



TV Africa-Kenya Holdings Limited v Communications Authority of Kenya (Civil Case E061 of 2023) [2025] KEHC 5088 (KLR) (Civ) (29 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E061 OF 2023

SN MUTUKU, J

APRIL 29, 2025

BETWEEN

TV AFRICA-KENYA HOLDINGS LIMITED APPLICANT

AND

COMMUNICATIONS AUTHORITY OF KENYA RESPONDENT

RULING

1. Under determination is the Chamber Summons dated 29th November 2024 (the Application) filed by TV Africa-Kenya Holdings Limited (the Applicant) against Communications Authority of Kenya (the Respondent). The Application is anchored under Regulation 11(2) of the *Advocates Remuneration Order* and other enabling provisions. It seeks the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. Spent.
 - iv. That this Honourable Court be pleased to review, vary and/or set aside the Ruling of the Taxing Master delivered on 18th November 2024 in respect of the Respondent's Party and Party Bill of Costs dated 3rd May 2024 (the Bill of Costs) and that the Bill of Costs be taxed on merit.
 - v. That in the alternative the Honourable Court be pleased to refer the matter back for re-taxation by a different Taxing Master of the Bill of Costs and with proper direction thereof.
2. The Application is supported by the grounds set out on the face of the Application and in the Supporting Affidavit sworn by Ken Ngaruiya, the CEO of the Applicant, on 29th November 2024.



3. The Applicant has raised the issue that the Ruling giving rise to this application was not delivered on 26th September 2024 as scheduled for reasons that it was not ready; that parties were informed on that date that the ruling would be delivered on notice but the Applicant or its counsel were not notified of the date of the ruling; that they only came to learn that a ruling had been delivered on 18th November 2024 and that a typed ruling giving reasons for taxation was not availed to the Applicant until 28th November 2024.
4. It was stated in the grounds supporting the application that the Taxing Officer misdirected himself on a matter of principle and law by finding that Kshs 2,053,169 was a fair figure as Party and Party costs for defending a Notice of Motion Application and arguing the Preliminary Objection which failed to take into consideration the principles of taxation in respect to whether the matter was complex and the length of the trial and other factors that may affect the fairness of an award of cost.
5. The Applicant has claimed that the Bill of Costs related to costs for defending the Notice of Motion Application and arguing the Preliminary Objection and not the main suit and that the figure awarded after taxation, being Kshs 2,053,169/=, is manifestly disproportionate to the matter, is unreasonable and inordinately high and amounts to substantial oppression and injustice to the Applicant.
6. The Applicant has opposed various items in the Party and Party Bill of costs as specifically enumerated under paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the grounds found on the face of the Application.
7. The Applicant claims that it stands to be prejudiced by the error made by the Taxing Officer for taxing the Bill at Kshs 2,053,169 which figure is unreasonable and inordinately high given that the matter was a simple application. The Applicant has urged this court to allow the application in the interest of justice.

The Replying Affidavit.

8. The Application is opposed through the Replying Affidavit sworn by David Mugonyi, the Director and CEO of the Respondent, on 12th February 2025. The Respondent has stated that the Applicant commenced proceedings against the Respondent together with an application seeking restraining orders against the Respondent; that the pleadings were based on the sum of Kshs 164,732,317; that the Respondent raised a Preliminary Objection challenging the Applicant's proceedings on the ground that the Applicant had not exhausted internal mechanisms of resolving the dispute, which the Court agreed with.
9. The Respondent stated that the Applicant, in view of the Court ruling, applied and was allowed to withdraw the suit and commenced the proceedings before the relevant Tribunal; that subsequently, the Respondent filed Party and Party Bill of Costs which was taxed on 18th November 2024 basing the taxation on Schedule 6 of the Advocates Remuneration Order, 2014, which is the relevant schedule in matters filed in the High Court.
10. It is further stated that the Taxing Officer, in assessing the instruction fees for defending both the Notice of Motion and the Preliminary Objection, was guided by the pleadings wherein the value of the subject matter was Kshs 164,732,317.08; that the Applicant has not laid out any sufficient basis to persuade this court to interfere with the Taxing Officer's decision and that the orders sought are not merited. The Respondent urged this court to dismiss the Application with costs to the Respondent.
11. The Application was canvassed through written submissions.



Applicant's submissions.

12. In its submissions dated 29th February 2025, the Applicant has submitted on one issue: whether it is just and fair to assess a sum of Kshs 2,053,169 as costs for opposing a notice of motion application. It is submitted that such assessment is based on an error of principle and the fee awarded is so manifestly excessive as to justify an inference that it was based on an error of principle.
13. The Applicant submitted that the High Court in a Ruling dated 21st December 2023 awarded the Respondent costs of the Application and costs for the Preliminary Objection; that the Respondent filed Bill of Costs dated 3rd May 2024 seeking a sum of Kshs 3,384,169.74 as costs for defending the Plaintiff's Application dated 20th March 2023, which Bill was taxed at Kshs 2,053.169/=.
14. The Applicant relied on *First American Bank of Kenya v Shah and others* [2002] E.A.L.R 64 at 65 where the court expressed the view that 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 so manifestly excessive as to justify an inference that it was based on an error of principle.
15. The Applicant highlighted what it terms as error of principle on the part of the Taxing Officer, accusing him of relying on Paragraph 1(b) of Schedule 6 of the Advocates Remuneration Order 2014 instead of taxing the Bill under (c) of Schedule 6 for Matters arising during proceedings, which is the rule applicable for costs of the suit instead of costs for opposing the Notice of Motion Application. It was submitted that the instruction fees for opposing a Notice of Motion Application for temporary injunctions in an existing suit should have been taxed under matters arising during proceedings.
16. It was submitted that the amount provided for defending a Notice of Motion Application under Schedule 6 of the Advocates Remuneration Order is Kshs 5,000/=. The Applicant relied on *John Paul Mibeso Shikuta v Leonard Kamau Njuguna*, Kiambu JC Misc. Civil Application No. 32 of 2017 where it was held that:

