



Koskei v Sang (Suing as Personal Representative of the Estate of the Late Esther Taprandich Sang) (Environment and Land Miscellaneous Application E010 of 2024) [2025] KEELC 530 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 530 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E010 OF 2024
LA OMOLLO, J
FEBRUARY 13, 2025

BETWEEN

EZEKIEL KIPSIELE KOSKEI APPLICANT

AND

NANCY CHEBII SANG RESPONDENT

SUING AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE ESTHER TAPRANDICH SANG

RULING

Introduction

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 7th May, 2024. The application is expressed to be brought under Schedule 7 of the Advocates Remuneration Order, Order 51 Rule 1 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*.
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the decision of the Taxing Officer as evidenced in the ruling delivered on 23rd April, 2024 be set aside and taxed afresh by this Honourable Court.
 - d. That in the alternative, the Honourable Court be pleased to order that the Respondent’s bill of costs be taxed afresh by another taxing officer.
3. The Application is based on the grounds on its face and the supporting affidavit of Ezekiel Kipsiele Koskei sworn on 7th May, 2024.



Factual Background.

4. The application under consideration first came up for hearing on 13th May, 2024 when the Court directed that it be served upon the Respondent. The Court also granted a temporary stay of execution of the orders issued by the Taxing Officer on 23rd April, 2024 pending the hearing and determination of this application.
5. The matter was mentioned on 4th June, 2024 and 8th July, 2024 to confirm service of the application upon the Respondent.
6. On 24th July, 2024 the Court gave directions that the application would be canvassed by way of written submissions.
7. After numerous mentions to confirm filing of submissions, the application was on 14th October, 2024 reserved for ruling.

Applicant's Contention.

8. The Applicant contends that the Taxing Officer delivered his ruling on 23rd April, 2024 and awarded the Respondent Kshs. 953,000/=.
9. The Applicant also contends that he has substantial grounds upon which he is challenging the ruling of the Taxing Officer.
10. The Applicant further contends that the Taxing Officer's decision exhibits procedural irregularities and errors as the Court had ordered that costs be taxed at a lower scale since it was undefended. He adds that this warrants the setting aside of the said decision.
11. It is the Applicant's contention that the decision of the Taxing Officer is marred by substantive errors including miscalculations and misinterpretations of laws and/or facts which have resulted in an unjust and incorrect taxation of costs.
12. It is also the Applicant's contention that it is necessary for the Court to set aside the said decision and order fresh taxation in order to uphold the interest of justice and to ensure that costs are properly and fairly determined in accordance with the law and the established principles.
13. It is further the Applicant's contention that there are reasonable grounds to believe that the Taxing Officer whose ruling is being challenged may not be impartial or free from bias in reconsidering the taxation.
14. The Applicant contends that fresh taxation by a different Taxing Officer will ensure fairness and impartiality in the assessment of costs, it will safeguard the rights of all parties involved and promote confidence in the judicial process.
15. He ends his deposition by stating that the Defendants(sic) stand to suffer grave and irreparable loss and damage if the orders sought are not granted.

Respondent's Response.

16. The Respondent filed a Replying Affidavit sworn on 23rd May, 2024.
17. She deposes that the Applicant was served with the party and



party bill of costs dated 26th June, 2023. The matter was mentioned on 11th July, 2023, 19th March, 2024 and 2nd April, 2024 to confirm whether the Applicant had filed a response to the application but despite requesting for time to do so, he failed to file the response.

