



**Scania Sacco Limited v Sireka (Miscellaneous Application
E299 of 2022) [2025] KEHC 9009 (KLR) (Civ) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9009 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E299 OF 2022

JN MULWA, J

JUNE 26, 2025

BETWEEN

SCANIA SACCO LIMITED APPLICANT

AND

WASHINGTON ODERA SIREKA RESPONDENT

RULING

1. By a chamber summons application dated 24/05/2025 the Applicant, Scania Sacco Limited sought orders to review, vary and/or set aside the costs as seen from the certificate of costs issued by the Taxing Officer on 10/12/2021 and in the alternative re-assess the said costs.
2. The summons are anchored under paragraph 11(2) of the *Advocates Remuneration Order* (ARO) grounds stated at its face and affidavit sworn by one Brian Makau the chairman of the Application on even date. The subject case of the taxation was Misc. Application No E181 of 2021 – Washington Odera v Scania Sacco Limited that arose from Milimani CMCC No 11257 of 2018 between the parties wherein a decree was issued in favour of the Respondent in the sum of Kshs 111,575 on 10/12/2021.
3. The dispute as may be seen from the grounds of the application are that the taxing officer erred in law and in principle in that the suit claim was for Kshs 514,955/= and as such, the instructions fees, which is the item under dispute was grossly exaggerated and ought to be Kshs 65,000/= and not Kshs 90,000/=, thus misdirected herself contrary to the well-established principles of law on taxation.
4. The Applicant did not file submissions despite having been accorded opportunity to do so. The Respondent's submissions are dated 30/04/2024. The court has considered the affidavit evidence and the Respondent's submissions.



5. Perusal of the pleadings that gave rise to the impugned taxation show the claim was for Kshs 514,952/= which was not defended hence an ex parte judgment entered in favour of the Respondent, but was subsequently set aside on 10/12/2021 and thereafter withdrawn with costs to the Defendant/ Respondent herein and assessed at Kshs 111,575/= which the Applicant finds to be too high in the circumstances.
6. The principles that ought to guide a taxing officer in assessment of costs were stated in the case of *First American Bank of Kenya Ltd v Shah and others* [2002] eKLR; thus:-
 - i. A 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
 - ii. That the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle.
7. Schedule 7 of the *Advocates Remuneration Order* underpins taxations of party and party bill of costs as is the case here.

The court further gathers that the defendant now applicant had denied the claim by way of a motion seeking striking out the suit against it. Though it did not file a statement of defence the *Advocates Remuneration Order*, the "Lower Scale" applies where no defence or other denial of liability has been filed and the "Higher scale" applies where a defence has been filed.

8. By the Defendant/Applicant herein filing the motion as aforestated, the costs had to be assessed on the higher scale, not the lower scale a situation well addressed in the case of *Masore Nyangau & Co. Advocates & others v Supplies & Services Ltd* [2018] eKLR where the court held that:-

“...a denial of liability can take the form of a statement of defence notice of Preliminary Objection, grounds of opposition, or replying affidavit where appropriate”

9. Further instructions fees is not determined by the stage when the suit is filed. It ought to be determined independently and only once as stated in the Court of Appeal case of *Joreth Limited v Kigano & Associates* [2002] eKLR, upon judgments.
10. At paragraph 1(c) of the ARO. 2014 on a claim of Kshs 514,952/= on the lower scale is Kshs 65,000/= and on the higher scale at Kshs 90,000/=. Based on this, it is the courts finding that the sum of Kshs 90,000/= on instructions fees and other items with a total of Kshs 111,575/= was properly assessed and within the scale fees. This court will not interfere with the Taxing Officer's discretion. Indeed, the Applicant having failed to show either that the decision was based on an error of principle or that the fee was manifestly excessive, the application must fail. It is dismissed with costs to the Respondent.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JUNE, 2025

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JANET MULWA.
JUDGE

