Seven Cents (Kshs. 166,666.67/-) among other items
 - c. Vide a letter dated 19th August 2024 addressed to the Deputy Registrar and in compliance with provisions of order 11 of the Advocates Remuneration Order, the Applicant wrote to the Deputy Registrar indicating that he wished to object items 1 and 2 of the bill of costs dated 18th October 2022
 - d. The value of the subject matter which was not transferred to the defendant was a portion of land whose consideration was Fourty Euros (40,000 Euros) equivalent to a sum of Kenya Shillings Three Million Two Hundred Thousand (Kshs. 3,200,000/-) going by the exchange rate prevailing at that time of Kshs 80/- per 1 euro as at the time of the agreement for sale for the subject property that was done on 15th November 2012.
 - e. The value of furniture and movable properties which were not in contention or the subject of the suit herein was Thirty Euros (30,000/- Euros).
 - f. Indeed, parties are bound by their pleadings and the orders sought in the plaint was not for recovery of the said amount but for; -
 - g. Directing the Defendant to sub - divide and hand over to the Plaintiff all completion documents listed in clause B of the agreement for sale
 - h. To grant cost and such other reliefs as this honourable court deems fit to grant
 - i. The suit was one that seeks orders of specific performance of an agreement for sale of land which does not raise complex legal issues and or involve legal research
 - j. The suit was compromised before it proceeded for hearing where parties recorded a consent judgement in which the completion documents were handed over to the Plaintiff.
 - k. The instruction fees awarded of a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/-) was manifestly excessive and the Taxing Officer based erred in her reasoning by basing her argument on extraneous and irrelevant factors whereas the pleadings had clearly indicated the value of the land
 - l. When pleadings are clear on the value of the subject matter the basis of assessment of the instruction fees should be on the value indicated therein and the taxing officer can only engage on external considerations when the value of the subject matter cannot be ascertained from the pleadings
 - m. Since the matter did not proceed for hearing the award on getting up fees was erroneous and ought not to have been awarded
 - n. The Taxing Officer erred by failing to comply with the provisions of schedule 6 paragraph 1[b] to award the instruction fees at 75% since the suit was settled before it proceeded for trial.



III. The Grounds of Opposition

5. The grounds of opposition dated 2nd September, 2024 filed by the Plaintiff/Respondent cited inter alia: -
 - a. The application as drawn and filed is incompetent, misconceived and an affront to Rule 16 of the ARO which grants the taxing master discretion
 - b. The Taxing Master considered all the relevant factors in arriving at her decisions. The Applicant wants the court to remit the subject bill for re taxation before a different taxing officer which not only amounts to forum shopping for courts but also impliedly casts aspersions on the Taxing Officer without any justification.
 - c. The Taxing Master took into account the principles of taxation in conformity with Rule 5 of the Advocates Remuneration Order.
 - d. The costs awarded were reasonable considering the work done and the taxing master did not exceed his discretion.
 - e. The Applicants have not demonstrated sufficient cause or grounds upon which this court should interfere with the discretion of the taxing master and grant the orders sought in the application. As such it would be unjust to do so.
 - f. The application herein is clearly unwarranted, misconceived and a waste of precious judicial time and resources
 - g. In the circumstances it is in the interest of justice that the application be dismissed.

IV. Submissions.

6. On 2nd October, 2024 the court directed that the chamber summons be dispensed by way of written submissions.

A. The Written Submissions by the Defendant/Applicant

7. The Applicant's submissions are dated 19th November, 2024. The same highlighted three issues for determination: -
 - a. Whether the taxing master erred in principle in the assessment of the instructions fees and getting up fees.
 - b. Whether the bill of costs dated 17th August 2022 should be reviewed, taxed off or remitted before a different taxing officer.
8. On the 1st issue for determination it is submitted that the Taxing Officer taxed the instruction fees at a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/-) and getting up fees at a sum of Kenya Shillings One Sixty-Six Thousand Six Sixty-Six Hundred and Sixty-Seven Cents (Kshs. 166,666.67/-). That the Taxing Officer erred in principle by failing to take into account relevant factors of assessing the instruction fees which is the value of the property that was yet to be transferred which was Fourty Euros (40,000Euros) inclusive of furniture and fittings which the Plaintiff/Respondent had taken possession and she was not seeking any orders of specific performance.
9. The Learned Counsel for the Applicant submitted that the court acknowledged that the bill had been filed in the year 2022 and it was not contested that as at that time the value of the suit property