18. She also deposes that the pattern demonstrated by the Applicant clearly showed that he was not opposed to the said bill of costs as presented.
19. She further deposes that the Applicant failed to follow the laid down procedure on objection to a decision on taxation as set out by paragraph 11 of the Advocates Remuneration Order.
20. It is her deposition that the Applicant failed to annex the ruling of the Taxing Officer, any notice that he gave to the Taxing Officer within the required period of fourteen days and the items of taxation to which he objects to.
21. It is also her deposition that the Applicant has not annexed the reasons advanced by the Taxing Officer for the basis of taxation.
22. She deposes that the Taxing Officer applied the relevant principles of taxation when taxing the costs bearing in mind that the Applicant did not file any response to the bill of costs. She adds that the Taxing Officer adopted a flexible and sensible approach to the task by striking a balance while taking into account the circumstances of the entire suit, time taken and the expenses incurred.
23. She also deposes that the Applicant has not stated, with exactitude, the exact principles of taxation that the Taxing Officer misapplied while assessing the bill of costs.
24. She ends her deposition by stating that she is advised by her advocates on record that the Applicant's application is incompetent, bad in law and an abuse of the Court process and it should be dismissed with costs.

Issues for determination.

25. The Applicant filed his submissions on 7th October, 2024 while the Respondent filed her submissions on 24th July, 2024.
26. The Applicant submits on the following issues;
 - a. Whether the ruling delivered on 23rd April, 2024 by the Taxing Officer was marred by procedural and substantive errors warranting fresh taxation of the Respondent's bill of costs.
 - b. Whether a different Taxing Officer should be appointed to assess the Respondent's bill of costs afresh and if so, on what grounds.
27. On the first issue, the Applicant relies on the judicial decisions of Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & Others [1972] EA 162, Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR and submits that the Taxing Officer's decision was marred with procedural irregularities and substantive errors.
28. The Applicant also submits that the Taxing Officer failed to comply with the directions of the Court that the Respondent's costs be taxed on a lower scale because the suit was undefended.
29. The Applicant further submits that the Taxing Officer miscalculated and misinterpreted the facts and the law in arriving at the taxed amount. He adds that the awarded costs were in excess of what is reasonable or justifiable in the circumstances.



30. With regard to the second issue, the Applicant submits that he has reasonable grounds to believe that the Taxing Officer who delivered the impugned ruling may not have been impartial or free from bias.
31. The Applicant also submits that the procedural irregularities and the unjustifiable award suggests a lack of impartiality that undermines the fairness of the taxation process.
32. The Applicant urges the Court to order fresh taxation to be done by a different Taxing Officer in order to restore confidence in the judicial process and to ensure that costs are fairly assessed in accordance with the law. The Applicant relies on the judicial decision of *First American Bank of Kenya v Shah 7 Others* [2002] 1EA 64 in support of his submissions.
33. The Applicant concludes his submissions by urging the Court to set aside the Taxing Officer's decision and the Respondent's bill of costs be taxed by another Taxing Officer.
34. The Respondent submits on the following issues;
 - a. Whether the reference herein lacks merit for offending paragraph 11 of the Advocates Remuneration Order.
 - b. Whether the Taxing Master erred in principle in the assessment of the bill of costs.
35. With regard to the first issue, the Respondent relies on paragraph 11 of the Advocates Remuneration Order and the decision of *Machira & Co. Advocates v Magugu* [2002] 2 EA.
36. The Respondent submits that paragraph 11 of the Advocates Remuneration Order sets out the steps that are to be followed in filing a reference.
37. The first step is that the aggrieved party must issue a notice specifying the items objected to within fourteen days. The second step would be for the Taxing Officer to promptly provide reasons for the decision. The third step is for the objector to file a reference within fourteen days upon receipt of the reasons and the fifth step is to seek leave to appeal to the Court of Appeal after the Court has rendered its decision.
38. The Respondent relies on the judicial decision of *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005]eKLR and submits that a good ground to file a reference would be in instances where a party writes to the Taxing Officer and he fails to respond.
39. The Respondent also relies on the judicial decision of *Ahmednasir Abdikadir & Co. Advocates vs National Bank of Kenya Limited (2)* [2006] 1 EA 5 and submits that where the reasons for the taxation are in the ruling, there is no need to write to the Taxing Officer.
40. The Respondent submits that in the present matter, there is no ruling attached and it is therefore difficult for this Court to discern whether there was a need to write to the Taxing officer to seek for reasons.
41. The Respondent also submits that the Court cannot equally tell the reasons given by the Taxing Officer in his determination and whether the same amounted to an error in principle.
42. The Respondent relies on *Aoro v Were (Miscellaneous Reference Application E019 of 2022)* [2022] KEHC 14628 (KLR) (31 October 2022) and submits that the Court cannot interfere with the award of quantum by the Taxing Officer unless it is proved that there is an error of principle in arriving at the said decision and that it occasions an injustice to the other party.



