



REPUBLIC OF KENYA



**Jetha v Guaranty Trust Bank Kenya Limited (Commercial Case 438 of 2016)
[2025] KEHC 11297 (KLR) (Commercial and Tax) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 438 OF 2016
JK NG'ARNG'AR, J
JULY 30, 2025**

BETWEEN

DINESH KUMAR ZAVERCHAND JETHA PLAINTIFF

AND

GUARANTY TRUST BANK KENYA LIMITED DEFENDANT

*(Being a Reference arising from the decision of the Taxing Master, Hon. L. Adisa,
Deputy Registrar in Milimani High Court Commercial Suit Number 438 of 2016)*

RULING

1. The Applicant filed a Chamber Summons Application dated 26th March 2025 seeking the following Orders: -
 - I. That the Taxing Master's Ruling dated 25th February 2025 taxing the Defendant's Bill of Costs dated 15th May 2023 at Kshs 601,536/= be set aside in its entirety.
 - II. That the Bill of Costs dated 15th May 2023 be taxed by a different Deputy Registrar in the Division.
 - III. That costs be awarded to the Defendant/Applicant.
2. The Application was brought under the provisions of sections 1A, 1B, 3A of the [Civil Procedure Act](#) and Rules 11 (1) and (2) of the Advocates Remuneration (Amendment) Order 2014 and it was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Greg Karungo on 26th March 2025.



The Applicant's Case.

3. The Applicant stated that the Respondent instituted this matter vide a Complaint dated 26th October 2016 and an accompanying Notice of Motion Application where he sought to restrain the Applicant from auctioning Flat Number 1, Block C situate on L/R No. 991/13, Nairobi. That the Respondent's Application for the injunction was dismissed by Nzioka J. through a Ruling dated 30th October 2017. The Applicant further stated that he raised a Preliminary Objection to the Respondent's suit and the Preliminary Objection was upheld by Mshila J. through a Ruling dated 3rd March 2023 where she held that the Respondent's suit was *res judicata*.
4. It was the Applicant's case that it filed its Party-to-Party Bill of Costs dated 15th May 2023 and the Taxing Master delivered her Ruling on 25th February 2025 where she assessed the instruction fee at Kshs 450,000/= as opposed to its proposal of Kshs 6,500,000/=. That the Taxing Master's assessment of the instruction fee was erroneous as instruction fee ought to be determined from the pleadings, judgement or settlement. It was the Applicant's further case that if was the Taxing Master had discretion in assessing instruction fee when it was not ascertainable from the pleadings.
5. The Applicant stated that in value of the subject matter was Kshs 124,957, 947.98/= being the figure that it demanded from the Respondent in the Complaint. That according to paragraph 1(b), Schedule 6A of the Advocates (Remuneration) (Amendment) Order 2014, the instruction fee based on the subject matter (Kshs 124,957,947.78/=) came to Kshs 2,074,362.74/=. The Applicant further stated that the Taxing Master was then at liberty to increase the instruction fee by taking into account the care and labour demonstrated by the advocate and the nature and importance of the suit.
6. It was the Applicant's case that he demonstrated the nature and importance of the suit, the value of the subject matter and the general conduct of the proceedings.
7. In its written submissions dated 18th June 2025, the Applicant submitted that the Reference was properly before court. That it filed its Notice of Objection in the form of a letter dated 12th March 2025 in compliance with the provisions of paragraph 11 (1) of the Advocates Remuneration Order. They relied on *Matiri Mburu & Chepkemboi Advocates vs Occidental Insurance Company Limited (2017) eKLR*, *Machira & Co. Advocates vs Arthur K. Magugu & Margaret Wairimu Magugu (2012) eKLR* et.al. The Applicant further submitted that the Taxing Master responded to their Notice of Objection stating that her reasons for taxation were as per the Ruling. That their Notice of Objection dated 12th March 2025 was not out of time.
8. In regards to the instruction fee, the Applicant submitted that it was trite law that the instruction fee is ascertainable from the value of the substratum (Kshs 124,957,947.78/=). Reliance was placed on *Joreth Limited vs Kigano & Associates (2002) eKLR*. That it was only after setting out the basic fee that the Taxing Master could use the discretion to increase the fee. It relied on *Kenya Airports Authority vs Otieno Ragot & Co. Advocates [2024] KESC 44 (KLR)* and *University of Nairobi & another v Moses (Civil Appeal 119 of 2020) [2022] KECA 45 (KLR)*.
9. It was the Applicant's submission that the subject matter of the suit was pricey, the loss of which would have adverse effects on its balance sheet. That the prosecution of the suit was marked with numerous applications and it took approximately 6 years from the suit's inception to its dismissal. It was the Applicant's further submission that it properly assessed the instruction fee at Kshs 6,500,000/= in its Bill of Costs.



