



Lago v National Irrigation Authority (Miscellaneous Application E169 of 2024) [2024] KEELC 14090 (KLR) (11 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14090 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E169 OF 2024**

JO MBOYA, J

DECEMBER 11, 2024

BETWEEN

GEORGE ODHIAMBO LAGO APPLICANT

AND

NATIONAL IRRIGATION AUTHORITY RESPONDENT

RULING

Introduction

1. The Applicant has approached the court vide Chamber Summons Application dated 29th August 2024 and in respect of which the Applicant has sought the following reliefs:
 - a. The decision of the Tribunal Taxing Officer dated 5th August 2024 vide Land Acquisition Tribunal Dispute No. TRLAP E005 of 2024; George Odhiambo Lago v National Irrigation Authority and National Land Commission on the Applicant Advocate's Bill of Costs dated 26th June 2024 be set aside on the following items:
 - i. Items 1 and 47 on Instructions Fees;
 - ii. Items 3, 5, 7, 9, 11, 12, 32, 34, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 77, 89, 93, and 104 on making of copies of documents which were filed and are on record;
 - iii. Items Nos. 17, 18, 38, 39, 45, 46, 64, 72, 73, 80, 81, 97 and 98 of service of pleadings.
 - iv. Item No. 13 on travelling expenses from Kisumu to Nairobi to file the claim;
 - v. Items 16, 21, 22, 37, 40, 44, 63, 68, 69, 70, 82, 85, 86, 87, and 96 on attendance before the offices of the Tribunal to file pleadings and documents and for Hearings, directions and mentions;



- vi. Items 102 and 103 on attendance, accommodation and subsistence in Kisumu and site visit for the Claimant and hiser advocates on record, which expenses were absolutely necessary, had to be incurred and were necessary;
 - vii. And for the reasons given, be set aside.
- b. The Court be pleased to tax the said Bill of Costs itself and to allows such sums as are reasonable either globally andor on the items as disputed, as specified in the Notice of Objection and the resultant reasons, given the circumstances of the case and taking into account the provisions of Schedule 11 paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the Advocates Remuneration Order 2014.
- In the alternative:
- c. The Bill of Costs dated 26th June 2024 be remitted back to the Land Acquisition Tribunal and the same be taxed afresh on priority basis by the members of the Land Acquisition Tribunal by itself.
 - d. Costs of this Application be provided for and in case the same is granted and in order to avoid the filing of fresh Bill of Costs, the same be determined and fixed by this court.
2. The subject Application [Reference] is premised on numerous grounds which have been highlighted in the body thereof. Furthermore, the Reference is supported by the Supporting Affidavit sworn by one Okong'o Kennedy Odhiambo, sworn on the 29th August 2024. In addition, the deponent has attached various annexures including a copy of the judgment of the Land Acquisition Tribunal and the Ruling of the Taxing Officer, which is the subject of the Reference.
 3. Upon being served with the Reference, the Respondent herein filed a Replying Affidavit sworn by one Mr. Issac Munga. For coherence, the Replying Affidavit was sworn on the 14th October 2024. Instructively, the Respondent herein contends that the Taxing Officer, namely the Deputy Registrar of the Land Acquisition Tribunal was seized of the requisite jurisdiction to undertake the impugned taxation. Besides, the Respondent has contended that the Taxing Officer correctly taxed the Bill of Costs and hence the Reference beforehand is not only misconceived but also legally untenable.
 4. The Reference beforehand came up for directions on 29th October 2024 and whereupon the advocates for the respective parties covenanted to canvass and dispose of the Reference by way of written submissions. In this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
 5. First forward, the Applicant filed written submissions dated 4th November 2024 whereas the Respondent filed written submissions dated 19th November 2024. Instructively, both sets of written submissions form part of the record of the court.

Parties' Submissions

a.The Applicant's Submissions:

6. The Applicant filed written submissions dated 4th November 2024 and wherein the Applicant has adopted the grounds contained at the foot of the Application. In addition, the Applicant has also highlighted the averments contained in the body of the Supporting Affidavit and the various annexures thereto.
7. Furthermore, learned counsel for the Applicant has ventured forward and highlighted four salient issues for consideration and determination by the court. Firstly, learned counsel for the Applicant has



submitted that the Deputy Registrar of the Land Acquisition Tribunal was devoid and divested of the requisite jurisdiction to entertain and undertake the taxation of the Applicant's Bill of Costs dated 26th June 2024. In particular, learned counsel for the Applicant has submitted that the jurisdiction to tax the Bill of Cost inheres on the Tribunal and not the Deputy Registrar of the Tribunal.

8. Additionally, learned counsel for the Applicant has submitted that even though the provisions of Section 133A (3) of the *Land Act* 2012 [2016] provides for the designation of a Deputy Registrar to assist the Tribunal in the performance of its [Tribunal] functions under the Act, the said section does not cloth the Deputy Registrar with the mandate to undertake the taxation of Bills of Costs.
9. On the other hand, learned counsel for the Applicant has submitted that the provisions of paragraph 2 of the Advocates Remuneration Order which was invoked and relied upon by the Deputy Registrar of the Land Acquisition Tribunal to tax the Bill of Costs does not speak to the Deputy Registrar of the Tribunal. In any event, it was contended that paragraph 2 of the Advocates Remuneration Order 2014 only bestows the jurisdiction to tax costs on the Deputy Registrars of the High Court and designated officers of the Tribunals.
10. Arising from the foregoing, learned counsel for the Applicant has submitted that the Deputy Registrar of the Land Acquisition Tribunal was thus divested of the requisite jurisdiction to undertake the taxation. In this regard, learned counsel for the Applicant has implored the court to find and hold that the proceedings undertaken by the Deputy Registrar, the Ruling thereof and the consequential Certificate of Taxation, are a nullity and ought to be set aside.
11. Secondly, learned counsel for the Applicant has submitted that the learned Deputy Registrar of the Land Acquisition Tribunal failed to properly exercise her discretion in taxing the instruction fees in terms of Items 1 and 47 at the foot of the Applicant's Bill of Costs. To this end, learned counsel for the Applicant has submitted that the learned Deputy Registrar misconstrued and misapprehended the value of the subject matter in dispute.
12. In addition, learned counsel for the Applicant has submitted that the learned Deputy Registrar improperly exercised her discretion in proceeding to assess and award instruction fees on the basis that the value of the subject matter was Kshs. 200,000- only. Nevertheless, it was contended that the sum of Kshs. 200,000- only, which the learned Deputy Registrar adverted to and referenced as the value of the subject matter, was only a limb of the reliefsremedies that were granted by the Land Acquisition Tribunal.
13. Other than the failure to properly discern and ascertain the value of the subject matter, learned counsel for the Applicant has also submitted that the learned Deputy Registrar also failed to take into account various perspectives and nuances that impact on the assessment and award of instruction fees. In this regard, counsel cited and referenced various factors including the importance of the matter to the parties, the complexity of the issues, the volume of documents that were examinedperused by the advocates on record and the timelines for the Hearing and determination of disputes before the Land Acquisition Tribunal.
14. To buttress the foregoing submissions that a failure to discern and appreciate the subject matter of the dispute would found a basis for interference with the discretion of the taxing officer and by extension, the Certificate of Taxation, learned counsel for the Applicant has cited and referenced inter alia the decision in *Kamunyori & Co. Advocates v development Bank of Kenya Ltd* [2015] eKLR; *Lucy Waithera and 2 Others v Edwin Njagi TA E.K Njagi & Co. Advocates* [2017] eKLR; and *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'Njuguna & 6 Others* [2006] eKLR respectively.