was unknown. That without any valuation report for proof of value, the amount presented by the Respondent could not be used as instruction fees. That the Taxing Officer failed to appreciate that the court had given a mention date for 10th October, 2018 to record a consent on costs and the same was not forthcoming. The Respondent's inaction of failing to pursue the matter on the said date could not be visited upon the Applicant. That the Taxing Officer had exercised her discretion injudiciously by shifting the burden of proving the value of the property to the Defendant/Applicant. The Taxing Master therefore ignored the principles in taxation and relied on an unknown principle of appreciating in value of the suit property without giving any basis of the rate of appreciating and value which formed the basis of the instruction fees.

10. It is submitted that the taxing master ignored the value of the property as stated in the plaint, witness statements and agreement for sale and hence exercised her discretion wrongly in determining the instruction fees which was high in light of the value of the subject property. Counsel stated that the exercise of discretion of a taxing officer is only permissible where the value of the subject matter cannot be ascertained from the pleadings. Reliance is placed in the holding in the case of "Joreth Limited - Versus - Kigano & Associates Advocates [2002] EA92". Further that the suit was not complex in nature and it was not contested since it was compromised before hearing therefore the assessment of the instruction fees at a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/=) was grossly exaggerated.
11. It is further submitted that the taxing officer erred in principle by failing to comply with the provisions under Schedule 6[1][b] of the advocates remuneration order by subjecting the instruction fees to 75% discount. The same provides that to sue or defend in a suit in which the suit is determined in a summary manner in any manner whatsoever without going to full trial the fee shall be 75% of the fees chargeable under item 1[b]. That the taxing master acknowledged this provisions but failed to apply them.
12. It was also submitted that the taxing officer erred in awarding getting up fees to the Plaintiff since the said costs are only awarded to advocate-client bill of costs and not party and party bill of costs. That the award of party and party is also not automatic as it ought to be proved that the party claiming the same prepared for the trial in order to warrant the award. The same is provided for under part 2[iii] of schedule 6 of the advocates remuneration order 2014 and was affirmed in the case of "C.N. Kihara Advocates Versus Maendeleo Ya Wanawake Organisation[MYWO]2021 eKLR". Counsel maintains that the plaintiffs advocate never prepared for the matter for hearing and the getting up fees was not meant to be awarded.
13. On whether the bill of costs dated 7th August, 2022 should be revived, taxed off or remitted before a different taxing officer, the applicant submits that the amended bill of costs dated 18th October, 2022 be set aside and be remitted before another taxing officer for taxation as it was held in the case of: - "Joreth Limited - Versus - Kigano & Associates Advocates [2002] EA92"

B. The Written Submissions by the Plaintiff/Respondent

14. The Law firm of Messrs. John Bwire & Associates representing the Respondents filed their submissions dated 22nd January, 2025 before court. The same summarised two issues for determination as follows
 - a. Whether the taxing master erred in principle in the assessment of the instruction fees and getting up fees and
 - b. Whether the bill of costs dated 17th august 2022 should be reviewed, taxed off or remitted before a different taxing officer.