43. The Respondent also submits that the Applicant has not put forth any evidence in support of his assertions that the Taxing Officer's decision has procedural irregularities and errors and that costs were to be awarded as per the lower scale.
44. The Respondent reiterates that the Applicant failed to annex the ruling he is filing a reference from, the notice he gave to the Taxing Officer within fourteen days and the reasons advanced by the Taxing Officer if any.
45. With regard to the second issue, the Respondent reiterates that the Applicant failed to file a response to the Party and Party bill of costs dated 26th June, 2023 and he was therefore not opposed to the bill of costs as presented.
46. The Respondent submits that the Taxing Officer applied the relevant principles of taxation while taxing the said bill of costs and she urges the Court to dismiss the Applicant's application.

Analysis and Determination.

47. I have considered the Applicant's application, the response thereto and the submissions.
48. It is my view that the following issues arise for determination;
 - a. Whether the Taxing Officer's decision delivered on 23rd April, 2024 should be set aside.
 - b. Who should bear costs of the application.
49. The principles for setting aside the decisions of Taxing Officers were established by the Court of Appeal in the case of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR. It was found 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.”
50. In Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] Civil Appeal 206 of 2006, the Court of Appeal gave instances where discretion cannot be deemed to have been exercised properly 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 instructions fee is arrived at on the wrong principles, it will be set aside.”

A. Whether the Taxing Officer's decision delivered on 23rd April, 2024 should be set aside.

51. The Applicant seeks that this Court sets aside the Taxing Officer's decision delivered on 23rd April, 2024 on the ground that it exhibits procedural irregularities. The Applicant submits that the Court ordered that the bill of costs be taxed at a lower scale but the Taxing Officer did not abide by the said directive.
52. The Applicant therefore seeks that the Respondent's bill of costs be taxed by another Taxing Officer.



53. The Respondent on the other hand contends that the Applicant failed to annex to his application a copy of the ruling of the Taxing Officer, a Copy of the Notice seeking for reasons for the decision and the response if any. The Respondent therefore submits that the Court is unable to determine whether it was necessary for the Applicant to seek for reasons.

54. Paragraph 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 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 subparagraph (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 expired.”

55. It is important to note that the Respondent contends that the Applicant neither annexed a copy of the ruling delivered by the Taxing Officer on 23rd April, 2023 nor sought reasons for his decision.

56. A perusal of the Court record shows that a copy of the decision of the Taxing Officer that was delivered on 23rd April, 2024 was filed. The Taxing Officer in his ruling made the following determination;

“The Defendant was served with the party to party bill of costs by the advocate for the Applicant/Plaintiff and there was no response. It is worth to note that too (sic) the value of the said land is not indicated in the pleadings.

Paragraph 1(a) and (b) of Schedule 6 applies only where the value of the subject matter can be determined from the pleadings/judgement or settlement between the parties. The taxing master therefore has discretion to award a reasonable sum and must exercise his discretion judicially...

I proceed to tax it as per Schedule 6 of the Advocates [Remuneration] Amendment] (sic) Order 2014.