15. Based on the failure to take into account the various factors/perspectives, relevant in the determination of the instruction fees, learned counsel for the Applicant has submitted that the award on account of instruction fees was therefore erroneous and thus constitutes an error of principle.
16. On the other hand, learned counsel for the Applicant also submitted that the learned Deputy Registrar also failed to appreciate that the dispute beforehand contained various limbs including the contention by the Applicant that his constitutional rights to property under article 40 of *the Constitution* had been violated. Furthermore, it was contended that the learned Deputy Registrar also failed to take cognisance of the nature of remedies that were granted by the Land Acquisition Tribunal.
17. Flowing from the foregoing submissions, learned counsel for the Applicant has therefore invited the court to find and hold that in arriving at the instruction fees, the learned Deputy Registrar failed to take into account relevant factors and thus the award on account of instruction fees was erroneous.
18. Thirdly, learned counsel for the Applicant has submitted that the learned Deputy Registrar also erred in law in declining to tax and award various items touching on expenses incurred by the Applicant towards making copies, photocopying documents and scanning documents, which were used during the proceedings before the Land Acquisition Tribunal. In this regard, it was contended that the reason that was granted by the learned Deputy Registrar in declining to award expenses incurred in making copies and photocopies, was simplistic.
19. It was the further submission by learned counsel for the Applicant that in declining to award the items touching on making copies and undertaking photocopying of various documents that were used during the proceedings, the learned Deputy Registrar fell out of touch with reality.
20. Fourthly, learned counsel for the Applicant has also submitted that the reason that was deployed by the learned Deputy Registrar in failing to award the items touching on making copies, undertaking photocopies and scanning of documents, namely, lack of receipts, was contrary to and in contravention of Rule 74 of the Advocates Remuneration Order. For good measure, learned counsel posited that the provisions of Rule 74 of the Advocates Remuneration Order, behooved the learned Deputy Registrar to call for the vouchers/receipts, if same were required by the Deputy Registrar/Taxing Officer.
21. In support of the foregoing submissions, learned counsel for the Applicant has cited and referenced paragraphs 74 and 74A of the Advocates Remuneration Order and the decision in the case of *Mumias Sugar Co. Ltd v Tom Ojienda and Associates Advocates* [2021] eKLR.
22. Fifthly, learned counsel for the Applicant has also submitted that the learned Deputy Registrar erred in law in taxing off the items pertaining to travelling and disbursements incurred by both the Applicant and his counsel during the physical Hearing undertaken at Kisumu as well as the expenses incurred during the visitation to the locus in quo. In this regard, learned counsel for the Applicant has posited that the learned Deputy Registrar did not properly exercise her discretion.
23. In any event, it was contended that the reason[s] given by the learned Deputy Registrar, namely lack of vouchers/receipts was equally erroneous. Instructively, learned counsel for the Applicant re-visited the provisions of paragraphs 74 and 74A of the Advocates Remuneration Order.
24. Sixthly, learned counsel for the Applicant has submitted that the total award that was returned by the learned Deputy Registrar on the basis of costs payable to and in favour of the Applicant was inordinately low. To this end, learned counsel for the Applicant posited that the award of Kshs. 72,500- only as costs of the proceedings beforehand, is not realistic.
25. Arising from the foregoing, learned counsel for the Applicant has submitted that the award of Kshs. 72,500- only as costs for prosecuting the suit before the Land Acquisition Tribunal therefore represents



- a serious error of principle. In this regard, the court was implored to find and hold that the quantum of award of costs beforehand therefore constitutes an error which warrants the intervention of the court.
26. To buttress the submissions touching on the inordinately low award of costs and the fact that same constitutes an error of principle, learned counsel for the Applicant has cited and referenced various decisions including Vincent Kibiwott Rono v Abraham Kiprotich Chebet & Another [2022] eKLR; Odera Obar & Co. Advocates v Chatterhouse Bank Limited [2018] eKLR; and Kanu National Elections Board & 2 Others Salah Yakub Farah [2018] eKLR respectively.
 27. Finally, learned counsel for the Applicant has submitted that arising from the various errors of principles which bedevil the Ruling of the learned Deputy Registrar, it is imperative that the court be pleased to set aside the Certificate of Taxation and thereafter to undertake the taxation of the Applicant's Bill of Costs.
 28. On the other hand, learned counsel for the Applicant has submitted that subject to setting aside the impugned Certificate of Taxation, the court should be pleased to refer the Bill of Costs back to the Land Acquisition Tribunal for purposes of being taxed by the Tribunal itself and not otherwise.
 29. In a nutshell, learned counsel for the Applicant has invited the court to find and hold that the impugned Ruling by the learned Deputy Registrar of the Land Acquisition Tribunal is replete with errors of commission and omission and thus ought to be set aside. To this end, learned counsel for the Applicant has implored the court to find and hold that this Application is meritorious and ought to be allowed with costs.

b.The Respondent's Submissions:

30. The Respondent herein filed written submissions dated 19th November 2024 and wherein the Respondent adopted the contents of the Replying Affidavit sworn on 14th October 2024. Furthermore, the Respondent highlighted and canvassed three [3] salient issues for consideration and determination by the court.
31. First and foremost, learned counsel for the Respondent has submitted that the learned Deputy Registrar of the Land Acquisition Tribunal was seized of the requisite jurisdiction to undertake the taxation of the Bill of Costs dated 26th June 2024.
32. In this regard, learned counsel for the Respondent has invited the court to take cognisance of Rule 37 of the Land Acquisition [Compensation Tribunal] Rules 2010 and Section 12 of the Land Acquisition Act, respectively.
33. Additionally, learned counsel for the Respondent has also invited the court to take cognisance of the decisions namely John Kinyanjui Theuri & Kariuki Njuguna TA Kinyanjui Njuguna & Co. Advocates v The Board of Trustees, National Social Security Fund, [2023] KLR and Nyamogo and Nyamogo Advocates v Panafrica Insurance Co. Ltd and Another [2016] eKLR respectively.
34. In short, learned counsel for the Respondent has contended that the learned Deputy Registrar of the Tribunal was only competent, but same was seized of the requisite jurisdiction to undertake the taxation of the Bill of Costs.
35. Secondly, learned counsel for the Respondent has submitted that the Applicant herein has failed to establish and demonstrate any error of principle that vitiates the Ruling of the Deputy Registrar and the consequential Certificate of Taxation. In particular, it has been contended that the Certificate of Taxation by the taxing officer can only be interfered with and/or set aside by the Judge where it is proven that the taxing officer committed an error of principle and not otherwise.



