Juja Coffee Exporters Limited v Grain Bulk Handlers Limited (Miscellaneous Civil Application E356 of 2024) [2025] KEHC 12112 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12112 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION E356 OF 2024

F WANGARI, J

MAY 29, 2025

BETWEEN

JUJA COFFEE EXPORTERS LIMITED ..... APPLICANT

AND

GRAIN BULK HANDLERS LIMITED ..... RESPONDENT

RULING

1. For ruling is the Applicant's Chamber Summons dated 4th December, 2024. The application is brought pursuant to the provisions of Rule 11 (1) and (2) of the Advocates (Remuneration) Order. It seeks the following orders: -

    a. That the Honourable Court be pleased to set aside the Ruling made by the Deputy Registrar, Hon. Christopher Yalwala dated 20th November, 2024 which awarded the 4th Defendant (Respondent herein) instructions fees in the sum of Kshs. 1,725,000/= and getting up fees in the sum of Kshs. 575,000/=;

    b. That this Honourable Court be pleased to remit the matter back to the Deputy Registrar for re-taxation of the 4th Defendant's Bill of Costs dated 27th August, 2024 which was taxed at a total amount of Kshs. 2,451,150/= with proper and appropriate directions;

    c. That in the alternative, the Honourable Court do exercise its inherent jurisdiction and be pleased to re-tax the items relating to instruction fees and getting up fees in the 4th Defendant's Bill of Costs dated 27th August, 2024 afresh;

    d. That the Honourable Court be pleased to grant any other orders that it deems fit and just; and

    e. That the costs of the application be provided for.

2. The grounds in support of the application are briefly that the value of the subject matter could not ascertained from the pleadings and the matter was dismissed before reaching the hearing stage or

judgement. Bearing in mind the instruction fees under Schedule VI (Other matters) of the Advocates (Remuneration) Order, 2014 is Kshs. 75,000/=, the Taxing Master is said to have erred in principle by relying on Schedule VI, paragraph 1 (b) matter in awarding inordinately high instruction fees in the sum of Kshs. 1,725,000/= and getting up fees of Kshs. 575,000/= to the 4th Defendant.

3. It is urged that the Taxing Master erred in principle when he relied on the value of the subject matter quoted in a valuation report by Tysons Limited dated 19th April, 2017 placing the value at Kshs. 140,000,000/=. It is said as a result of the Taxing Master's errors in principle, the sum of Kshs. 2,451,150/= awarded as party and party costs was so manifestly high as to highly unjust and detrimental to the Applicant.

4. It concludes that it would be in the interest of justice that the Taxing Master's decision of 20th November, 2024 be set aside and the Party and Party Bill of Costs dated 27th August, 2024 be taxed afresh before another Deputy Registrar or by this court. The application is supported by the affidavit sworn on even date by Mark Waziri, the Applicant's Counsel. Other than the annexures, it restates more or less the grounds in support of the application and I see no value in rehashing the same.

5. The application is opposed through a replying affidavit dated 19th December, 2024 sown by Michael O. Oloo, the Respondent's Counsel. In a nutshell, he deposes that the Taxing Master's decision of 20th November, 2024 is proper, beyond reproach and urges the court to uphold the same since the Taxing Master to relevant principles and the applicable laws.

6. It is averred that the Applicant's position could not be discerned from the pleadings is wrong since the court correctly found that the could actually be determined and instead of the court adopting the figure of Kshs. 230,000,000/= it had proposed, the court in its discretion and wisdom adopted the lower figure of Kshs. 140,000,000/= for purposes of computing instruction fees.

7. On the application of 75% ratio, the Respondent contends that the matter was dismissed after the same had been set down for hearing. It is also contended that getting up fees was proper since the matter had already been set down for hearing and thus the same was due and payable. In totality, it is urged that the application has no basis and the orders sought out to be declined.

8. Directions were taken to have the application heard by way of written submissions. The Applicant's submissions are dated 10th March, 2025. The Respondent opted to rely on the replying affidavit.

Analysis and Determination

9. I have carefully considered the application, the response, the Applicant's submissions, the authorities cited as well as the law and the only issue for determination is whether the objection is application is merited. Corollary to this is the issue of costs.

10. The application is basically a reference on the Taxing Master's ruling dated 20th November, 2024. The role of this court on a reference is clearly delineated. In Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR, the Court of Appeal held 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..."

11. In Arthur v Nyeri Electricity Undertaking [1961] EA 497, the predecessor of the Court of Appeal observed as follows: -

> "...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..."

12. The Applicant's complaint is that the fees awarded to the Respondent was manifestly excessive thus inviting this court's interference on the same. Its primary reason is that the value of the subject matter could not be ascertained from the pleadings and that the matter was dismissed before it was heard. In Joreth Limited v Kigano & Associates [2002] eKLR, the Court of Appeal held as follows: -

> "...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..."

13. From the evidence on record, it is not in dispute that the value of the subject matter was not pleaded, there was neither settlement nor judgement since the matter was dismissed before it was heard. This being the case, the court shall interrogate the Taxing Master's decision dated 20th November, 2024 to satisfy itself as to the reasons that made the Taxing Master adopt the figure of Kshs. 140,000,000/= for purposes of computing instruction fees.

14. In settling for Kshs. 140,000,000/=, the Taxing Master observed as follows: -

> "...In this case, the benefit that was bound to accrue to the Plaintiff if its claim herein succeeded was to regain ownership and the value of the suit property. That, too, was the loss that was bound to accrue to the 4th Defendant if the Plaintiff's case succeeded. The value of the subject matter herein is therefore the value of the suit property..."

15. In support of this position, the Taxing Officer cited the persuasive decision in Masore Nyangau & Co. Advocates v Kensalt Ltd [2019] eKLR where the court observed as follows: -

> "...It is thus a fallacy to suppose that the court can look at nothing else other than the pleadings, or judgment, or settlement, so as to determine the value of the subject matter. If the court can call for witnesses to determine the matter at hand, a fortiori, the court can certainly refer to documents presented before the court, so as to determine the value of the subject matter, which will then lead to a decision on instruction fees..."

16. From the Taxing Master's reasoning, I see no error of principle warranting this court's intervention. The fact that the matter was not heard to conclusion and documents produced did not preclude the Taxing Master from looking at the documents on record to ascertain the value of the subject matter. As correctly held in Masore Nyangau & Co. Advocates v Kensalt Limited (supra), the fact that the value is not pleaded or that there is no settlement or judgement does not stop the court from looking at other documents on record.

17. As held in Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board (supra), courts should be slow in interfering with a Taxing Master's exercise of discretion. I have found no error of principle and as such, there is nothing to warrant this court to interfere with the ruling dated 20th November, 2024. I have said enough to show that the application dated 4th December, 2024 must fail.

18. On costs, the same follows the event. However, it must be remembered that award of costs is discretionary and the court reserves the discretion whether to award the same or not. Though the application has failed, it was not brought in bad faith and the Applicant had bona fides in bringing the same. I therefore direct that each party shall bear own costs.

19. The upshot of the foregoing is that the court renders itself as hereunder: -

    a. The Chamber Summons application dated 4th December, 2024 lacks merit and the same is hereby dismissed; and

    b. Each party to bear own costs.

    It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF MAY, 2025.

.....

F. WANGARI

JUDGE

In the presence of;

Mr. Mramba Advocate h/b for Mr. Waziri Advocate for the Applicant

Mr. Oloo Advocate for the Respondent

Ms. Norah, Court Assistant