



**Muturi Mwangi & Associates v Mwangi (Environment and Land Miscellaneous Application E163 of 2021) [2025] KEELC 275 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 275 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E163 OF 2021**  
**OA ANGOTE, J**  
**JANUARY 30, 2025**

**BETWEEN**

**MUTURI MWANGI & ASSOCIATES ..... APPLICANT**

**AND**

**HELLEN WANJIRU MWANGI ..... RESPONDENT**

**RULING**

1. Before this court is the Applicant's Chamber Summons application dated 27<sup>th</sup> March 2024, brought under Rule 11(1) & (2) of the Advocates Remuneration Order 2014. The Applicant has sought for the following orders.
  - a. That this Honourable Court be pleased to find that the learned Deputy Registrar/ Taxing Master in exercising her discretion in determining the instruction fees due to the Applicant in her decision delivered on 22<sup>nd</sup> August 2022, with respect to the Applicant's Bill of Costs dated 24<sup>th</sup> August 2021, did not act judiciously thus arriving at an amount so manifestly low as to cause an injustice to the Applicant and warrant the disturbance of the same by this Honourable Court.
  - b. That this Honourable Court be pleased to set aside the learned Deputy Registrar/ Taxing Master's decision delivered on 22<sup>nd</sup> August 2022 with respect to the Applicant's Bill of Costs dated 24<sup>th</sup> August 2021.
  - c. That this Honourable Court be pleased to re-assess the Advocate/Client fees due to the Applicant and find that the fees due in the taxation cause is as presented in the Advocate/ Applicant's Bill of Costs dated 24<sup>th</sup> August 2021 and the submissions filed in support thereto.
  - d. That the costs of this application be in the cause.



2. This application is supported by the grounds set out on its face and in an affidavit sworn by Muturi Mwangi. These grounds are that the Applicant's advocates filed an Advocate-Client Bill of Costs dated 24<sup>th</sup> August 2021 and that the Bill of Costs arose from services rendered in Nairobi ELC Case No. 317 of 2011 Hellen Wanjiru Mwangi versus the Administrators of the Estate of Jason Atinda Ouko.
3. It was deponed that the learned Deputy Registrar delivered a ruling dated 22<sup>nd</sup> August 2022 awarding the applicant Kshs. 1,275,929.06/- as taxed costs despite the applicant having proposed Kshs. 34,147,100/- as taxed costs, and that in her ruling, the Taxing Officer determined the instruction fees with reference to the purchase price of the suit property stated in the 1976 sale agreement rather than the value of the suit property, made available through a valuation report filed pursuant to her leave.
4. According to the Applicant, the instruction fee was allowed at Kshs. 450,000 as opposed to Kshs. 15,620,000 as proposed in the taxed Bill of Costs.
5. The deponent averred that in her ruling, the Taxing Officer stated that the Applicant unilaterally filed the valuation report, yet the Respondent was at all times made aware of the intended valuation, invited to elect a mutual valuer and requested to be present throughout the valuation. It was deposed that the Respondent however chose not to allow the necessary access to the suit property or to respond to the invitation. Additionally, it was deposed, the Applicant had sought leave to obtain and file the same.
6. The Applicant asserted that the Taxing Officer misapprehended the nature of the matter, its complexity and cause of action, all factors evident in the Applicant's bill of costs and well settled principles of law on determination of instruction fees.
7. He added that the Taxing Officer failed to appreciate the edict and dictates of Rules 3, 5, 13A and 16 of the Advocates Remuneration Order with respect to the nature and substance of the underlying matter and that she failed to conduct the proceedings in compliance with the Overriding Objective principle.
8. The deponent further averred that the Taxing Officer disregarded and failed to appreciate the final orders of the court which gave rise to the Applicant's Bill of Costs dated 24<sup>th</sup> August 2021; that she did not appreciate the substantive effect of the judgement by Obaga J in which he granted the equitable remedy of specific performance to the Respondent and that one who seeks equity must do equity and equity delights to do justice and not by halves.
9. Lastly, he claimed that the Taxing Officer disregarded the overwhelming weight of evidence on record, including the valuation report, which ought to have informed the value of the suit property.
10. The Respondent opposed the application through a Replying Affidavit dated 25<sup>th</sup> July 2024 and sworn by Helen Wanjiru Mwangi. She averred that the Applicant's proposed sum of Kshs. 34,147,100 is based on the valuation report which was an afterthought and was not part of the pleadings or the documents in the proceedings.
11. She asserted that the report was unilateral, non-factual and over-ambitious; that the Taxing Officer elucidated the guiding principles in assessing the fees in her ruling and was guided by the same in exercising her discretion, and that the Applicant had already been paid over Kshs. 1.2 million by the Respondent which is not too low to cause any injustice.
12. Hellen Wanjiru Mwangi deponed that the Applicant has not demonstrated reasonable grounds to enable the court to interfere with the discretion of the taxing master as there is no error of law or of principles or the amount awarded being too low to make it interfere with the decision. She further asserted that the Application offends the provisions of Rule 11 of the Advocate's Remuneration Order as there are no itemized objections as required or expected.