15. On the 1st issue for determination, it is submitted that Schedule 6 of the Advocates Remuneration Order (ARO) provides that fees for instructions in suits shall be as listed therein unless the taxing officer in his discretion shall increase the same or unless otherwise provided. The Respondent submits that the dispute herein originated from the agreement to sell and purchase a half portion of property known as title no Kwale/Galu Kinondo/1233 together with one fully furnished house at Fourty Euros (40,000 Euros) which agreement was made on 15th November, 2012. That it is not contested by the time the bill of costs was filed in the year 2022 and by that time the value of the suit property was unknown. That the suit was compromised by a consent recorded by parties but the same was not on monetary terms. That the court was to assess costs of the suit and award the same to the Plaintiff. The Respondent states that the taxing master was rightful in exercising her discretion in assessing the instruction fees. Reliance was placed in “Joreth Limited Versus Kigano & Associates Advocates [2002] EA92” and in “Del Monte Kenya Limited Versus Kenya National Chamber of Commerce and Industry [KNCCI] Murang’a Chapter & 2 Others.
16. It is further submitted that the taxing master was correct in taking into consideration the value of the suit property due to passage of time, the size of the property, its location, the nature of the suit, the length of time it took the plaintiff to actualize her rights and the interests and the conduct of the parties as determinable from the court record. That the same were guided by the principles governing taxation as was held in the case “Premchand Raichand Ltd Another V Quarry Services of East Africa Ltd and Another”.
17. The Respondent maintains that the sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000) was reasonable and the same encompasses any discount that would be chargeable under Schedule 6[1] [b] of the ARO if the value of the property was ascertainable and used to charge instruction fees. That the Applicant has failed to demonstrate with precision any manner in which the Taxing Master erred in principle by exercising the discretion expressly provided for under statute.
18. On getting up fees it was submitted that Schedule 6 paragraph 2 of the ARO provides that a fee for getting up and preparing for trial shall be allowed. That in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph. The Respondent submits that the matter had been set down for hearing by the time the consent was recorded. That the taxing officer was satisfied that the case had been prepared for trial therefore and the getting up fees was therefore warranted and was directly from the instruction fees. Reliance was placed in the cases of “Alpha Knits Limited – Versus - Kenindia Assurance Company Limited [2023] eKLR and “Ramesh Naran Patel – Versus - Attorney General [2012] eKLR” that the award of (...) Kshs. 166,666.67/- was judicious and justifiable in the circumstances.
19. On whether the bill of costs should be reviewed, taxed off or remitted before a different taxing officer, the Learned Counsel submitted that the discretion of the taxing officer is provided for under Rule 16 of the ARO. That there is no evidence that the taxing master exercised her discretion capriciously or whimsical to warrant any of the above reliefs. In case of “Republic V Ministry of Agriculture and 2 Others; Exparte Muchiri W’njuguna & Others [2006] eKLR”. The respondent states that remitting the taxed bill to another taxing officer for re-taxation would amount to forum shopping for courts and hence the same order should not issue. According to the respondent, the application is for dismissal with costs.



V. Analysis & Determination

20. The Court has considered the filed the Chamber Summons application dated 27th August, 2024, the Grounds of Opposition in response to it, the rival written submissions, the cited authorities and the relevant provisions of *the Constitution* of Kenya, 2010 and the law.
21. For the Honourable Court to arrive at an informed, fair and reasonable decision, it has framed the following four (4) issues for its determination. These are:-
 - a. Whether the Chamber Summons application dated 27th August, 2024 has any merit or not.
 - b. Whether the ruling delivered on 7th August, 2024 by Taxing Master should be set aside.
 - c. Whether the bill of costs dated 18th October, 2022 be reviewed and taxed off or remitted with appropriate directions before a different taxing master for consideration
 - d. Who should bear the cost of this application.

Issue No. a). Whether the Chamber Summons application dated 27th August, 2024 has any merit or not.

22. Under this sub heading, the Honourable Court will be examining the main substratum of the application – reviewing and setting aside of the decision by the Taxing Master. Essentially, the Applicant seeks to set aside the ruling of the court over the Respondents bill of costs dated 18th October, 2022. In so doing, the Applicant states that the Taxing Master injudiciously taxed the bill and awarded an excessive sum thereby abusing the discretion granted over taxation. Under the provision of Rule 11 of the Advocates Remuneration Order makes provision for the procedure an aggrieved party must adopt. It states:
 - a. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - b. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 - c. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - d. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days’ notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
23. The procedure contemplated above is summarily as follows: -
 - a. The aggrieved party issues a notice within 14 days on the items objected
 - b. The Taxing Officer shall forthwith give reasons for his decision



