



**Strategic Urembo Sacco Society Limited v Meli (Environment and Land Miscellaneous Application E056 of 2021) [2024] KEELC 13904 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13904 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E056 OF 2021  
NA MATHEKA, J  
DECEMBER 18, 2024**

**BETWEEN  
STRATEGIC UREMBO SACCO SOCIETY LIMITED ..... APPLICANT  
AND  
SHADIA MOHAMED KIPKORIR MELI ..... RESPONDENT**

**RULING**

1. The application is dated 19<sup>th</sup> July 2024 and is brought under Rule 11 of the [Advocates Remuneration Order Advocates Act](#), Articles 25(c) & 50 of the [Constitution of Kenya](#), 2010 seeking the following orders;
  1. That the Ruling of the Taxing Master (Hon. Nyariki J.) delivered on 15<sup>th</sup> May 2024 and all other subsequent orders arising therefrom be varied and/ or set aside.
  2. That the Advocate - Client Bill of Costs dated 30<sup>th</sup> January 2024 be struck out in its entirety.
  3. That in the alternative, this Honorable Court be pleased to tax the Bill of Costs dated 30<sup>th</sup> January 2024 afresh and/or make directions as to its fresh taxation before a different taxing master.
  4. That the Honorable Court be pleased to issue any other orders that it may deem fit.
  5. That the costs of this reference be provided for.
2. It is premised on inter alia the following grounds that vide the Bill of Costs dated 30<sup>th</sup> January 2024, the Respondent's Advocate filed an Advocate - Client Bill of Costs seeking the sum of Kshs. 374,297.20 as costs. That the Taxing Master held that the Bill of Costs was unopposed and went ahead to allow all the items as drawn to scale save for VAT, which was taxed off at nil. That notwithstanding the fact that a Replying Affidavit sworn on 2<sup>nd</sup> May 2024 and subsequently the Submissions filed in the matter, the same were unfortunately never taken into consideration by the Taxation Master. That the Taxing



Master delivered a Ruling on 15<sup>th</sup> May 2024 and taxed the Advocate's Bill of Costs dated 30<sup>th</sup> January 2024 at Kshs. 374,297.20 without taking into consideration the aforementioned documents causing great prejudice to the Applicant. That the Applicant is aggrieved by the Ruling of the Taxing Master and files this reference against the said Ruling in its entirety and all consequent orders arising therefrom. That the Taxing Master therefore erred in condemning the Applicant unheard and in allowing the taxation as unopposed. That based on the sum of the grounds set out in the foregoing, it is evident that the Taxing Master's Ruling delivered on 15<sup>th</sup> May 2024 was erroneous. It is equally apparent that the Advocate's Bill of dated 30<sup>th</sup> January 2024 is thus misconceived. That on the basis of the foregoing, it is in the interest of justice and fairness that the Taxing Master's Ruling delivered on 15<sup>th</sup> May 2024 and all other consequent orders arising therefrom be set aside, and the Advocate's Bill of Costs dated 30<sup>th</sup> January 2024 be struck out with costs to the Client.