The Response.

10. The Respondent filed his Replying Affidavit dated 26th May 2025 and stated that the Application was bad in law and had been filed out of time. That for the Reference to be valid, the Applicant was mandated to issue its Notice of Objection on 11th March 2025 and not 13th March 2025 as exhibited in its Notice of Objection. The Respondent further stated that the Applicant's Notice of Objection was filed outside the statutory 14-day period.
11. It was the Respondent's case that there was no reason for the Applicant to delay in filing its Notice of Objection. That in the absence of this court enlarging the time necessary for filing the Notice of Objection, it lacked the jurisdiction to determine the present Application.
12. The Respondent stated that the Applicant had failed to demonstrate how the Taxing Master misdirected or improperly exercised her discretion to warrant interference of the award on instruction fee by this court. The Respondent further stated that the mere mention of the sum of Kshs 124,957,498/= in the Plaint could not be used to determine the value of the subject matter for the purpose of taxation.
13. It was the Respondent's case that the Applicant had failed to lay any basis for this court to interfere with the Taxing Master's discretion in assessing the instruction fee.
14. In his written submissions dated 26th November 2024, the Respondent submitted that the Applicant's Bill of Costs was exaggerated and was not drawn to scale. That the Applicant's proposal of Kshs 6,500,000/= was excessive and unreasonable. Reliance was placed on *Brampton Investment Limited v Attorney General & 2 others (2013) eKLR*. The Respondent further submitted that in the Plaint, he sought temporary and injunctive orders against the Applicant and the prayers did not contain any monetary award or claim. That additionally, the suit was not prosecuted to its conclusion.
15. It was the Respondent's submission that a mere mention of Kshs 124,957,498/= by the Applicant could not be used a basis to determine the value of the subject matter without any ascertainment of its proven value in a Judgement. He relied on *Otieno, Ragot & Company Advocates v Kenya Airports Authority (2021) eKLR* and *Peter Muthoka & another vs Ochieng & 3 others (2019) eKLR*.
16. The Respondent submitted that the issue before court was res judicata. That it was not a complex issue and he urged the court to tax off the amount proposed by the Applicant and award Kshs 75,000/=.
17. I have gone through and considered the Chamber Summons Application dated 26th March 2025, the Replying Affidavit dated 26th May 2025, the Applicant's written submissions dated 18th June 2025 and the Respondent's written submissions dated 20th November 2024. The two issues for my determination were: -
 - i. Whether the Reference was filed out of time.
 - ii. Whether the Taxing Master's Ruling dated 25th February 2025 should be set aside.

Whether the Reference was filed out of time

18. Rule 11 of the Advocates (Remuneration) Order 2014 provides: -
 - 1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.



- (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
19. The Applicant filed its Party-to-Party Bill of Costs dated 15th May 2023 and the same was opposed by the Replying Affidavit dated 26th May 2025. In her Ruling dated 25th February 2025, the Taxing Master taxed the Bill of Costs at Kshs 601,536/=.
 20. Being aggrieved by the decision of the Taxing Master, the Applicant wrote to the Taxing Master a Notice of Objection dated 12th March 2025 stating their objection to the taxation on instruction fee. The Applicant further asked for the reasons for the assessment of the instruction fee. The Taxing Master through an e-mail dated 25th March 2025 to the Applicant stated that her reasons were as per her Ruling. The Applicant then filed the present Application on 26th March 2025 and thereafter filed the present Application on 18th May 2023.
 21. The question then was whether the Applicant complied with the timelines as provided by Rule 11 of the Advocates (Remuneration) Order 2014. As stated earlier, the Taxing Master delivered her Ruling on 25th February 2025 and the Applicant's Notice of Objection was dated 12th March 2025 and filed on 13th March 2025. By my calculation, the time spent between the delivery of the Taxing Master's Ruling and the receipt of the Applicant's Notice of Objection was 12 days. This was in accordance with Rule 11 (1) of the Advocates (Remuneration) Order 2014 which provided the Applicant 14 days after the Taxing Master's Ruling to launch an Objection.
 22. In regards to Rule 11 (2) of the Advocates (Remuneration) Order 2014, the Applicant should file his Reference within 14 days after receiving the Reasons for Taxation from the Taxing Master. Again, as stated earlier, the Applicant received an e-mail from the Taxing Master on 25th March 2025 informing him that the reasons for the Taxation were as per the Ruling. The Applicant then filed the present Application on 26th March 2025 which was a day after the reasons.
 23. Flowing from the above, it is my finding that the Applicant satisfied the provisions of Rule 11 of the Advocates (Remuneration) Order 2014. It is my further finding that the Reference was properly before this court and was ripe for determination.