13. The Applicant's counsel filed submissions and authorities which I have considered.

### **Analysis and Determination**

14. The Applicant/Advocate has filed this reference application under Rule 11 of the Advocates Remuneration Order, against the ruling of the Taxing Officer dated 22<sup>nd</sup> August 2022. Rule 11 of the Advocates Remuneration Order provides as follows:

- “(1) 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.
- (2) 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.
- (3) 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.
- (4) 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.”

15. The reference herein is specifically with respect to the taxation of the instruction fees by the Taxing Officer. The Applicant deposes that in her ruling, the Taxing Officer determined the instruction fees using the purchase price of the suit property stated in the 1976 sale agreement rather than the value of the suit property, made available through a valuation report filed pursuant to her leave.

16. In her determination, the Taxing Officer held as follows with respect to the instruction fees:

“In this case, the value of the subject matter is unascertainable from the pleadings and the judgement on record. The Applicant however, unilaterally had a valuation conducted on the suit property herein and attached a valuation report to its bundle of supporting documents dated 1 April 2022. Upon carefully perusing the court record, I do note that the Plaintiff (Respondent herein) admits to buying the suit property in 1976 for the purchase price of Kshs 150, 000/-. It would be misguided for this court to consider the valuation report presented to it after judgment was rendered as the same was not part of the proceedings in the parent file. I will therefore use my discretion and award an instruction fee of Kshs 450, 000/-. In granting this amount, I have taken into account the principles elucidated above in the Joreth case and also the principles elucidated in Republic v Minister for Agriculture & 2 Others ex-parte Samuel Muchiri W'Njuguna & 6 others (2006) eKLR, where the court aptly stated that the taxation of the advocates instruction fees should avoid any prospect of unjust enrichment and should be reasonable compensation for professional work done. Getting up fees is consequently taxed at Kshs 150,000/-.”



17. The Applicant is aggrieved by the award of Kshs. 450,000 as instruction fees and wishes to have this decision set aside, and substituted with the instruction fees presented in the Advocate/Applicant's Bill of Costs dated 24<sup>th</sup> August 2021, which is for Kshs. 15,620,000. The Applicant deponed that the Taxing Officer failed to consider the weight of evidence on record, including the valuation report, which ought to have informed the value of the suit property.

18. It is trite that in a reference, a court will not interfere with the exercise of discretion of a Taxing Officer, unless such Taxing Officer erred in principle in assessing the costs. This was held in *Kipkorir, Tito & Kiara Advocates vs Deposit Protection Fund Board* [2005] eKLR where the court stated as follows:

“On 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.”

19. Indeed, an error as to the correct value of a subject matter and instruction fees arrived at on the wrong principles are rightly considered errors of principle. In *Kamunyori & Company Advocates vs Development Bank of Kenya Limited Civil Appeal No. 206 of 2006[2015]* eKLR, the court stated as follows:

“... failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instruction fee is arrived at on the wrong principles, it will be set aside”

20. The Supreme Court in *Kenya Airports Authority vs Otieno Ragot and Company Advocates* [2024] KESC 44 (KLR) has pronounced itself on the process of determination of value of a subject matter. In its determination, it reaffirmed the principles established by the Court of Appeal in *Joreth Ltd. vs Kigano & Associates* [2002] 1 E.A. 92 and in *Peter Muthoka & Another vs Ochieng & 3 Others*, Civil Appeal No. 328 of 2017; [2019] eKLR. It held 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. In that regard, the Court of Appeal in the case of *Joreth Ltd. vs. Kigano & Associates* [2002] 1 E.A. 92 expressed that-

“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) ...”



Equally, the Court of Appeal in considering the issue of how the value of a subject matter can be determined in *Peter Muthoka & Another vs. Ochieng & 3 Others*, Civil Appeal No. 328 of 2017; [2019] eKLR, stated 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.”

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.”

