



**National Water Conservation Pipeline Corporation v Runji & Partners
Consulting Engineers and Planners Limited (Arbitration Cause E002 of 2020)
[2025] KEHC 5106 (KLR) (Commercial and Tax) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E002 OF 2020**

RC RUTTO, J

APRIL 25, 2025

BETWEEN

**NATIONAL WATER CONSERVATION PIPELINE
CORPORATION APPLICANT**

AND

**RUNJI & PARTNERS CONSULTING ENGINEERS AND PLANNERS
LIMITED RESPONDENT**

*(Being a reference against the Ruling and order of Hon C.L. Adisa (taxing officer) delivered
on 12th June 2024 arising from the respondent's bill of costs dated 28th March 2024)*

RULING

1. The appellant, being aggrieved by the ruling delivered on 12th June 2024, has preferred this reference seeking orders that:
 1. The Honorable Court be pleased to order that the ruling delivered by the Hon. Chembeni L. Adisa, the Taxing Officer on 12th June 2024 in relation to the party and party bill of costs dated 28th March 2024 to be set aside;
 2. The Honorable Court be pleased to order for re taxation of thirty three items being 3, 12, 17, 20, 23, 28, 30, 47, 49, 58, 59, 61, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 76, 78, 80, 82, 84, 86, 88, 91, 92, 93 and 94 of the party and party bill of costs dated 28th March 2024 by another taxing officer other than Hon Chembeni L. Adisa;
 3. The costs of this application be borne by the client /respondent herein.



4. This Honourable Court be pleased to make any such order and/or orders as it may deem just and appropriate in the circumstances.
2. The application was premised upon grounds on the face of it and the supporting affidavit of Eng. John K Muhia, the applicant's acting CEO, sworn on 26th June 2024. The facts giving rise to the reference are that the respondent lodged its party and party bill of costs dated 28th March 2024 seeking a sum of Kshs.886,995.600. The same was filed in pursuance of costs awarded in its favor in an application setting aside an arbitral award. By ruling dated 12th June 2024, the respondent's bill of costs was taxed at Kshs.268,095.00. Aggrieved by the ruling, the applicant filed the present reference challenging items 3, 12, 17, 20, 23, 28, 30, 47, 49, 58, 59, 61, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 76, 78, 80, 82, 84,86, 88, 91, 92, 93 and 94. It contended that those items were marred with errors warranting an interference by this court.
3. The applicant urged this court to allow the reference on account of the following errors purported to be committed by the taxing officer: awarding instruction fees on interlocutory applications without setting down the basic applicable minimum scale from which to draw her discretion to either increase or decrease thereby awarding instruction fees that was manifestly too high on items 20, 30 and 47; misapprehended the standing provisions on the length of the folio and proceeded to award fees that were manifestly too high for perusal in items 3, 17 and 28; violated paragraph 5(d) of Schedule 6 of the Advocates (Remuneration) (Amendment) Order by awarding fees for making photostat copies without the supporting receipts or vouchers as delineated in items 12, 23 and 49; contravened Rule 50 and 50A of the Advocates (Remuneration) (Amendment) Order for allowing costs for attendances at a higher scale on items 58, 59, 61, 64, 65, 66, 67, 68, 69, 70 and 71; violated rule 77 (1) of the Order when the officer allowed costs for preparing the bill of costs in items 73, 74, 91, 93 and 94 when one-sixth of the total amount had been taxed off; allowed the costs of attending court for taxation of the bill of costs in item 73 which is catered for by paragraph 69(3) of the Advocate (Remuneration)Order and which ought to be completed by the taxing officer; and allowed disbursement costs without supporting receipts or vouchers in items 76, 78, 80, 82, 84, 86, 88 and 92. It deposed that it was in the interest of justice that the reference be allowed.
4. The respondent did not file any response to the reference. Pursuant to the directions of this court issued on 25th September 2024, the parties canvassed the reference by way of written submissions. In its written submissions dated 7th October, 2024, the applicant submitted that the taxing officer's decision was replete with errors of principle and law. Fortifying several decisions of the court, the appellant submitted that the taxing master erred in principle by awarding instruction fees on interlocutory applications, misapprehended the standing provisions of the length of a folio and costs for attendance at a higher scale as well as disbursements. It prayed that its reference be allowed.
5. The respondent filed its written submissions dated 14th October 2024 opposing the reference. It submitted that several documents including receipts went missing. Regrettably, the CTS does not bear those items. Those receipts were thus attached to the submissions. It urged this court to restore item 83. He conceded that item 17 ought to have been entered in the sum of Kshs.2,250.00 instead of Kshs.4,300 while item 28 ought to be Kshs.50.00 and not Kshs.45.00. On items 12, 23, 49, 76, 78, 80, 82, 84,86, 88 and 92 it submitted that the taxing master allowed the same by dint of paragraphs 74 and 75 (1) of the Order. It submitted that items 20, 30, 47, 58, 59, 61, 64, 65, 66, 67, 68, 69, 70, 71, 73 and 74 were drawn to scale. On item 93 and 94, it submitted that it had paid a sum of Kshs.500.00. Finally, on the application of paragraph 77 (1) of the Order, the respondent submitted that it was discretionary and wasn't mandatory to disallow costs of such taxation.



6. I have carefully considered the reference as well as the parties' submissions. I have also examined the impugned ruling delivered on 28th March 2024. The principles applicable when considering to interfere with the decision of the taxing master were ruminated by Odunga, J. (as he then was) in the case of Republic vs. Competition Authority Ex Parte Ukwala Supermarket Ltd & Anor [2017] eKLR where he stated:

“The circumstances under which a Judge of the High Court interferes with the taxing officer's exercise of discretion are now well known. These principles are:

- (1) 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 manifestly excessive as to justify an inference that it was based on an error of principle;
- (2) it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge;
- (3) if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practise is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;
- (4) it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;
- (5) the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
- (6) the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;
- (7) the mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of First American Bank of Kenya vs. Shah and Others [2002] 1 EA 64.”