36. Other than the foregoing, learned counsel for the Respondent has also submitted that it is incumbent upon the Judge to exercise deference to the taxing officer and only to interfere where the taxing officer has improperly exercised his/her discretion.
37. To support the foregoing submissions, learned counsel for the Respondent has cited and referenced various decisions including *Kipkorir Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR; *Premchand Raichand Limited & Another v Quarry Services of East Africa Limited & Another* [1972] E.A 162; *Kamunyori & Co. Advocates v Development Bank of Kenya Limited* [2015] eKLR; *First American Bank of Kenya v Shah & Others* [2002] E.A.L.R 64; and *Joreth Limited v Kigano & Associates* [2002] 1EA 92 respectively.
38. Thirdly, learned counsel for the Respondent has submitted that the Land Acquisition Tribunal which undertook the proceedings culminating into the judgement beforehand, is the trial court. In this regard, it has been contended that by virtue of being the trial court, the Land Acquisition Tribunal is thus not seized of the jurisdiction to undertake the taxation itself. For good measure, it has been contended that a judicial officer cannot assess a Bill of Costs that they themselves awarded.
39. Arising from the foregoing submissions, learned counsel for the Respondent has therefore implored the court to find and hold that the limb of the Application seeking to have the Applicant's Bill of Costs to be taxed by the Land Acquisition Tribunal is misconceived and legally untenable. To this end, learned counsel for the Respondent has cited and referenced the decision in the case of *Ogola v Onyango Otunga & Co. Advocates* [2023] eKLR.
40. In short, learned counsel for the Respondent has invited the court to find and hold that the Applicant herein has neither established nor demonstrated the requisite ingredients to warrant the interference with the Ruling of the Deputy Registrar and consequential Certificate of Taxation arising therefrom. Pertinently, learned counsel has implored the court to proceed and dismiss the Application beforehand with costs.

Issues for Determination:

41. Having reviewed the Reference and the Response thereto and upon consideration of the written submissions filed on behalf of the respective parties, the following issues crystallize [emerge] and are thus worthy of determination:
 - i. Whether the question of the competence/jurisdiction of the Deputy Registrar of the Tribunal can be questioned *vide* the instant Reference, or otherwise.
 - ii. Whether the Deputy Registrar of the Land Acquisition Tribunal was seized of the requisite jurisdiction to undertake the taxation of the Applicant's Bill of Costs or otherwise.
 - iii. Whether the Applicant herein has established and demonstrated the requisite ingredients to warrant the setting aside of the Ruling of the Deputy Registrar and the consequential Certificate of Taxation arising therefrom.
 - iv. What reliefs/remedies, if any, ought to be granted.



Analysis and Determination

Issue No. 1. Whether the question of the competence jurisdiction of the Deputy Registrar of the Tribunal can be questioned vide the instant reference, or otherwise.

42. Learned counsel for the Applicant has submitted that upon the filing of the Bill of Costs dated 26th June 2024, same [Bill of Costs] was placed before the Deputy Registrar of the Land Acquisition Tribunal who thereafter proceeded to and undertook the taxation thereof.
43. Nevertheless, learned counsel for the counsel for the Applicant has contended that the Deputy Registrar of the Land Acquisition Tribunal was not seized and/or possessed of the requisite jurisdiction to undertake the taxation. In particular, learned counsel for the Applicant has contended that the Deputy Registrar of the Land Acquisition Tribunal is not a Deputy Registrar of the High Court and hence same cannot arrogate unto herself the jurisdiction donated vide paragraph 2 of the Advocates Remuneration Order 2014.
44. On the other hand, learned counsel for the Applicant has also contended that even though the provisions of Sections 133A (3) of the *Land Act, 2012* [2016] adverts to the secondment of a Deputy Registrar to the Tribunal in an endeavour to assist the Tribunal in the performance of its functions, the said provisions do not confer/bestow upon the Deputy Registrar the power to undertake taxation of Bills of Costs, like the one beforehand.
45. On behalf of the Respondent, it was contended that the Deputy Registrar of the Land Acquisition Tribunal is seized of the requisite competence and jurisdiction to undertake the taxation of Bills of Costs.
46. Even though learned counsel for the Applicant has brought up the question of the jurisdiction of the Deputy Registrar of the Land Acquisition Tribunal to undertake taxation of Bills of Costs, it is crystal clear that the issue of the competence of the Deputy Registrar to undertake the taxation was neither canvassed nor ventilated before the Deputy Registrar. For good measure, learned counsel for the Applicant did not raise the jurisdictional question before the Deputy Registrar.
47. To the extent that the jurisdictional question was neither raised nor canvassed before the learned Deputy Registrar, same [Deputy Registrar] was not afforded an opportunity to deliberate on the question of his/her jurisdiction. Pertinently, it was apposite that the issue of jurisdiction/competence of the Deputy Registrar be canvassed before her in the first instance.
48. Having failed to raise and/or canvass the competence or otherwise of the Deputy Registrar for the said Deputy Registrar to respond, the question that now arises and which the court must grapple with is whether such an issue can be taken and canvassed vide the instant Reference.
49. To my mind, an Applicant can only raise and canvass vide Reference the issues that had been placed before the Deputy Registrar/taxing officer and not otherwise. In this regard, if learned counsel for the Applicant was convicted that the Deputy Registrar was not seized of the requisite competence and jurisdiction, then same ought to have dealt with the issue in the first instance before the taxation was undertaken.
50. Insofar as the competence of the Deputy Registrar was not questioned in the first instance, same, namely competence/jurisdiction of the said taxing officer cannot now be taken as a point vide the instant Reference. To this end, it is my finding and holding that the preliminary question touching on the competence and jurisdiction of the Deputy Registrar is not only premature but also misconceived.