21. In this case, the value of the suit property was not apparent or discernible from the pleadings or judgment of the court. The suit property, measuring 5 acres, was sold to the Plaintiff through a sale agreement dated 15<sup>th</sup> October 1976, for the consideration of Kshs. 105,000.
22. No valuation of the suit property was presented during the course of hearing. It is only after judgment, during taxation proceedings, that the Applicant presented a valuation report. The said valuation report was annexed to the Supporting Affidavit dated 1<sup>st</sup> April 2022.
23. The question raised for this court’s consideration is whether the Taxing Officer erred in failing to take into consideration the valuation report filed by the Applicant. As to whether a Taxing Officer may consider additional evidence in the taxation process, *Okong’o J in Otieno, Ragot & Co Advocates vs County Government of Kisumu* [2022] KEELC 15078 (KLR) was of the view that there is no room for ascertaining the value of the subject matter from valuation reports submitted during taxation. The court held:

“There is no room for ascertaining the value of the subject matter from valuation reports submitted during taxation where like in the present case, the same cannot be ascertained from the pleadings, judgment or settlement. It was therefore not open for the Applicant to prepare valuation reports for the purposes of taxation. It is worth noting that the Applicant’s valuation reports were prepared in July 2020 and the bill filed in August 2020. There is no doubt that the said valuation reports were prepared for the purpose of the taxation.”



24. Of a divergent view is Munyao J in *Masore Nyang'au & Co. Advocates vs Kensalt Limited* [2019] KEELC 2712 (KLR), who opined that:

“Schedule 6 above, does prescribe how costs should be assessed ‘where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties’. The said schedule does not however explicitly prescribe what should be done, where the value of the subject matter is not in the pleadings, judgment or settlement. You could indeed have litigation where the value of the subject matter is not given in the pleadings, judgment or settlement. A common example is in land cases, where say, the plaintiff files suit to cancel the defendant’s title claiming that the defendant acquired the title through fraud but the title rightfully belongs to the plaintiff. In such a case, all that may be given in the pleadings is the registration particulars of the said land and no more. Assuming the plaintiff in such a case succeeds, and the court orders the defendant’s title to be cancelled, and in place, the plaintiff to be registered as proprietor, what would the plaintiff be entitled to as costs in respect of instruction fees since no actual value may be given in such a judgment?”

At the end of the day, costs will need to be pegged on the value of the subject matter, and my own view of the matter, is that the court is not precluded from asking for evidence so as to determine what the value of the subject matter may be for purposes of taxing costs, or refer to other documents provided in the course of the case, and which may point at the value of the subject matter. Such documents may include the sale agreement, valuation report, or the consideration noted in the transfer instrument or title.”

25. The court held that in any case under Rule 13A of the Advocates Remuneration Order, a Taxing Officer may call for evidence for purposes of determining a dispute before it. Rule 13A reads as follows:

“For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.”

26. It is then clear that a Taxing Officer, may call for additional evidence in exercising his duty. This power is discretionary and not as of right. A party must therefore seek leave of the court before adducing additional evidence during taxation proceedings.

27. In this matter, while the Applicant depones that the valuation report was filed subsequent to leave that was sought from the Taxing Officer, such leave was not granted by the Taxing Officer. When the parties appeared before the Taxing Officer on 22<sup>nd</sup> March 2022, Counsel for the Applicant communicated its interest to file a valuation report.

28. The Respondent’s Counsel indicated that it was reluctant as it argued that the bill cannot be taxed at its current value, as the property has already been developed. The Taxing Officer then directed the parties to file their submissions, making no mention of its application to file a valuation report.

29. There was therefore no express agreement or of the court that the valuation report would be the basis of assessing the instruction fees.

30. This court is of the view that the filing of valuation reports for the purpose of guiding the taxing officer in taxation ought to be discouraged for the simple reason that such a value was never the basis of the suit in the first place.



31. If the value of a suit property is so important to a litigant, then it should form a basis of his claim and should be specifically pleaded. This was similarly held in *S.G. Mbaabu & Co. Advocates vs Joseph Muoki Kakenyi, Mathew Mweu Kakenyi & Annaounceatah Maritia Kiteta* (Sued on their own behalf and as administrators of the Estate of Peter Mwikya Kakenyi (Deceased) [2018] KEELC 1356 (KLR).
32. On this basis, this court finds that the Taxing Officer rightfully declined to consider the valuation report filed by the Applicant, as the same was filed without leave. Having found that there are no reasonable grounds to interfere with or set aside the Taxing Officer's decision, the Taxing Officer's decision is hereby upheld.
33. The application dated 27<sup>th</sup> March 2024 is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY, 2025**

**O. A. ANGOTE**

**JUDGE**

**In the presence of;**

Mr. Ndungu for Wachira for Applicant

Mis Magie for Respondent

Court Assistant: Tracy