7. Before delving into the merits of the reference, I wish to remind parties that submissions will never take the place of pleadings. The respondent in its submissions purported to introduce evidence. Insofar as that is concerned, I will not hesitate to disregard them and strictly confine myself to its response on the issues raised without introducing evidence from the bar.

8. Turning to the reference, the applicant contended that items 20, 30 and 47 ought not to have been awarded as item 1 had already awarded instruction fees. As a matter of practice and law, instruction fees are only awarded once. Those instruction fees are intended to cover the conduct of the matter as



long as it is alive until its logical conclusion. This includes lodging or opposing applications within the same cause. I therefore find that instruction fees ought to be awarded once with the drafting of those applications or responses forming the basis for an award. I therefore agree with the applicant to find that the taxing master erred in principle in awarding those items as they ought to have been struck off.

9. On items 73, 74, 91, 93 and 94, the applicant submitted that the same ought to be taxed off as 1/6 of the total amount on the bill had been taxed off. The applicant placed reliance on the provisions of paragraph 77 (1) of the Advocates Remuneration Order which provides as follows:

“If more than one-sixth of the total amount of a bill of costs, exclusive of court fees, be disallowed on taxation, the party presenting the bill for taxation may, in the discretion of the taxing officer, be disallowed the costs of such taxation.”

10. As rightly pointed out by the respondent, the decision to disallow such costs are discretionary. In that regard, it is for the taxing master to exemplify why the costs are allowed or disallowed for the benefit of the parties. This is because an exercise of discretion must be done judiciously. This taking into account that under paragraph 77 (2), such decision is final.

11. On costs for attendance as set out in items 58, 59, 61, 64, 65, 66, 67, 68, 69, 70 and 71, the applicant lamented that the same contravened paragraphs 50 and 50A of the Advocates (Remuneration) (Amendment) Order for allowing costs for attendances at a higher scale. The said paragraphs provide as follows:

50. Costs in High Court according to Schedule VI.

Subject to paragraphs 22 and 58 and to any order of the court in the particular case, a bill of costs in proceedings in the High Court shall be taxable in accordance with Schedule VI and, unless the court has made an order under paragraph 50A, where Schedule VI provides a higher and a lower scale the costs shall be taxed in accordance with the lower scale.

50A. Schedule VI costs on the higher scale.

The court may make an order that costs are to be taxed on the higher scale in Schedule VI on special grounds arising out of the nature and importance or the difficulty or urgency of the case; the higher scale may be allowed either generally in any cause or matter or in respect of any particular application made or business done.”

12. It is apparent from the above provision that an order must be made that the costs are to be taxed on the higher scale in schedule VI before applying it. In other words, the taxing officer is to apply the lower scale unless the application of the higher scale has been sanctioned within the parameters of special grounds. In this case, it has not been shown if an order was issued to that effect. I therefore agree with the applicant that the lower scale ought to have been applicable in the absence of an order to the contrary.

13. On disbursements as itemized in 76, 78, 80, 82, 84, 86, 88 and 92, the applicant urged this court to disallow them as they were not backed by supporting evidence. Paragraph 69 (2) of the Advocates Remuneration Order provides that disbursements shall be shown separately at the foot of the bill. Paragraph 74 continues to state that receipts or vouchers for all disbursements charged in a bill of costs shall be produced on taxation if required by the taxing officer.



14. In this case, it was incumbent for the taxing master to explain either that it did confirm the disbursements upon perusal of the court file or in the alternative, call for a receipts or vouchers for the disbursements. That did not take place. It is therefore inconceivable as to how the taxing master awarded the sums stating that they were drawn to scale.
15. Regarding the disputed sum on the length of folios and the photostat copies, I do agree with the applicant that before the award stated in bill was allowed, the taxing officer ought to have confirmed those numbers of folios as well as the copies before awarding the same. I therefore find that the taxing officer erred in principle in awarding items 3, 12, 17, 23, 28 and 49.
16. Finally, paragraph 69 (3) of the Order provides that fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer. I have looked at the bill of costs dated 28th March 2024. The item at paragraph 73 was not left blank by the respondent in gross violation of the said provision that is couched in mandatory terms. It was for the taxing master to fill for those costs. It was therefore improper for the taxing master to allow it as prayed.
17. Other than the items set forth herein, I find that the taxing master applied the correct principles and properly awarded the remaining items. In light of this, the following orders are issued:
 1. The ruling delivered by the Hon. Chembeni L. Adisa, the Taxing Officer on 12th June 2024 in relation to the party and party bill of costs dated 28th March 2024 be and is hereby set aside in terms of items 3, 12, 17, 20, 23, 28, 30, 47, 49, 58, 59, 61, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 76, 78, 80, 82, 84,86, 88, 91, 92, 93 and 94 of the party and party bill of costs dated 28th March 2024;
 2. The bill of costs dated 28th March 2024 is hereby remitted back for re-taxation of thirty-three items being 3, 12, 17, 20, 23, 28, 30, 47, 49, 58, 59, 61, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 76, 78, 80, 82, 84,86, 88, 91, 92, 93 and 94 by a taxing officer other than Hon Chembeni L. Adisa in line with the directions and guidelines set out in this ruling, adjusting the items as appropriate;
 3. As costs follow the event, the applicant shall have the costs of this reference.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF APRIL, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Applicants

.....for Respondent

Sam Court Assistant