Intrusion (sic) Fees

The amount of the said suit land is known. (sic) The piece of land is basically an agricultural land. Hence the amount charged of Kshs. 800,000 by the Applicant is on the higher side as the value of the land is not known hence the same is hereby assessed at Kshs. 600,000

On item 2 is assessed at ksh 200,000



Item 4 to item 71 are all taxed as drawn

The Party and Party bill of cost dated 26th June 2023 is taxed at Ksh 936,545”

57. The said ruling was with respect to a party and party bill of costs dated 26th June, 2023 filed by the Respondent herein after the Court in its judgement delivered in Kericho ELC Case No. 61 of 2012 between Nancy Chebii Sang (Suing as personal representative of the estate of the late Esther Taprandich Sang) and Ezekiel Kipsiele Koskey awarded her costs.
58. The bill of costs dated 26th June, 2023 is not annexed to the affidavit in support of the present application. I have taken the liberty of perusing Kericho ELC Case No. 61 of 2012 and the bill of costs filed therein.
59. Under Item No. 1 on instruction fees, the Respondent sought to be awarded Kshs. 800,000/= and the Taxing Officer in his ruling taxed the instruction fees at kshs. 600,000/=. Item No. 2 on Getting up fees was taxed at Kshs. 200,000/= while no award was made on item No. 3.
60. The Taxing Officer then taxed Items 4 to 71 as drawn and the Party and Party bill of costs dated 26th June, 2023 was taxed at Kshs. 936,545/=.
61. It is imperative to note that save for item No. 1 on instruction fees, the Taxing Officer did not give reasons for taxing items 4 to 71.
62. This Court notes that the Applicant has not annexed any letter to show that he sought reasons for the taxation of item No’s 4 to 71. On perusal of the pleadings filed in Kericho ELC Case No. 61 of 2012, I have found no such letter.
63. In the judicial decision of Evans Thiga Gaturu Vs Kenya Commercial Bank Ltd [2012] eKLR the Court held as follows;

“In my own view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the Judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles. However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons.” [Emphasis Mine]
64. In the above cited judicial decision, the Court held that where no reasons appear on the face of the decision of the Taxing Officer, it is judicious that such reasons be furnished to enable the Court make an informed decision as to whether or not the discretion of the Taxing Officer was rightly exercised.
65. The Taxing Officer did not give reasons for the taxation of item No’s 4 to 71. It is my view that it was imperative for the Applicant to seek reasons for the taxation of item No’s 4 to 71 of the bill of costs as no such reasons were given. Given the circumstances, the question that follows is what then should be done?
66. In Elijah Ireri t/a Ireri & Company Advocates v County Government of Embu [2021] eKLR the Court held as follows;

“19. A copy of the taxing officer’s ruling has not been attached to the reference or submissions filed nor has he availed the impugned bill of costs. However, I have been able to peruse the said ruling which is on record. From the same, it is clear that the same does not contain reasons on its face. The items which the taxing officer seems to have given reasons thereof are items 1 and disbursement items.



I say so having noted that the applicant seeks setting aside of the costs allowed by the Deputy Registrar in its entirety and in alternative, Items 1-13 of the bill be reviewed and taxed off. It therefore means that the only items which this Court can deal with are Item 1 and the disbursements. Items 2-13 cannot be considered by this Court.” [Emphasis Mine]