51. To buttress the foregoing exposition of the law, it suffices to cite and reference the decision of the Court of Appeal in the case of Wilfred Konosi TA Konosi & Co. Advocates v Flamco [2019] eKLR where the Court of Appeal addressed a similar situation.
52. For coherence, the court stated and held thus:
- As a Judicial Officer sitting to tax a Bill of Costs between an advocate and his or her client, a taxing officer must determine the question whether heshe has jurisdiction to tax a Bill if the issue of want of advocateclient relationship is raised. An allegation that the advocateclient relationship does not obtain in taxation of an advocateclient Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question.
53. Secondly, there is no gainsaying that any person, the Applicant herein not excepted, who sees to object to the decision of a taxing officer [the Deputy Registrar] is obligated to lodge a Notice of Objection to Taxation and in respect of which, the objector is enjoined to highlight the items sought to be objected to. In this regard, it was incumbent upon the Applicant to itemise and highlight the question of jurisdiction if at all the Applicant was keen to object to same.
54. Be that as it may, I beg to underscore that I have reviewed the Notice of Objection to Taxation dated 12th August 2024 and which was filed on behalf of the Applicant. For good measure, the Applicant herein did not itemisehighlight the question of the jurisdiction of the Deputy Registrar as one of the items sought to be impugned.
55. In my humble view, if the Applicant was convinced that the question of jurisdiction was one of the items which same [Applicant] was keen to object to, then it behoved the Applicant to comply with Rule 11 (1) of the Advocates Remuneration Order on that account.
56. To my mind, the question of jurisdiction was not highlighted at the foot of the Notice of Objection to Taxation. In this regard, the raising of the issuequestion of jurisdiction in the body of the submissions by the Applicant is therefore an afterthought.
57. To underscore the importance of a Notice of Objection to Taxation and in particular, the requirement that the objector does highlight the items [read the limbs] of the taxation being objected to, it suffices to adopt and reference the holding of the Court of Appeal in the case of Machira & Co. Advocates v Arthur K. Magugu & another [2012] eKLR where the Court of Appeal stated as hereunder:
12. Sub-rule (1) requires the party objecting to give notice in writing within 14 days “of the items of taxation to which he objects.” As the trial judge correctly found, the Respondents notice of 1st August 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.
13. As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeals or reviews was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation, the Respondents notice of 1st August 2001 was fatally defective. It follows that the Respondents reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out.
58. From the decision supra, it is evident and apparent that the objector is called upon to highlight the items that are sought to be objected to. The failure to highlight a particular item denotes that that item,



which has not been highlighted, cannot thus be canvassed in the intended Reference, or the Reference, if any, filed by the Applicant.

59. Arising from the foregoing, it is therefore my finding that yet again, the aspect touching on jurisdiction and the competence of the Deputy Registrar of the Land Acquisition Tribunal cannot be agitated or ventilated by the Applicant.
60. Thirdly, it is also imperative to state that even though the Applicant has made submissions pertaining to and concerning lack of jurisdiction of the Deputy Registrar of the Land Acquisition Tribunal to tax the bill, the issue of jurisdiction is not one of the prayers that have been highlighted in the body of the Reference. To the extent that the question of lack of jurisdiction is not part of the prayers sought, I am again constrained to find and hold that the issue has been improperly raised and canvassed.
61. Pertinently, parties are bound by their pleadings and in this case the Applicant is bound by the contents of the Reference filed. In this regard, the Applicant cannot therefore seek to expand the boundaries and/or scope of the Reference through the submissions filed. [See the decision of the Court of Appeal in Independent Electoral and Boundaries Commission & another v Mule & 3 others (Civil Appeal 219 of 2013) [2014] KECA 890 (KLR) (31 January 2014) (Judgment)] [See also the decision in Dakianga Distributors (K) Ltd v Kenya Seed Company Limited [2015] eKLR]
62. Arising from the foregoing discussion, my answer to issue number one [1] is threefold. Firstly, the question of lack of jurisdiction of the Deputy Registrar of the Land Acquisition Tribunal to tax the Bill of Costs was neither raised nor canvassed before the Deputy Registrar in the first instance. In this regard, the question cannot therefore be canvassed *vide* the instant Reference.
63. Secondly, the Applicant herein was obligated to highlight all the items of the taxation, which same [Applicant] sought to object to. To this end, if the question of jurisdiction was [sic] an item sought to be impugned, then same [jurisdiction] ought to have been duly itemised at the foot of the Notice of Objection to Taxation dated 12th August 2024.
64. Thirdly, the question of jurisdiction of the Deputy Registrar of the Land Acquisition Tribunal to tax the bill was also not captured in the body of the Reference. Notably, the issue of lack of jurisdiction has only been brought forth *vide* the written submissions and not otherwise. Such an endeavour is contrary to and contravenes the doctrine of departure.

Issue Number 2 Whether the Deputy Registrar of the Land Acquisition Tribunal was seized of the requisite jurisdiction to undertake the taxation of the Applicant's Bill of Costs or otherwise.

65. Even though the court has engaged with and addressed the propriety touching on the manner the question of jurisdiction has been brought forth, it is still apposite to bring the debate on whether the Deputy Registrar of the Land Acquisition Tribunal had jurisdiction to tax the Bill to a close. To this end, I hold the opinion that the question herein may very well recur and/or emerge in subsequent proceedings.
66. Be that as it may, it suffices to underscore that the Deputy Registrar of the Land Acquisition Tribunal is a judicial officer seconded and designated to serve the Land Acquisition Tribunal. Suffice it to underscore, that the secondment of the Deputy Registrar to serve the Land Acquisition Tribunal is underpinned by the provisions of Section 133A (3) of the *Land Act* 2012 [2016].
67. Given the importance of the provisions of section 133A (3) of the *Land Act* [supra] to this matter, it is imperative to reproduce same.
68. For ease of appreciation, the said provision is reproduced as hereunder:



133A. Establishment of the Tribunal.

- (1) There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of three persons appointed by the Cabinet Secretary through a notice in the Gazette.
- (2) The members of the Tribunal shall consist of—
 - (a) one person nominated by the Judicial Service Commission, who shall serve as the Chairperson;
 - (b) one person nominated by the Cabinet Secretary; and
 - (c) one person nominated by the Attorney-General.
- (3) The Judicial Service Commission shall second a Deputy Registrar and such other staff members as are necessary to assist the Tribunal in the performance of its functions under this Act.
- (4) The Tribunal may, co-opt an expert to advise it on any matter before it and shall regulate its own procedure.
- (5) Members of the Tribunal shall be paid such allowances or other remuneration as the Judicial Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.

69. The purpose of secondment or designation of a Deputy Registrar to the Land Acquisition Tribunal is to assist the Tribunal in the performance of its functions under the Act. One of the functions of the Land Acquisition Tribunal would be the taxation of Bills of Costs arising from its determination of disputes entertained and adjudicated upon by itself.

