



**Ford Kenya v Mukhombwa & 2 others (Miscellaneous Reference Application
E010 of 2024) [2025] KEHC 939 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 939 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS REFERENCE APPLICATION E010 OF 2024
SC CHIRCHIR, J
JANUARY 30, 2025**

BETWEEN

FORD KENYA APPLICANT

AND

BENARD MUNASE MUKHOMBWA 1ST RESPONDENT

JAFRED MUCHESIA NGAIRA 2ND RESPONDENT

JOEL AMUNA RUHU 3RD RESPONDENT

RULING

1. Through the chamber summons dated 7th February 2024, the Applicant seeks for the following orders;
 - a. THAT this honourable court be pleased to set aside the ruling delivered on 25th January 2024 by Hon. L Mbacho in respect to the 1st respondent party to party Bill of costs.
 - b. That in the alternative to prayer 1 the decision of the learned taxing master with respect of item 1 be set aside and be taxed afresh by this Honourable court or be remitted for taxation afresh before a different taxing master.
 - c. That costs of this application be provided.
2. The Application is supported by the grounds appearing on the face of the Application and the supporting affidavit of Stephen Namusyule.
3. It is the Applicant's case that the taxing master erred in taxing instruction fee at Kshs100,000/= as the subject matter was unascertained, undefended and unopposed. That consequently the taxation went against the provisions of paragraph 9 of schedule 11 of the [Advocates' Remuneration order](#).



4. It is further stated that the 1st respondent failed to serve the pleadings and the matter proceeded undefended and that the Applicant only filed a Notice of appointment after being served with undated Bill of costs.
5. The Applicant further states that it only took 10 days to conclude the matter; that the matter did not involve any complex or novel issues. The award of ksh.100,000 on instructions fee was therefore exorbitant.

The Respondent's Case

6. The 1st respondent states that the error allegedly made by the taxing Officer has not been disclosed; that the amount stated under schedule 11 of paragraph 9 of the *Advocates Remuneration order* is simply the minimum , and not the exact amount that the taxing master is supposed to award on instructions fee.
7. The 1st respondent states that the applicant were served with several notices and cites the one dated 10th May 2022 and an affidavit of sworn on 11th May 2022 in respect of the service as an example of service. He denies that the matter took 10 days to conclude.

Applicant's Submissions

8. The applicant reiterates that the taxing master failed to consider that the pleadings were not served and that the Applicant did not participate in the proceedings in the tribunal.
9. They further submit considering that the subject matter was not ascertained, the award of ksh. 100,000 was too excessive when considered against the recommended fee of ksh. 35,280. It is further submitted that the matter was undefended , took 10 days to prosecute and there was no complexity involved.
10. The respondent did not file any submissions.

Determination

11. The 1st respondent herein filed a complaint before the political parties Tribunal against the Applicant and the 2nd and 3rd respondents . The 2nd and 3rd respondent did not appear but the Applicant did file a Notice of appointment. From the tribunal's judgment delivered on 16th May 2022, it emerged that the parties had come to a compromise on the complaint but there was lack of consensus on the fees. The tribunal stepped in to make a finding that the complainant(1st respondent herein) was entitled to costs. The costs were subsequently taxed by the taxing master.
12. The Applicant was aggrieved by the Ruling of the taxing master and consequently filed this reference.
13. The taxation of a bill of costs is an exercise of discretion by the taxing master and the decisions of the superior courts sets the guidelines upon which a Judge can interfere with the exercise of the said discretion.
14. In *Republic v Ministry of Agriculture and 2 Others; Ex-parte Muchiri W'Njuguna & others* NRB HC Misc. Civil Appl. No. 621 of 2000 [2006] eKLR the court held 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 is somewhat too high or too low; it will only interfere if it thinks the award is 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.”

15. Also in the case of *Paul Ssemogerere & Olum v Attorney General* - Civil Application No.5 of 2001 [unreported] the court expressed the view that the taxing officer’s opinion on what is a reasonable fee should not be interfered with lightly and that there should be a compelling reason to justify the interference by the Judge.