- c. Upon receipt of the reason, the objector shall within 14 days' file an application to the High Court setting out grounds for objection
 - d. If dissatisfied with the High Court, the objector shall with leave of court appeal to the Court of Appeal.
24. From the availed record, the Taxing Officer was served with the statutory notice challenging the taxed bill vide a letter dated 19th August, 2024. However, the Honourable Court has not been able to trace the reasons forwarded by the Taxing Master in justification of the taxed bill and in response to the statutory notice. Be that as it may, its noted the Chamber summons application challenging the ruling by the taxing master was filed after the statutory notice was given to the taxing master. The court opines that the Applicant has sufficiently demonstrated having followed the laid down procedure in making the instant application. For this very reason, I discern that the Chamber Summons application is merited in terms of procedure and thus should be allowed whatsoever.

Issue No. b). Whether the ruling delivered on 7th August, 2024 by Taxing Master should be set aside.

25. Under this Sub – heading, the Honourable Court will decipher on the issues of setting aside the ruling by the Taxing Master. The legal principles governing the setting aside of decisions by the Taxing Master are well established in several cases. The Court notes that most of them have been referred to by the parties herein and thus there will be no point to re – invent the wheel. They include but not limited to the cases of: “Premchand Raichand Limited & Another – Versus - Quarry Services of East Africa Limited and Another [1972] E.A 162, First American Bank of Kenya vs Shah and Others (2002) EA 64 and Joreth Ltd vs Kigano and Associates (2002) 1 EA 92. The said principles are summed up as follows: -
- a. That there was an error of principle.
 - b. The fee awarded was manifestly excessive or is so high as to confine access to the court to the wealthy.
 - c. That the successful litigant ought to be fairly reimbursed for the costs he has incurred.
 - d. That so far as practicable there should be consistency in the award.
26. Based on the records herein, the Taxing Master awarded the Respondent a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500, 000/=). Undoubtedly, the Applicant herein vehemently disputes the said award and terms the same as being excessively high given that the value of the suit property is unknown. Further, that the suit was settled by consent. The court is called upon to interfere with the discretion of the taxing master in making this award.
27. According to the provision of Schedule 6, Part A (1) of the Remuneration Order 2014 provides as follows:
- a. “1. Instruction fees Subject as hereinafter provided, the fees for instructions shall be as follows —
 - b. (a).....
 - c. (b)To sue or defend in a suit in which the suit is determined in a summary manner in any manner whatsoever without going to full trial the fee shall be 75% of the fees chargeable under item 1(b).
 - d. (c).....”



28. The circumstances under which a court can interfere with such discretion were aptly stated in the case of: - “First American Bank of Kenya Vs Shah and Others [2002] E.A.L.R. 64 AT 69”, where the court held as follows: -

“First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle”.

29. Additionally, in the South African Case of: “Visser – Versus - Gubb 1981 (3) SA 753 (C) 754H – 755C”. The court stated as follows:

a. “The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

30. From the record and specifically at pages 2 of 5 of the ruling on the amended bill of costs, the Taxing Master under instruction fees stated that the Plaintiff had sought for a sum of Kenya Shillings Two Million (Kshs. 2,000,000/-) under this limb stating that the matter was complex and the suit property had accrued value since the year 2012 to the date of Judgement. The Taxing Master noted that the Defendant while disputing this amount had on the other hand proposed a sum of Kenya Shillings Fifty Thousand (Kshs. 50,000/=) as reasonable given that the suit was based on specific performance and which was not a complex issue of law. The court in its award based on the agreement of 15th December, 2012 involving the suit property and which stated that the purchase price would be a sum of Fourty Euros (40,000/- Euros). The Taxing Master opined that the value of the suit property had appreciated by the time the bill was placed before the court in the year 2022. However, without any valuation report, the court was of the view that a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/-) was sufficient given the size of the suit property, its location and the nature of the suit.

31. The Applicant herein disputes this amount and states that the amount is grossly high and the delay in filing the bill of costs from the time the suit was compromised was not occasioned by the Applicant, hence the issue of appreciation of the property in terms of its value from the time of filing the suit to filing of the bill of costs was not to be considered. The question that arises is whether the taxing master exercised her discretion injudiciously.