70. My reading and understanding of Section 133A (3) of the *Land Act* 2012 [2016] drives me to the conclusion that the Deputy Registrar of the Land Acquisition Tribunal is bestowed with the jurisdiction and competence to tax Bills of Costs filed before the Land Acquisition Tribunal.

71. Notwithstanding the foregoing, it is also apposite to state that by virtue of being a Deputy Registrar, same is conferred with the special powers which accrue to the Registrar and Deputy Registrars under the *Civil Procedure Act* and the Rules made thereunder. Instructively, the Registrars and Deputy Registrars are conferred with special powers pursuant to the provisions of Order 49 Rule 1 of the Civil Procedure Rules 2010.

72. To contextualize the foregoing exposition of the law, it suffices to reproduce the provisions of Order 49 Rule 1 of the Civil Procedure Rules 2010; which to my mind also apply to the Land Acquisition Tribunal.

73. Same are reproduced as hereunder:

1. Registrar to be ministerial officer [Order 49, rule 1]

Wherever in these Rules it is provided that any ministerial act or thing may be done by the court, that act or thing may be done by the registrar or by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand.

74. Other than the provisions of the Civil Procedure Rules 2010 which have been highlighted in the preceding paragraph, it is also instructive to take cognisance of the provisions of paragraphs 2 and 10 of



the Advocates Remuneration Order. For good measure, the said paragraphs underscore the designated officer who is mandated to undertake taxation of Bills of Costs.

75. To this end, it suffices to reproduce paragraphs 2 and 10 of the Advocates Remuneration Order.

76. Same are reproduced as hereunder:

2. Application of Order

This Order shall apply to the remuneration of an advocate of the High Court by his client in contentious and non-contentious matters, the taxation thereof and the taxation of costs as between party and party in contentious matters in the High Court, in subordinate courts (other than Muslim courts), in a Tribunal appointed under the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap. 301) and in a Tribunal established under the *Rent Restriction Act* (Cap. 296).

10. Taxing officer

The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or Deputy Registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.

77. The contents of paragraph 10 of the Advocates Remuneration Order constitutes the Registrar, District Registrar or Deputy Registrar of the High Court as the taxing officers for the taxation of Bills filed under this Order. Even though the paragraph herein relates to Deputy Registrars of the High Court, there is no gainsaying that a Deputy Registrar whether of the High Court or of the designated Tribunal remains a judicial officer and thus seized of similar competence and jurisdiction for purposes of taxation of Bills.

78. To buttress this position of the law, it is instructive to revert to the decision of the Court of Appeal in the case of Wilfred Konosi TA Konosi & Co. Advocates v Flamco [2019] eKLR where the court underscored the nature and task of the taxing officer.

79. For good measure, the Court of Appeal held and stated as hereunder:

The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered.

80. The Applicant's Bill of Costs which was the subject of taxation was filed pursuant to the Advocates Remuneration Order. Pertinently, the Applicant herein invoked and deployed the provisions of Schedule 11 of the Advocates Remuneration Order in his endeavour to discern the costs due and payable. Suffice it to underscore that the Bill of Costs under reference is primarily filed under the Advocates Remuneration Order and hence its taxation is governed by paragraph 10 of the Advocates Remuneration Order.

81. Barring repetition, I beg to reproduce paragraph 10 of Advocates Remuneration Order again.

10. Taxing officer

The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or Deputy Registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.



82. In summary, I hold the humble position that paragraph 10 of the Advocates Remuneration Order, ought to be read *mutatis mutandis*. Furthermore, same ought to be read taking into account the fact that the Land Acquisition Tribunal was established following the Amendment of the *Land Act* in 2016. In this regard, the Advocates Remuneration Order could not have referenced the Deputy Registrar of the Land Acquisition Tribunal. Nevertheless, the reference to the Deputy Registrar ought to be read liberally and not otherwise.
83. For the sake of posterity, my answer to issue number two [2] is that the Deputy Registrar of the Land Acquisition Tribunal is conferred with the requisite competence and jurisdiction to tax Bills of Costs files before the Land Acquisition Tribunal.

Issue No. 3 Whether the Applicant herein has established and demonstrated the requisite ingredients to warrant the setting aside of the Ruling of the Deputy Registrar and the consequential Certificate of Taxation arising therefrom.

84. The Deputy Registrar of the Land Acquisition Tribunal entertained the taxation proceedings and thereafter rendered her Ruling on 26th August 2024 and wherein the Deputy Registrar spoke to various items contained at the foot of the Bill of Costs.
85. To start with, the Deputy Registrar taxed and awarded instruction fees in terms of item 1 in the sum of Kshs. 58,800- only. However, it is worth recalling that the Applicant herein had sought for instruction fees in the sum of Kshs. 500,000- only.
86. From the decision of the learned Deputy Registrar, the sum of Kshs. 441,200- only was taxed off. To this end, the learned Deputy Registrar proceeded on the basis that the value of the subject matter was Kshs. 200,000- and not otherwise.
87. Even though the learned Deputy Registrar proceeded and awarded instruction fees in the sum of Kshs. 58,800- only, there is no gainsaying that the learned Deputy Registrar did not endeavour to discern and/or determine the value of the subject matter from the pleadings, judgment or settlement. At any rate, it suffices to underscore that the dispute beforehand touched on *inter alia*, the violation of the Applicant's human rights and fundamental freedoms including the right to property under Article 40 of *the constitution*.
88. Additionally, it is also instructive to point out that the Applicant herein had also laid a claim to the effect that the Respondent had entered upon and trespassed onto the Applicant's land and thereafter commenced to lay irrigation infrastructure thereon without undertaking compulsory acquisition.
89. Without endeavouring to highlight and discuss the entirety of the Applicant's claim before the Land Acquisition Tribunal, it suffices to point out that the claim by the Applicant was heard and determined by the Tribunal which thereafter proceeded to issue a raft of reliefs and/or remedies in favour of the Applicant. For good measure, the remedies which were granted in favour of the Applicant are highlighted at the foot of the judgment rendered on 14th June 2024.
90. To my mind, the dispute that was placed before the Land Acquisition Tribunal did not have a designated value contained or highlighted in the body of the Statement of Claim. Furthermore, the judgment of the Land Acquisition Tribunal did not determine the value of the subject matter. Pertinently, the Tribunal's Decree directed *inter alia* that National Land Commission [who was the 2nd Respondent] was to undertake survey and valuation of the suit properties with a view to determining the extent of the wayleave and thereafter arrive at the amount of the compensation payable.



