



**Trisquare Limited & another v Larsen & another (Civil Case  
9 of 2018) [2025] KEHC 11350 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 11350 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL CASE 9 OF 2018  
DO CHEPKWONY, J  
MARCH 28, 2025**

**BETWEEN**

**TRISQUARE LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**SAMUEL KURIA MBUGUA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHRISTRIAN LAU LARSEN ..... 1<sup>ST</sup> DEFENDANT**

**SUSAN CLARE LARSEN ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This Reference is in respect of the Ruling delivered by the Deputy Registrar on 27<sup>th</sup> June, 2019, which was filed vide a Chamber Summons Application dated 18<sup>th</sup> July, 2019 in which the Appellant seeks the following orders:-
  - a. That the Ruling and/or decision delivered herein on 27<sup>th</sup> June, 2019 by the Honourable Learned Taxing Master Honourable Wilson Rading taxing the Party & Party Bill of Costs dated 1<sup>st</sup> November, 2018 at Kshs. 20,092,115/= be set aside and/or vacated.
  - b. That the Bill of Costs dated 1<sup>st</sup> November, 2018 be remitted back for re-taxation by a different Taxing Officer with appropriate directions.
  - c. that in the alternative this Honourable Court do tax the party and party bill of costs.
  - d. That the costs of the application be provided for.
2. The Application is based on the Supporting Affidavit of Lawrence Oigiro Nyangito sworn on 18<sup>th</sup> July, 2019 and the following grounds as set out on its face.



- a. That the Taxing Master erred in law in failing to properly subject the Party and Party Bill of Costs dated 1<sup>st</sup> November, 2018 under Item No.5, 7 and 8 particularly by purporting the matter to be so important to warrant Kshs. 20,092,115/= as instruction fees, twenty times the scale fees.
  - b. That the Taxing Master erred in law and in fact by taking into account unsubstantiated issues and factors in the taxation of the Bill of Costs.
  - c. That the Taxing Master erred in law and in fact by attaching importance of the matter to the following considerations
    - i) The complexity of the matter
    - ii) The value of the subject matter.
  - d. That the Taxing Master erred in law in completely ignoring the submissions filed by the Plaintiff/Applicant.
  - e. That the Taxing Master erred in principle and reached an erroneous conclusion.
3. According to the Applicants, when the Deputy Registrar delivered the Ruling, they wrote to request for reasons for the Ruling which were issued on 17<sup>th</sup> July, 2019 and upon considering the same found that they do not disclose any sufficient grounds or guiding principles. Their argument is that the Taxing Officer erred in holding that the matter was so important to warrant instruction fees of Kshs. 20,092,115/=, and failing to consider that the matter did not proceed to full trial but was determined at interlocutory stage which shows that the matter was not as complex. The Applicants have therefore urged the court to allow the Reference since the taxing officer erred both in law and in fact.
  4. The Respondents filed Replying Affidavit which was sworn by Christian Lau Larsen on 20<sup>th</sup> November, 2019 on her own behalf and on behalf of the 2<sup>nd</sup> Respondent. The Respondents contend that the Reference is vexatious as it has been sworn by an advocate yet it has raised contentious facts which is in violation of the Advocate Practice Rules. They have urged that the Affidavit ought to be struck out.
  5. According to the Respondents, the Applicants filed a suit against them seeking aggravated damages and the same was struck out and costs awarded against them by the court. That due to the court order on costs, the Respondents filed a Bill of Costs seeking instruction fees of Kshs. 25,041,900/= which the Taxing Master taxed it at Kshs. 20,000,000/= in accordance with the law. The Respondents contend that the value of the subject matter as set by the Plaintiffs was Kshs. 1,324,664,700/= and based on the complexity of the matter, the Taxing Master ought to have enhanced the instruction fees to Kshs. 25,000,000/=. They hold that the Reference is an attempt to delay them from enjoying the fruits of their Judgment.
  6. The Respondents have urged that the Reference ought to be dismissed with costs as it was made in bad faith since the firm of advocates being Nyangito & Co. has not obtained leave to come on record for the Plaintiffs.
  7. The Applicant filed a Further Affidavit sworn on 28<sup>th</sup> September, 2023 where the deponent, Lawrence Oigoro Nyangilo, the Applicant's Counsel, holds that the issues touch on law and non-contested matters hence he is competent to swear the Affidavit which is not defective as alleged by the Respondent. He also holds that the cardinal principles which guide the Taxing Officer when taxing a Bill of Costs is value of the subject property, importance of the matter and complexity of the matter. The Applicants further hold that the case was struck out by the court and they filed an appeal to the



