



**Ford Kenya v Murunga (Miscellaneous Reference Application
E011 of 2024) [2025] KEHC 921 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 921 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS REFERENCE APPLICATION E011 OF 2024
SC CHIRCHIR, J
JANUARY 30, 2025**

BETWEEN

FORD KENYA APPLICANT

AND

CHRISPINE KIPSANG MURUNGA RESPONDENT

RULING

1. Through the chamber summons dated 7th February 2024, the Applicant seeks for the following orders;
 - a. That the taxing officer’s decision dated 25th January 2024, be set aside.
 - b. That upon grant of prayer (1) here above the respondent bills of costs filled in the tribunal on 25th October 2023 be remitted for fresh taxation before a different taxing officer.
 - c. That in the alternative to prayer 2 above, this court does proceed to exercise its inherent jurisdiction and tax the respondent’s bill of costs filed in the tribunal on 25th October 2023
 - d. That costs of this application be borne by the respondent
2. The application is premised on the grounds appearing on the face of the Application and the supporting affidavit of Stephen Namusyule.
3. The applicant states that following the judgment that was delivered by the political party disputes tribunal on 5th August 2022 awarding the respondent’s costs, the respondent filed his party and party bill of costs on 25th October 2023.They filed an submissions in opposition to the bill .
4. It is the Applicant’s case that the award of ksh. 250,000 on instructions fee was too exorbitant given the simplicity of the matter and that the award exceeded the statutory minimum hence constituting an error in principle.



5. The Applicant further states that the taxing master overlooked the fundamental principle that costs should be proportionate to the complexity involved, leading to unjustifiably high award.
6. In response the Respondent filed the preliminary objection dated 19th April 2024 whose terms were:
 1. That this court lacks jurisdiction to grant the orders sought by the Applicant as it lacks the territorial jurisdiction as the taxing officer's decision that the Applicant seeks to be set aside is from the political parties Tribunal in Nairobi hence the reference should be filed in Nairobi.
 2. That the taxing officer acted according to the provisions of the *Advocates Act* chapter 16 of the laws of Kenya in assessing costs at ksh. 255,960
 3. That the Applicant's Application is incompetent, misconceived, bad in law and an abuse of the court process.
 4. That the Applicant's chamber summons Application offends paragraph 11(2) of the Advocates Remuneration order (2014) as the reference was filed out of time.

Applicant's submissions.

7. It is the Applicant's submission that the instruction fee of Kshs. 250,000/- was based on an unascertained subject matter, that the actual fee ought to be ksh. 35,280 as per paragraph 9 of schedule 11 of the Advocates Remuneration order. consequently, the Applicant further submits, the award was not only excessive but was contrary to the clear provisions of the law. He urges the court to substitute the aforesaid award with ksh. 35,280.
8. The Applicant further submits that the complaint being PPTC NO. E016 OF 2022 was prosecuted over a period of 5 days; that the brevity of the proceedings is a crucial factor that the taxing master failed to take into account.
9. The Applicant argues that the matter before the tribunal was not complex and that the said award in the face of the simplicity of the matter was unjustifiable and constituted an abuse of discretion.

Analysis and determination

10. The issue for determination by this court is:
 - a). whether the preliminary objection should be upheld
 - b). whether the taxation of costs was erroneous or the award excessive

Whether the preliminary objection should be upheld.

11. The respondent's first ground of objection is by way of a preliminary objection. It is argued that this court lacks the territorial jurisdiction to handle this matter as the complaint, the subject matter of taxation was handled at Nairobi.
12. I do not find any merit in the objection as the jurisdiction of the political parties' tribunal is countrywide. Further, the high court has no territorial limitation. The preliminary objection is misconceived, and it is hereby rejected.



Whether the Taxation of costs was erroneous or the award excessive

13. The principles upon which a judge can interfere with the discretion on taxing costs are well settled . In the case of Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR where the Court of Appeal set out the principles as follows;

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.

In Arthur v Nyeri Electricity Undertaking [1961] EA 497, the predecessor of this Court said at page 492 paragraph I: “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 interfere only in exceptional cases”.
14. Also 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 stated : “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. I have perused the Ruling of the taxing master and noted that she was alive to all the principles that guide the taxation of costs . She referred to paragraph 3 of schedule 11 on the criteria to be applied when the subject matter of a suit can not be ascertained from the pleadings, judgment or settlement. she also considered the provisions on the minimum costs when the subject matter cannot be ascertained. She relied on the case of Joreth Ltd VS Kigano & Associates(2002)1 EA 92A which sets out factors that should guide the exercise of discretion.
16. The Applicant has submitted that the award ought to have been the minimum of ksh. 35, 280, Provided under paragraph 9 of schedule 11. It is either that the Applicant has misapprehended the law or is engaging in an attempt to deliberately mislead. The paragraph referred to states as follows: “ where the value of the subject matter cannot be ascertained such costs as the court in its discretion but not less than 35, 280, if undefended or unopposed and (subject to any special order for a good reason connected with the nature and importance of or the difficulty or the urgency of the matter) such figure being left to the discretion of the court”
17. Thus contrary to the Applicant’s submissions, the figure of ksh. 35,280 is the minimum applicable, and only if the suit is undefended. Where the suit is defended it is left to the discretion of the court. To that extent there was no error in principle.
18. The other issue that has been raised by the Applicant is the time it took to prosecute the suit. This fact has not been disputed and therefore I accept the Applicant’s submission that the litigation took 5 days. However Election related litigation must be disposed of expeditiously. The 5 days therefore was a matter of necessity. However am not oblivious to the fact that the 5 days must have been intense, taking a toll on the litigants and particularly their Advocates.
19. In the circumstances, while I agree that the time litigation takes is a factor for consideration when assessing costs, Am of the view that the glorification of the 5 days or whatever other an unusually short period a litigation takes, must not camouflage the intensity of the work that had to be done within the said period .



20. On the last issue of the complexity of the matter, I am in agreement with the Applicant. There was no evidence of any novel issue that was being adjudicated, a finding that the taxing master too, arrived at.
21. Despite this conclusion, I find that the award of ksh. 250,000 was slightly on the higher side. Consequently, I will set the award of ksh. 250,000 on instructions fee and substitute it with ksh. 200,000. The other items in the bill was not a subject of this reference.
22. In the end the Application succeeds and I hereby proceed to make orders as follows;
 - a). The taxing master assessment of instructions fee at ksh. 250,0000 is hereby set aside and substituted with ks. 200,000
 - b). The rest of the items remain undisturbed.
 - c). I make no order as to costs on this reference

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

S.CHIRCHIR

JUDGE.