91. Taking into account the nature of the reliefs and remedies that were granted by the Land Acquisition Tribunal, it is crystal clear that the determination of the instruction fees in respect of the instant matter was dependent on the discretion of the Deputy Registrar, albeit taking into account a plethora of factors including the nature of the dispute, the complexity thereof, the size/volumes of documents perused by the parties and also the timelines under which the Claim was to be determined. Instructively, the Claims before the Land Acquisition Tribunal are time bound and must be determined within sixty (60) days from the date of lodgement.
92. To be able to undertake proceedings before the Land Acquisition Tribunal, there is no gainsaying that the advocates concerned must comply with the set timelines. Furthermore, the advocates concerned must also prioritise the disputes before the Land Acquisition Tribunal in an endeavour to assist the Tribunal to meet its statutory timelines.
93. In my humble view, the Deputy Registrar of the Land Acquisition Tribunal did not appreciate the nature of the subject matter that was placed before the Land Acquisition Tribunal. Having failed to appreciate and internalise the nature of the proceedings, the learned Deputy Registrar proceeded to and improperly exercised her discretion in ascertaining and taxing instruction fees.
94. The importance of appreciating the nature of the dispute beforehand and the value of the subject matter was highlighted by the Court of Appeal in the case of *Kamunyori & Co. Advocates v development Bank of Kenya Ltd* [2015] eKLR, where the Appellate court stated thus:
22. 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 (see *Elmandry and Others v. Salim* [1956] EACA 313). As long ago as 1961, the predecessor of this Court emphasized in *Arthur v. Nyeri Electricity* [1961] EA 492 that "where there has been an error in principle, the Court will interfere, but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the Court will intervene only in exceptional cases." That is still good law.
95. Additionally, the need and necessity to appreciate the value of the subject matter in an endeavour to discern and arrive at the appropriate instructions fees was also highlighted/elaborated upon by the Court of Appeal in the case of *Peter Muthoka v Ochieng & 3 Others* [2019] eKLR where the court stated and held thus:

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.



It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.

96. Likewise, the appreciation of the value of the subject matter before engaging with and undertaking the taxation of instruction fees in a matter was also underscored in the case of *Joreth Limited -vs- Kigano & Associates* [2002] IEA 92 where the court stated as hereunder:

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) but if the same is not ascertainable the taxing officer is entitled to use his discretion to assess Instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, and direction by the trial judge and all other relevant circumstances.

97. In my humble view, the learned Deputy Registrar failed to address her judicial mind to the nature of the proceeding that was placed before the Land Acquisition Tribunal. Similarly, the learned Deputy Registrar also failed to appreciate the reliefs that were sought thereunder and more particularly, the fact that there was no monetary value apparent in the body of the Statement of Claim and the judgment of the Land Acquisition Tribunal, save for the award of Kshs. 200,000-only, on account of mesne profits.
98. Simply put, the learned Deputy Registrar committed an error of principle while taxing the instruction fees and the error of principle herein, vitiates the entirety of the taxation and the award of instruction fees.
99. Secondly, the learned Deputy Registrar also does not appear to have appreciated that the Advocates Remuneration Order and in this case Schedule 11 of the Advocates Remuneration Order stipulates/provides the scale fees. However, what is provided for is the basic fees [floor] and not the ceiling.
100. Suffice it to underscore that while taxing both items pertaining to instruction fees, namely items 1 and 47, the learned Deputy Registrar was obsessed with the minimum scale fees. For good measure, the learned Deputy Registrar seemed and/or imagined that taxation of Bills of Costs is a mathematical exercise. Suffice it to underscore that the learned Deputy Registrar ought to have appreciated that taxation of Bill of Costs entails an exercise of discretion, which must be exercised judiciously, objectively and reasonably.
101. The Supreme Court of Kenya in the case of *Kenya Airports Authority v Otieno Ragot and Company Advocates* (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) (Judgment) discussed the scope of the duty of a taxing officer. Notably, the court underscored that the duty of the taxing officer is not a mechanical or mathematical one.



102. For coherence, the Supreme Court stated thus:

68...Bearing the above in mind, we find that the proper interpretation of Schedule VI Part B is that in assessing fees thereunder, including instruction fees, a Taxing Officer is required to exercise his/her discretion guided by the prescribed scale of fees in Part A. To our minds, that does not mean, as the impugned majority judgment found, that a Taxing Officer is simply to apply the mathematical formula to the instruction fees ascertained in the taxed Party-Party costs. Failure to evaluate a disputed item under taxation and determine it judiciously is contrary to the clear provisions of Rule 16 of the Advocates Remuneration Order. Besides, a Taxing Officer being a judicial officer exercising a judicial mandate cannot be said to be performing such mandate mechanically or merely as a formality

103. Thirdly, the learned Deputy Registrar also proceeded to and taxed off items pertaining to and concerning making of copies, photocopies and scanning of documents. According to the Deputy Registrar, the items pertaining to the said claims had not been supported by receipts/vouchers to verify same.

104. In my humble view, the learned Deputy Registrar misapprehended and misconceived the extent and scope of the mandate donated unto her by dint of paragraphs 13A and 74 of the Advocates Remuneration Order. Had the learned Deputy Registrar internalised the referenced provisions, same [Deputy Registrar] would have come to the conclusion that she had the mandate to call for the receipts and vouchers. It was not open to the learned Deputy Registrar to merely dismiss the items for want of proof, without an endeavour from her end to call for the receipts and vouchers.

105. It is imperative to reproduce the provisions of paragraphs 13A, 74 and 74A of the Advocates Remuneration Order.

106. Same are reproduced as hereunder:

13A. Powers of taxing officer

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.

74. Vouchers to be produced

Subject to paragraph 74A, receipts or vouchers for all disbursements charged in a Bill of Costs shall be produced on taxation if required by the taxing officer.

74A. Witness expenses

(1) The taxing officer shall allow reasonable charges and expenses of witnesses who have given evidence and shall take into account all circumstances and without prejudice to the generality of the foregoing, the following factors

- (a) the loss of time of the witness;
- (b) if the witness is a party, the time spent giving evidence;
- (c) the loss of wages or salary to the witness or his employer while attending court;
- (d) the cost of travelling, board and lodging in accordance with the status of the witness;



- e) where the witness is a professional man, any scale fees by which he may charge for his time or attendance;
- (f) if the witness came from abroad, whether this was a reasonable means of obtaining his evidence after considering the importance or otherwise of his evidence;
- (g) where the witness is an expert witness as defined by the *Evidence Act* (Cap. 80) and has given evidence, a fee for qualifying to give evidence where he has reasonably had to spend time, effort or money in investigating the particular matter on which he gave evidence.

(2) The taxing officer shall allow reasonable charges and expenses in respect of any person not actually called as a witness whose attendance has been certified as necessary by the Judge.