16. The Applicant’s complain herein is that the item on instructions fee was too high. The principles to be taken when assessing fees are well settled, and the following decided cases are some of the relevant decisions:

a). In *Paul Ssemogerere* case (*supra*) the court held:

“In our view, there is no formula by which to calculate the instruction fee. The exercise is an intricate balancing act whereby the taxing officer has to mentally weigh the diverse general principles applicable, which sometimes, are against one another in order to arrive at the reasonable fee. Thus while the taxing officer has to keep in mind that the successful party must be reimbursed expenses reasonably incurred due to the litigation, and that advocates, remuneration should be at such level as to attract recruits into the legal profession, he has to balance that with his duty to the public not to allow costs to be so hiked that courts would remain accessible to only the wealthy. Also while the taxing officer is to maintain consistency in the level of costs, it is settled that he has to make allowance for the fall, if any, in the value of money.....”

b). The same position was reiterated in *Karen & Associates Advocates v Caroline Wangari Njoroge* [2019] eKLR, in which the Court cited the decision of the Court in *Ochieng, Onyango, Kibet and Obaga Advocates v Adopt Light Ltd.* HC misc. 729 of 2006 where the court stated that;

“...The taxing master must consider the case and the labour required in the matter, the nature or importance of the matter more so the amount or value of the subject matter involved, the interest of the client in sustaining or losing a brief and the complexity of the dispute.....”

c). Finally in the case of *Joreth Limited v Kigano & Associates* [2002] 1 EA 92 at 99 the Court of Appeal held:

“ 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 so ascertainable the taxing officer is entitled to use his discretion to assess such 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, any direction by the trial judge and all other relevant circumstances”

17. I have perused the ruling of the taxing master, and I have noted that she considered the provisions of paragraph 3 of schedule 11, which gives guidelines on when the subject matter is not capable of being



ascertained; paragraph 9 on the minimum fee when the subject matter is unknown, and the decision in *Joreth case* (*supra*) among other decisions.

18. Therefore, am unable to find any error in principle in as far as the taxation is concerned.
19. What about the actual award of ksh. 100,000 on instructions fee?
20. I have perused the complaint that was filed at the tribunal. In it the 1st respondent had sued the Applicant and the 2nd and 3rd respondents. He sought for an interim injunction to restrain the Independent Electoral and Boundaries Commission from gazetting or otherwise recognizing the 2nd respondent herein as the Ford Kenya Nominee for Isukha North ward; a declaration that the 2nd respondent herein was not qualified to participate in the nomination of Isukha North ward since he was still an employee of the county Government of Kakamega, and finally an order compelling the Applicant herein to uphold the nomination certificate of the 1st respondent herein.
21. In reference to the said complaint, the Applicant has stated that the pleadings were not served , but later goes on to state that it did file a Notice of appointment when it was served with an undated bill of costs ;,that the subject matter was not ascertained; that it took 10 days to prosecute, and there was no complexity on the case.
22. The allegation that the pleadings were not served is negated by the Applicant's subsequent admission that they were served with undated bill of costs, and indeed went ahead and filed a Notice of appointment.
23. On the length of the proceedings, whereas it may be true that the matter took 10 days to be concluded, the need for expeditious disposal is a requirement where election petitions or petitions incidental to elections are concerned. This requirement tend to put a lot of strain on the litigants and their Advocates. Often it means other matters would have to be put aside to allow the Advocate concentrate on the drafting of a complaint . It follows that the drafting of pleadings , and the litigation itself , however short it takes, is quite intensive.
24. Further the complaint involved nomination of three candidates to vie for political office. The proceedings were therefore not only urgent and time consuming, but also important to the Respondents as the case had a bearing on their political careers. Thus, the proceedings were important.
25. In the circumstances, I consider the award on instructions fee , by the taxing master to have been reasonable and I have no reason to interfere with it.
26. In the end, the reference fails and it is hereby dismissed, with no orders as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE.