67. In the above cited judicial decision, the Court was dealing with a matter wherein the Taxing Officer had only given reasons for taxation of item No. 1 and the disbursements but had failed to give reasons for the taxation of the other items in the bill of costs. The Applicant had also not sought reasons for the taxation of the other items. The Court held that it could only address the items which the Taxing Officer had given reasons to.
68. Similarly, in the present matter, the Taxing Officer only gave reasons for taxation of item No. 1. It is my view that Item No. 1 on instruction fees and by extension item No. 2 on getting up fees are the only items that this Court can reconsider in this reference.
69. The Applicant contends that the Taxing Officer’s ruling delivered on 23rd April, 2024 exhibits procedural irregularities as the Taxing Officer did not take into consideration the order of the Court that costs be taxed at the lower scale.
70. In response the Respondent contends that even though the Applicant alleges procedural irregularities, he failed to put forth any evidence to prove that the decision of the Taxing Master was not taxed to the lower scale.
71. The Taxing Officer taxed item No. 1 on instruction fees at Kshs. 600,000/=. A perusal of the bill of costs dated 26th June, 2023 shows that the Respondent stated that the value of the subject matter was kshs. 4,000,000/= and therefore sought to be awarded kshs. 800,000/=.
72. In assessing the instruction fees at kshs. 600,000/= the Taxing Officer stated that the value of the suit property could not be ascertained.
73. Upon perusal of the pleadings filed in Kericho ELC Case No. 61 of 2012 it is evident that the value of the suit property cannot be ascertained.
74. As pointed out by the Applicant, the Court in its judgement delivered in Kericho ELC Case No. 61 of 2012 made an order that costs to the Plaintiff (the Respondent in the present proceedings) be taxed at the lower scale.
75. The said orders are as follows;
 - a. The Defendant, shall by himself, agents, servants, employees or any other party acting on his behalf, forthwith vacate from the land known as LR Kericho/ Kapsuser/320 within 30 days of the delivery of this judgement.
 - b. Costs to the Plaintiff at the lower scale since the suit was undefended” [Emphasis Mine]
76. It is, therefore, clear that the Taxing Officer ought to have taxed the said bill of costs on the lower scale.
77. The Taxing Officer in his ruling stated as follows;

“...I proceed to tax it as per schedule 6 of the Advocates [Remuneration] Amendment] (sic) Order 2014...”



78. In the judicial decision of *Kiambu Murutani Co. Limited v Kamindi Selfridges Supermarket* [2021] eKLR the Court held as follows;

“ 10. The suit was filed in the year 2011 and determined in the year 2019. The applicable Remuneration Order is the 2006 for the instruction fees and 2014 Advocates Remuneration Order for the services rendered after 2014.”

79. In the present matter, the plaint in *Kericho ELC Case No. 61 of 2012* was filed on 24th July, 2012 and therefore the applicable Remuneration order is the one for the year 2006.

80. That being the case, the Taxing Officer’s decision on the applicable Remuneration Order was based on an error of principle.

81. In *Meir Mizrahi & another v Nairobi City Council & 2 others* [2014] eKLR the Court held as follows;

“The Ruling in *Premchand Raichand & Another v Quarry Services E.A Ltd & Others* (1972) E.A provided that a Court will not normally interfere with a taxing officer’s decision on taxation matters, the exception to the same are decisions based on error of principle and manifestly excessive fees awarded to justify an inference that it was based on an error. The Court is granted unfettered power to determine what orders it deems fit and suitable to be made in the circumstances of the determination of a taxing officer’s ruling as per Section 51(2) of the *Advocates Act*. In exercise of the aforementioned provisions of the law, and considering all circumstances and issues raised, the application by the Plaintiff dated 20th July, 2006 is allowed and the Bill of Costs dated 6th April 2006 remitted for taxation afresh before a different taxing officer.”

82. In the judicial decision of *Elijah Ireri t/a Ireri & Company Advocates v County Government of Embu* (supra) the Court held as follows;

“ 26. In the instant case, the amount claimed was straight-forward. Looking at what the schedule provides, it is clear that the taxing officer did not apply the Schedule properly. The amount arrived at was erroneous and ought to be reviewed as it was based on a wrong principle. The bill ought to be returned for reconsideration by the taxing master.” [Emphasis Mine]

Disposition.

83. In my view, the taxation of items No. 1 and 2 of the bill of costs dated 26th June, 2023 was based on an error of principle.

84. Consequently, I order as follows:

- a. The bill of costs dated 26th June, 2023 is hereby remitted for fresh taxation of items No. 1 and 2 before a different Taxing Officer.
- b. The Taxing officer shall use the Advocates Remuneration Order, 2006.
- c. The Applicant shall have costs of this reference.

85. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 13TH DAY OF FEBRUARY, 2025.



L. A. OMOLLO

JUDGE.

In the presence of: -

No appearance for the Applicant.

No appearance for the Respondent.

Court Assistant; Mr. Joseph Makori