107. My reading of the cited provisions of the Advocates Remuneration order drives me to the conclusion that it is the duty/mandate of the taxing officer/Deputy Registrar to call for the receipts/vouchers where apposite. On the contrary, the taxing officer/Deputy Registrar cannot adopt a perfunctory approach and thereby decline to award costs charged, merely on the basis of absence of vouchers/receipts.
108. The provisions of paragraphs 13A and 74 of the Advocates Remuneration Order have received judicial consideration in the case of *Mumias Sugar Company Limited v Tom Ojienda & Associates Advocates* (Miscellaneous Civil Application 299 of 2017) [2021] KEHC 9051 (KLR) (Commercial and Tax) (24 February 2021) (Ruling) wherein it was stated thus:
24. Before I conclude, the Company's submission that the Advocates did not annex to the Bill of Costs the full set of pleadings before the arbitral Tribunal merits consideration. Para. 69 and 70 of the Order provides for the manner of preparation and filing bills for taxation. A party filing a Bill of Costs is not required to accompany the bill with supporting documents. Indeed, this position is confirmed by Para. 13A of the Order, where the taxing officer has the power and authority to summon and examine witnesses, to administer oaths, to direct production of books, papers and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute. In addition, Para. 74 of the Order, receipts and vouchers shall be produced if required by the taxing officer.
109. Yet again, I come to the conclusion that the manner in which the learned Deputy Registrar handled and/or dealt with the taxation of the Applicant's Bill of Costs did not accord with or adhere to the principles underpinned by the Advocates Remuneration Order. In this regard, the impugned taxation was not only irregular but also contravened the laid down principles of the law.
110. Fourthly, it is also important to recall that the learned Deputy Registrar of the Land Acquisition Tribunal also declined to award the travelling expenses for the advocate for the Applicant and the Applicant himself. Nevertheless, there is no gainsaying that the hearing in respect of the matter was undertaken physically at Kisumu and hence the Applicant had to travel.
111. Other than the foregoing, it is also not lost on this court that the Land Acquisition Tribunal also undertook a visitation to the locus in quo. Pertinently, the locus in quo is situated in Migori County and to this end, both the Applicant and his learned counsel had to incur travelling and subsistence expenses.
112. To my mind, the dismissal of the items pertaining to and concerning attendance by counsel and the Applicant merely on account of non-provision of the receipts/vouchers was equally perfunctory. Furthermore, the manner in which the learned Deputy Registrar dealt with the items touching on



- attendance to the Tribunal and the locus in quo demonstrates that the Deputy Registrar was devoid of reality and common sense. Besides, there is no gainsaying that the import and tenor of paragraph 74A of the Advocates Remuneration Order was not considered.
113. Without endeavouring to highlight and deal with all the errors of principle that bedevil the Ruling and the consequential Certificate of Taxation, it is also apposite to highlight the quantum of costs that were awarded to an in favour of the Applicant. To start with, there is no gainsaying that the dispute that was filed before the Land Acquisition Tribunal raised weighty legal and constitutional issues.
114. Additionally, it is not lost on this court that the proceedings before the Land Acquisition Tribunal are time bound. In this regard, all the parties and the advocates to the parties appearing before the Land Acquisition Tribunal are under an obligation to assist the Tribunal to comply with the statutory timelines.
115. To this end, it suffices to underscore that the parties and the advocates for the parties are called upon to exercise A heightened degree of diligence. Furthermore, the timelines provided for would also entail sacrifices being made by the advocates including sacrificing other matters where same [advocates] are involved.
116. In my humble view, the learned Deputy Registrar was obligated to tax the Bill of Costs in such a manner to ensure that the successful party is duly indemnified as pertains to the expenses which such a successful party has been made to incur as a result of the offending party. Instructively, the costs that are awarded by the taxing officer should be such as to attract new recruits into the profession and not to deter recruits from joining the profession.
117. Suffice it to point out that the learned Deputy Registrar does not appear to have appreciated and internalised the dictum in the case of *Premchard Raichand Limited & Another v Quarry Services of East Africa Limited & Another* [1972] E.A 162 where the court outlined the various principles that guide taxation of costs.
118. For coherence, the following principles were highlighted:
- a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy,
 - (b) that a successful litigant ought to be fairly reimbursed for the cost he has had to incur,
 - (c) that the general level of remuneration of Advocates must be such as to attract recruits to the profession and
 - (d) so far as practicable there should be consistency in the award made and
 - (e) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.
119. While considering the principle that costs are awarded to indemnify the successful party against expenses incurred, the court in the case of *Kanu National Elections Board & 2 Others Salah Yakub Farah* [2018] eKLR stated thus:
29. The quantum of such costs is to be what is reasonable to prosecute the proceedings. Generally, the objective of taxation is to award “the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him or her in relation to his or her claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded. The Taxing Master is required to allow all such costs, charges and expenses



as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same.[24]

120. Flowing from the foregoing paragraphs it is evident and apparent that the learned Deputy Registrar failed to take into account relevant factors, took into account irrelevant factors and better still committed several errors of principle whose net effect negates the proper exercise of discretion.
121. Put differently, the learned Deputy Registrar improperly and injudiciously exercised her discretion while taxing the Applicant's Bill of Costs. Furthermore, it is not lost on this court that the learned Deputy Registrar did not comply with and/or abide by several provisions including paragraphs 13A, 74 and 74A of the Advocates Remuneration Order.
122. In the circumstances, I am minded to find and do hereby find that the impugned Ruling and the resultant Certificate of Taxation by the learned Deputy Registrar is wrought with and replete of errors of commission and omission. In this regard, the Applicant has established and demonstrated the requisite ingredients to warrant the setting aside of the Certificate of Taxation.
123. Before departing from the issue herein, it is imperative to take cognisance of the decision of the Supreme Court of Kenya in the case of *Non- Governmental Organizations Coordination Board v EG & 5 others* (Petition (Application) 16 of 2019) [2023] KESC 102 (KLR) (Civ) (8 December 2023) (Ruling) where the Apex court held that:
 22. The gravamen of the applicant's reference is the taxed award of Kshs 5,000,000 for instruction fees. This court recently in *Outa v Odoyo & 3 others*, SC Petition No 6 of 2014; [2023] KESC 75 (KLR) highlighted the following principles to be considered in an application for setting aside a Certificate of Taxation: "(11)A Certificate of Taxation will be set aside, and a single Judge can only interfere with the taxing officer's decision on taxation if;
 - a. there is an error of principle committed by the taxing officer;
 - b. the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy;(and I may add, conversely, if the award is so manifestly deficient as to amount to an injustice to one party).
 - c. the court is satisfied that the successful litigant is entitled to fair reimbursement for the costs he has incurred, (and I may add, the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party); and
 - d. the award proposed is so far as practicable, consistent with previous awards in similar cases. To these general principles, I may add that;
 - i. There is no mathematical formula to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances,
 - ii. Although the taxing officer exercises unfettered judicial discretion in matters of taxation that discretion must be exercised judicially, not whimsically,
 - iii. The single Judge will normally not interfere with the decision of the taxing officer merely because the Judge believes he would have awarded a different figure had he been in the taxing officer's shoes."