Court of Appeal which is pending determination. They hold that the taxing master applied wrong principles of the law and harshly punished the Applicants by awarding an exorbitant sum of Kshs. 20,000,000/=. They further argue that they are formally on record having filed Notice of Change of Advocates dated 18<sup>th</sup> July, 2019 to come on record in place of Kihara & Wayne Advocates. They urge the court to allow the reference application.

8. The court directed the Reference to be canvassed by way of written submissions. The court notes that the Defendants/ Respondents' Submissions are dated 29<sup>th</sup> August, 2023 and the Plaintiff/Applicant's submissions are dated 28<sup>th</sup> September, 2023.
9. In the Applicant submissions, they have submitted that the Taxing Officer erred and the matter should be remitted to a different Taxing Officer for re-taxation for the reason that the matter did not proceed to full hearing.
10. In the Respondent's submissions they have submitted that the court relied on the correct principles and thus the decision of the taxing officer should be upheld.

### **Analysis and Determination**

11. Having considered the Reference Application, the Replying Affidavit and the submissions the court finds that the main issue for consideration is whether the Reference has merits to warrant the grant of orders sought therein.
12. It is trite that this court should not interfere with the decision of the taxing master unless the same is founded on wrong principles of law. In the case of *Kipkorir, Titoo & Kiara Advocates – v- Deposit Protection Fund Board*, Civil Appeal No. 220 of 2004; [2005]eKLR, the Court of Appeal held that:-

“On reference to a judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the Taxing Officer, erred in principle in assessing the costs.”
13. It is also trite that for the taxing master to determine the instruction fees the same is based on the value of the subject matter, complexity of the matter and the importance of the matter. This was the position given by the Court of Appeal in the case of *Joreth Ltd – v- Kigano & Associates* [2002]eKLR where it held that:

“The value of the subject matter for 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 such instruction fees as he considers just taking in account, amongst other matters, the nature and the 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.”
14. In the instant case, it is evident that the value of the subject matter was ascertainable and thus can be discerned from the Plaint which sought orders that a sum of Kshs. 1,324,664,700/= be paid as compensation. In a Ruling delivered on 28<sup>th</sup> September, 2018, Justice Meoli proceeded to strike out the suit with costs on the basis that the suit was rooted on forgery. It is from this Ruling that the Bill of Costs was filed and it culminated into the Ruling of the Taxing Officer.
15. Given that the value of the subject matter was ascertainable, this Court finds that the Taxing Officer was correct to use the sum of Kshs. 1,324,664,700/= as the basis of the instruction fees. In consideration of the *Advocates Remuneration Order* under Schedule 6, Paragraph 1 (d) which indicates that the



instruction fees to defend a suit shall be as set out in Sub Paragraph 1(b) which sets out the scale. Using the sum of Kshs.1,324,667,700/= the instruction fees arrived at is Kshs. 20,570,015.50 and this confirms that the taxing master applied the correct principles of law. Thus, the court finds that the Ruling of the Taxing Officer should not be disturbed.

16. The upshot is that the Reference filed vide Chamber Summons application dated 18<sup>th</sup> July, 2019 lacks merit and the same is hereby dismissed with costs to the Respondent.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 28<sup>TH</sup> DAY OF MARCH, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:-

M/S Okumu holding brief for Mr. Nyangito for Applicants

Mr. Kahura counsel for Respondents

Court Assistant - Martin