32. It is trite law that instruction fees are charged from the value of the subject matter, but there are suits where the value cannot be drawn from pleadings or judgment as is evident in the instant suit. The Taxing Master has expressed herself as to how she arrived at the amount awarded for instruction fees. It is noteworthy that initially the amount sought was a sum of Kenya Shillings Two Million (Kshs. 2,000,000/-) and which was taxed off to the present amount. It is evident that the suit was not protracted or complex and the same did not proceed to completion, however the taxing master has stated that the location and size of the property informed the instruction fees granted. I am convinced that the Taxing Officer did use a wrong principles of law in arriving at the taxed amount. In as much as



the size of the suit property is stated in the lease deed, the exact location of the same was not provided for by any reliable documentary evidence even in the pleadings. Supposing the location was disclosed in the pleadings, my conviction is still unwavering that the same would still not inform the court of the current value of the suit property. The taxing master therefore based her award on assumption. From the pleadings the value of the suit property as at the time of purchase was Fourty Thousand Euros (40,000 Euros) which is equivalent to a sum of Kenya Shillings Three Million Two Hundred Thousand (Kshs. 3,200,000/-). The Plaintiff/Respondent failed to give any evidence in the form of a valuation report in guiding the taxing master on the current value of the property, the court cannot assume that the property has appreciated over the years and further give a figure of its current market price. The Defendant/Applicant has also failed to give a definitive position on the value of the property which is the subject of the suit herein. Indeed, as observed by the Applicant, the suit was on orders of specific performance, but over what? The property is what makes the subject matter of the suit. This court opines that the value of the property as at the time of instituting the suit will guide in calculation of the instruction fees. The amount awarded as instructions fees was in all honesty exorbitant and the court holds so. The court opines that the sum of Kenya Shillings One Hundred and Fifty Thousand (Kshs. 150,000/-) suffices and the sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/-) is taxed off to a sum of Kenya Shillings One Hundred and Fifty Thousand (Kshs. 150,000/-). The court has considered the provision for charging 75% of the fees chargeable under schedule 6 PART A [1b] of the Remuneration Order 2014 for suits that have been concluded in a summary manner.

Issue No. c). Whether the bill of costs dated 18th October, 2022 be reviewed and taxed off or remitted with appropriate directions before a different taxing master for consideration

33. Clearly, from the above expansive analysis, the issue under this sub title has been exhausted. Nonetheless, the Honourable Court holds that on the getting up fees, Ojwang J. (as he then was) in “Shamshudin Khosla as Chairman, Abdul Gafur Pasta as Honorary Secretary & Mohamed Bayusuf as Treasurer (On their own behalf and on behalf of) the Members of Kenya Transport Association – Versus - Kenya Revenue Authority [2011] eKLR expounded on the term getting up and stated as follows:

“From the foregoing authority, I would draw the inference that “getting-up” fees, in ordinary litigation, partially overlaps with instruction fees. Whereas instruction fees represent the formal commitment of the Advocate to a new client who thereafter gives sufficient instructions, in a process of hearing-and-receiving by the Advocate, getting-up fees relate to the first step (and possibly, later, equally-significant steps) which the Advocate takes, in preparing the pleadings and other vital process-documents, for lodgement and service.”

34. The Taxing Master awarded the getting up fees at a sum of Kenya Shillings One Sixty-Six Thousand Six Sixty-Six Hundred and Sixty-Seven Cents (Kshs. 166,666.67/-) based on the one third of the instruction fees rule. The Applicant disputes the said amount and states that the Plaintiff/ Respondents’ Advocate never prepared the matter for hearing and getting up fees was not meant to be awarded based on the reasons that as at the time default judgement was being entered, the matter was already set down for formal proof. It is stated that the matter came up for directions on 21st May, 2018 and a consent was recorded on the said date where a further mention was issued for 10th July, 2018 to confirm compliance with the terms of the consent. That the suit was thus compromised by recording of the consent and the Plaintiff has not proved that he had prepared for trial hence no award should be made on the basis of getting up fees.