124. My answer to issue number three [3] is to the effect that the Applicant has ably established and demonstrated grave errors of principle which were committed by the learned Deputy Registrar in the course of taxing the Applicant's Bill of Costs. In this regard, circumstances are bound to warrant the intervention of the court.

Issue No. 4 What reliefs/remedies, if any, ought to be granted.

125. Having found and held that the Applicant has established and demonstrated the requisite ingredients to warrant the interference with the Ruling of the Deputy Registrar and the consequential Certificate of Taxation, the question that does arise relates to what next.

126. Learned counsel for the Applicant has invited the court to proceed and undertake the taxation of the various items of the Bill of Costs highlighted at the foot of the Notice of Objection to Taxation. In the alternative, learned counsel for the Applicant has invited the court to remit the Bill of Costs to the Land Acquisition Tribunal [and not the Deputy Registrar thereof] to undertake a fresh taxation of the Bill of Costs.

127. As concerns the limb of the submissions touching on the court taking up and proceeding to tax the Bill of Costs, it is the position of the court that taxation of Bill of Costs is the exclusive preserves of the taxing officers. Consequently, whenever the court intervenes and sets aside a Certificate of Taxation, it behooves the court to remit the Bill of Costs to a different taxing officer for purposes of taxation.

128. The foregoing position has been adverted to and elaborated in a number of decisions. Notably, in the case of *Joreth Limited v Kigano & Associates* [2002] 1EA 92, it was held thus:

It was stated by the predecessor of this Court in the case of *Steel Construction & Petroleum Engineering (E.A.) Ltd vs. Uganda Sugar Factory Ltd* (1970) E.A. 141 per spry JA at page 143:

"Counsel for the appellant submitted, relying on *D'Souza v. Ferao* [1960] EA 602 and *Arthur v. Nyeri Electricity Undertaking* [1961] EA 492 that although a judge undoubtedly has jurisdiction to re-tax a bill himself, he should as a matter of practice do so only to make corrections which follow from his decision and that the general rule is that where a fee has to be re-assessed on different principles, the proper course is to remit to the same to another taxing officer. I would agree that, as a general statement, that is correct, adding only that it is a matter of juridical discretion."

129. Arising from the ratio decidendi adverted to in the preceding paragraph, I decline the invitation by the learned counsel for the Applicant to engage with and undertake the taxation of the Bill of Costs.

130. On the other hand, the learned counsel for the Applicant has invited the court to remit the Bill of Costs to the Land Acquisition Tribunal for purposes of same being taxed by the members of the Tribunal itself.

131. The contention that the Bill of Costs be remitted to the Land Acquisition Tribunal and that same be taxed by the Tribunal itself is informed by the belief that the Deputy Registrar of the Tribunal is not seized of the requisite competence and jurisdiction to do so.

132. Be that as it may, it is worth recalling that while dealing with issue number two [2] elsewhere herein before, the court found and held that the Deputy Registrar of the Tribunal is seized of the requisite jurisdiction to undertake the taxation. [See Section 133A (3) of the *Land Act* 2012 [2016] as read together with paragraph 10 of the Advocates Remuneration Order.



133. To this end, what comes to the fore is whether the Bill of Costs should be remitted to the Land Acquisition Tribunal for purposes of taxation by itself [Tribunal] or the Deputy Registrar thereof.
134. Suffice it to point out that the Bill of Costs under reference ought to be remitted to the Deputy Registrar for purposes of taxation. However, the question that does arise is whether the Deputy Registrar whose Ruling has been set aside would be impartial in undertaking the re-taxation.
135. I am afraid that the Deputy Registrar whose Ruling and the Certificate of Taxation has been impugned may not exercise the requisite impartiality. In this regard, there is a likelihood that the provisions of Article 50(1) of *the Constitution*, 2010; that underpins the right to fair hearing, trial and due process of the law may be breached and/or violated.
136. Flowing from the foregoing, this court is thus constrained to decree that the Bill of Costs shall be remitted to the Land Acquisition Tribunal for purposes of taxation. The taxation shall be undertaken by the Deputy Registrar of the Tribunal other than Hon. Kaimenyi Kanyiri [whose Certificate of Taxation has been set aside].
137. Nevertheless, if there is no other Deputy Registrar competent to undertake the fresh taxation, then the Bill of Costs under reference shall be placed before the Land Acquisition Tribunal and thereafter same [Bill of Costs] shall be taxed by the members of the Tribunal itself.

Final Disposition:

138. Flowing from the discussion [whose details have been highlighted in the body of the Ruling], it must have become crystal clear that the Applicant herein has established and demonstrated the requisite ingredients to warrant the setting aside of the Ruling of the learned Deputy Registrar dated 5th August 2024 and the consequential Certificate of Taxation.
139. In the premises, the final orders that commend themselves to the court are as hereunder:
 - i. The Chamber Summons Application [Reference] dated 29th August 2024 be and is hereby allowed.
 - ii. The Ruling of the learned Deputy Registrar dated 5th August 2024 and the consequential Certificate of Taxation arising therefrom be and are hereby set aside.
 - iii. The Bill of Costs dated 26th June 2024 be and is hereby remitted to the Land Acquisition Tribunal for purposes of taxation by the Deputy Registrar other than Hon. Kaimenyi Kanyiri, whose Certificate of Taxation has been impugned.
 - iv. In the event that there is no other Deputy Registrar, subject to clause (iii), the Bill of Costs shall be placed before the Land Acquisition Tribunal and thereafter be taxed by the Tribunal itself.
 - v. The taxation of the Bill of Cost under reference shall be undertaken on priority basis, subject to the convenience of the Tribunal.
 - vi. The costs of the Chamber Summons Application [Reference] shall be borne by the Respondent.
 - vii. For the avoidance of doubt and to avert the filing of a Bill of Costs for taxation, the costs in terms of clause (vi) be and are hereby assessed and certified in the sum of Kshs. 50,000- only.



140. Finally, the court finds it apposite to express sincere gratitude for the comprehensive and incisive submissions which were filed in respect of the instant matter. Indeed, the said submissions have enabled the court to address and resolve pertinent issues that transcend the instant matter.

141. It is so Ordered.

DATED, SIGNED AND DELIVERED ON THE 11TH DAY OF DECEMBER 2024

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – Court Assistant.

Mr. Kennedy Okong’o for the Applicant

Mr. Ochola for the Respondent

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