3. The Respondents stated that the reference has been filed after two months, which exceeds the prescribed 14-day period provided for under the *Advocates (Remuneration) Order*, under Paragraph 11(1). Consequently, the reference is time-barred and should be struck out. Since the reasons for the decision of the Taxing Master had been given in the ruling itself, the clock for filing the reference started from the date of the ruling. That the grounds in support of the objection against the decision of the Taxing Master lack legal basis. Even if the same are to be considered, they could not have ousted the Taxing Master's jurisdiction since none of the items on the Bill of Costs were contested other than the unfounded allegations that the Bill of Costs was premature. Thus, the Bill of Costs as far as the items are concerned was unopposed. That the Taxing Master, acting under established legal principles and with jurisdiction to assess costs, duly taxed the bill of costs following the dismissal with costs, of the suit brought as a miscellaneous application. It was not for the Taxing Master to decide whether the costs were payable upon being awarded or after the determination of the second suit filed by the Respondent/Applicant. The Taxing Master had no jurisdiction to review or set aside the decision of the Superior Court awarding costs. The Taxing Master's role is independent of the merits of the suit itself, focusing solely on determining the appropriate costs payable. That the Respondent/ Applicant's filing of a plaint after the dismissal of their initial suit brought as a miscellaneous application does not affect the court's previous decision that Applicant/ Respondent was awarded the costs. Costs were awarded in relation to the earlier defective suit, and that award remains intact regardless of any subsequent legal actions unless appealed against.
4. That the Respondent/ Applicant's objection lacks legal merit, as it does not challenge the taxing officer's process or the amounts awarded but is instead based on an irrelevant subsequent filing of a plaint. That the Respondent/ Applicant's attempt to file a plaint under the same case number as the dismissed miscellaneous application is procedurally improper. The dismissal of the earlier application marked the conclusion of that matter, and a fresh suit with a new case number is required to proceed with a proper plaint. Miscellaneous applications are not designed for substantive suits, and their dismissal does not grant leave for re-filing under the same case number. That the Chamber Summons Application dated 19<sup>th</sup> July, 2024 is an abuse of the court process as the same has been filed to delay and frustrate the payment of the costs awarded. The application should be dismissed with costs and they pray that the honourable court awards interest on the costs taxed on the 15<sup>th</sup> of May, 2024 at rate of 14% from the 15<sup>th</sup> May, 2024 till payment in full. That the Chamber Summons Application dated 19<sup>th</sup> July, 2024 is frivolous, vexatious and an abuse of the process of the court and the same ought to be dismissed with costs.



5. This court has considered the application and the submissions therein. The procedure for the challenge of a taxing master's decision is provided under Rule 11 of the [Advocates Remuneration Order](#) which provides as follows:

- “(1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the 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.”

6. Be that as it may, the principles of varying or setting aside a Taxing Master's decision as set out in the cases of [First American Bank of Kenya v Shah and Others](#) (2002) EA 64 and [Joreth Ltd v Kigano and Associates](#) (2002) 1 EA 92, that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law. In [First American Bank of Kenya v Shah and Others](#) (2002) EALR 64 the court held that;

“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”.

7. These principles reiterate the position of the Court of Appeal in [Joreth Ltd v Kigano & Associates](#) (2002) eKLR, where the said Court held 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, or where the amount of fees awarded by the taxing master is excessive to amount to an error in principle.

8. In [Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'njuguna](#) (2006) eKLR Ojwang, J (as he then was) expressed himself as follows:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other...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. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the [Advocates \(Remuneration\) Order](#) itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. Needless to state not all the above factors may exist in any given



case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment...A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved...Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularised justification of the mode of exercise of any discretion provided for... The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs...”

9. I have perused the court record and find that indeed the applicant herein did not file an objection/reference in court within 14 days as required under rule 11 (2) of the *Advocates (Remuneration)*. Be that as it may, they state that the Taxing Master held that the Bill of Costs was unopposed and went ahead to allow all the items as drawn to scale save for VAT, which was taxed off at nil. That notwithstanding the fact that a Replying Affidavit sworn on 2<sup>nd</sup> May 2024 and subsequently the submissions filed in the matter, the same were unfortunately never taken into consideration by the Taxation Master. I have perused the said ruling and indeed the Taxing Master noted that the bill of costs was unopposed. I find this was an error on the part of the Taxing Master as the Applicant had a right to be heard. Consequently, I find that the application is merited and I grant the following orders;

1. The Taxing Master's decision of taxed bill of costs dated 30<sup>th</sup> January 2024 and ruling delivered on 15<sup>th</sup> May 2024 be and is hereby set aside.
2. The bill of costs dated 30<sup>th</sup> January 2024 shall be remitted to another Taxing Master for taxation.
3. No order as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 18<sup>TH</sup> DAY OF DECEMBER 2024.**

**N.A. MATHEKA**

**JUDGE**