“The applicable provision on fees for presenting or opposing any application not otherwise provided for is the one found in Schedule 6 of the Advocates Remuneration Order 2014, and which pegs such instruction fees as ‘such sum as may be reasonable but not less than Kshs. 5,000’.”
17. The Applicant accused the Taxing Officer of awarding excessive costs of Kshs 2,053,169 against the pronouncements of the Court in *Danson Mutuku Muema v Julius Muthoka Muema & Others*, Machakos HC Civil Appeal No. 6 of 1991, cited with approval in *Republic v Ministry of Agriculture & 2 others Ex Parte Muchiri W'Njuguna & 6 others*.
18. The Applicant urges that this Application be allowed with costs.

Respondent's submissions

19. The Respondent's submissions are dated 15th March 2025. The Respondent narrated the background of the matter giving rise to this Application and submitted that it is not in dispute that the Applicant withdrew its suit and commenced proceedings before the Communications and Multimedia Appeal Tribunal leading to filing of Party and Party Bill of Costs dated 3rd May 2024 seeking costs of the Preliminary Objection and Notice of Motion.
20. The Respondent seeks determination of the issue whether the Taxing Officer erred in taxing the Respondent's Party and Party Bill of Costs at Kshs 2,053,169. It was submitted that the Taxing Officer did not err in awarding the above costs because he relied on the relevant provisions of the law, being



Schedule 6 Paragraph 1(b) of the Advocates Remuneration Order, 2014. It was submitted that the Respondent defended the suit and successfully challenged it by raising a Preliminary Objection.

21. The Respondent submitted that the Taxing Officer did not err in using the sum of Kshs 164,732,317.08 as the value of the subject matter of the Preliminary Objection and the Notice of Motion because there is no dispute that the subject matter of the Plaintiff is the figure cited. The Respondent relied on Civil Appeal No. 328 of 2017 (*Peter Muthoka & another v Ochieng Onyango, Kibet & Obaga Advocates*) on the issue of determinable subject matter.
22. On the other contested items of the Bill of Costs, the Respondent submitted that the Taxing Officer did not err in awarding the fees and that the Applicant's Chamber Summons herein lacks merit and should be dismissed with costs to the Respondent.

Analysis and determination

23. I have considered the Application and the grounds supporting it. I have considered the Replying Affidavit in opposition and the rival submissions of the parties, as well as the authorities cited. I have also taken time to read the court file records.
24. From the record of the court, the Applicant filed a Plaintiff dated 30th March 2023 seeking declaratory order that the Respondent (Defendant) is bound by the Agreement dated 2nd November 2022, among other orders. The Applicant also filed a Notice of Motion of the same date seeking an injunction against the Respondent to restrain it from demanding payment of the License Fees and from demanding immediate payment measures, among other prayers.
25. The Respondent filed a Preliminary Objection dated 24th April 2023 blaming the Applicant of failing to utilize the doctrine of exhaustion and questioning the jurisdiction of the Court in determining this matter. By a ruling delivered on 21st December 2023, the court (Hon. Lady Justice Ongeru) allowed the Preliminary Objection, struck off the Notice of Motion and awarded costs of the Notice of Motion and the Preliminary Objection to the Defendant (Respondent).
26. Further, on 25th April 2024, Justice Ongeru considered the Applicant's Notice of Withdrawal of the suit and delivered a brief ruling allowing the Applicant to withdraw the suit and reiterated that the Applicant was to pay the Respondent the costs of the Preliminary Objection and the Notice of Motion dated 30th March 2023. The Judge stated that the costs of the suit to abide the outcome of the Tribunal since the matter was still active.
27. The above facts clearly show that the Party and Party Bill of Costs was in respect of the Preliminary Objection and the Notice of Motion and not the main suit. The record is clear that the Court did not award costs for the main suit and therefore taxed Bill of Costs cannot have been in respect of the main suit.
28. This court is not privy to the status of the matter before the Tribunal. Be that as it may, there is no doubt that the taxed bill of costs was not for the main suit but the Preliminary Objection and the Notice of Motion as pronounced by the Court (Hon. Lady Justice Ongeru, J).
29. Guided by the principle that this court should not interfere with the decision of the taxing officer unless there is an error of principle, and having considered the issues raised in this application, it is my considered view that the taxed bill is excessive for basing the taxation on the value of the subject matter of the main suit instead of basing it on the Notice of Motion Application and the Preliminary Objection.



30. I find the Chamber Summons dated 29th November 2024 merited and hereby allow it by granting prayers 4 and 5. The Ruling of the Taxing Officer delivered on 18th November 2024 in respect of the Respondent's Party and Party Bill of Costs, including consequential orders, is hereby set aside.
31. The said Bill of Costs shall be taxed afresh on merit before a different taxing officer at the Civil Division of the High Court at Milimani Law Courts, Nairobi.
32. This file was closed on 25th April 2024 and remains closed.

DATED, SIGNED AND DELIVERED THIS 29TH APRIL 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Mr. Njuguna for the Plaintiff/Applicant

Ms Musau for Defendant/Respondent