35. Paragraph 2 of Schedule 6A of the Remuneration Order 2014, provides as follows:

“In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation

36. The record bears the fact that the suit had already been set down for hearing of the formal proof before the consent was entered into. The parties herein appeared before the court on two occasions being 21st May, 2018 and 10th July, 2018 for recording the consent and to confirm compliance with the contents of the consent. The Applicant in his submissions has admitted that default Judgement had been entered and the matter was set down for formal proof with a date before the consent was entered into. This statement confirms that the hearing had been prepared for, therefore it cannot be said that there was no preparation for the proceeding of the matter. The award of getting up fees is therefore adjusted to a sum of Kenya Shillings Fifty Thousand (Kshs. 50,000/-) as per what has been awarded on the instruction fees. I am guided by the holding in “C.N Kihara & Company Advocates – Versus - Maendeleo Ya Wanawake Organization (MYWO) [2021] eKLR”, in which G.V. Odunga J (as he then was), stated as follows:

“58., it is clear under Schedule 6 paragraph 2 of the Advocates Remuneration Order, 2014 that no fees is chargeable for getting up and preparing for trial until the case is confirmed for hearing and in case where the case is not heard, the taxing officer must be satisfied that the case has been prepared for trial.”

37. Having made the above findings, the court sees no tenable grounds in having the bill of costs reviewed, taxed off or remitted before a different taxing officer, the court has already dealt with review of the bill.

Issue No. d). Who will bear the Costs of the Application?

38. It is now well established that the issue of costs is at the discretion of the Court. Costs means what is awarded to a party at the conclusion of any legal action or proceedings in litigation. The proviso of the Section 27 of the *Civil Procedure Act*, Cap. 21 holds that costs follow the event. By event it means the result or outcome of the legal action or proceeding (See the case of Republic – Versus - Rosemary Wairimu Munene – Versus – Ihururu Dairy Farmers Co – Operative Limited – JR. Appl. No. 6 of 2004; Cecilia Karuru Ngayu – Versus Barclays Bank of Kenya Limited (2016) eKLR & Supreme Court Petition No. 4 of 2012 eKLR - Jasbir Singh Rai & 3 Others – Versus – Tarlochan Singh Rai & 4 Others).

39. In the instant Application, the Court finds that it is in the interest of justice for each party to bear its own costs given the circumstances of the case.

VI. Conclusion & Disposition

40. Consequently, upon causing an indepth analysis to the framed issues herein in the Preponderance of Probabilities and the balance of convenience, the Honourable Court finds that the Taxing Master erred in the assessment hence arriving at the wrong assessment of costs. Thus, it proceeds to orders as follows:

-

a. That the application dated 27th August, 2024 be and is hereby found to be meritorious and thus allowed and thus setting aside the decision of the Taxing Master dated the 4th February, 2021.



- b. That the following terms to be adhered with: -
- i. The bill of costs dated 18th October, 2022 be and is hereby re-assessed to a sum of Kenya Shillings One Hundred & Fifty Thousand (Kshs. 150,000/-) for instruction fees and a sum of Kenya Shillings Fifty Thousand (Kshs. 50,000/-) for getting up fees.
 - ii. The Taxing Officer be and is hereby directed to re-calculate the new assessed amount and issue the new Certificate of Costs.
 - iii. The other items will remain as taxed.
- c. That each party will bear its own costs.

It is so ordered accordingly.

RULING DELIVERED THROUGH THE MICROSOFT PLATFORM, SIGNED & DATED AT KWALE THIS 18TH DAY OF FEBRUARY 2025

HON. MR. JUSTICE L.L NAIKUNI

ENVIRONMENT & LAND COURT AT KWALE

Ruling delivered in the presence of: -

Mr. Daniel Disii – the Court Assistant.

M/s. Indesia Advocate holding brief for M/s. Mugo Advocate for the Plaintiff/Respondent.

Mr. Mungai Kamau Advocate for the Defendant/Applicant.