Whether the Taxing Master's Ruling dated 25th February 2025 should be set aside.

24. Section 6 of the Advocates Remuneration Order 2014 provides: -

Notwithstanding anything contained in this Order, on every taxation the taxing officer may allow all such costs, charges and expenses as authorized in this Order as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed



which appear to the taxing officer to have been incurred or increased through over caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons, or by other unusual expenses.

25. In *DK Law Advocates v Zhong Gang Building Material Co. Ltd & another* [2021] KEHC 3173 (KLR), Odunga J. (as he then was) referred to the case of *First American Bank of Kenya vs. Shah and Others* [2002] 1 EA 64 when discussing instances where a Judge could interfere with the decision of a Taxing Master where it was held thus: -

“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....”

26. Similarly, in *Amuga and Company Advocates v Kisumu Concrete Products Limited* [2021] KEHC 4144 (KLR), Mativo J. (as he then was) held: -

“.....The general principles governing interference with the exercise of the Taxing Master’s discretion were authoritatively stated by a South African court as follows: -

“The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for



example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue .

.. The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

Before interfering with a decision of a Taxing Master, the court must be satisfied that the Taxing Master’s ruling was clearly wrong, as opposed to the court being clearly satisfied that the Taxing Master was wrong. The court will not interfere with the decision of the taxing master in every case where its view of the matter in dispute differs from that of the Taxing Master. It only interferes when it is satisfied that the Taxing Master’s view of the matter differs so materially from its own that it should be held to vitiate the ruling. When a court reviews a taxation it is vested with the power to exercise the wider degree of supervision. This means: -

“ . . . that the Court must be satisfied that the Taxing Master was clearly wrong before it will interfere with a ruling made by him . . . viz that the Court will not interfere with a ruling made by the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Masters view of the matter differs so materially from its own that it should be held to vitiate his ruling.

The Taxing Master is required to consider the time taken, the complexity of the matter, the nature of the subject-matter in dispute, the amount in dispute and any other factors he or she considers relevant. The definitive question is whether the Taxing Master struck this equitable balance correctly in the light of all the circumstances of this particular case. This requires this court to be satisfied that the Taxing Master was clearly wrong before interfering with her decision. The quantum of such costs is to be what was reasonable fees and must be within the remuneration order. The determination of such quantum is determined by the Taxing Master and is an exercise of judicial power guided by the applicable principles.

The exercise of the Taxing Master’s discretion will not be interfered with ‘unless it is found that he/she has not exercised his/her discretion properly, as for example, when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.’ (Emphasis added)

27. I agree with the above decisions as clearly interpreting the law and setting clear parameters and principles relevant to this Reference.
28. It was clear from the pleadings that the Applicant’s main contention with the Taxing Master’s Ruling dated 25th February 2025 was the awarding of Kshs 450,000/= as instruction fees. The Applicant stated that the amount was low as the value of the subject matter was Kshs 124,957,947/= which meant the minimum fee awardable as instruction fee was Kshs 2,074,362/=.



29. In determining the instruction fee, the Court of Appeal in *Joreth Limited v Kigano & Associates* [2002] KECA 153 (KLR) held: -

“.....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.....”

30. In *Kenya Power & Lighting Co. Ltd v Msellem* (Miscellaneous Civil Application E056 of 2021) [2022] KEELC 2624 (KLR) (8 July 2022) (Ruling), Odeny J. held: -

“A taxing master is under a duty to consider the instruction fee which should cover the advocates work including taking instructions and preparing the case for trial or appeal, the value of the subject matter and that the taxing master’s discretion must be exercised judicially and not whimsically or capriciously.”

31. I have looked at the pleadings in this case, particularly the Plaintiff dated 26th October 2016. The prayer among others was a permanent injunction restraining the Applicant from selling the suit property in respect of a claim of Kshs 124,957,947.78/=. The substance of the claim was that the Applicant wanted to exercise its power of sale over the suit property for the claim of Kshs 124,957,947.78/=: an amount which arose in an earlier suit i.e. Nairobi HCCC Number 379 of 2005, Fina bank Limited vs Maizena Maize Millers Limited. It is salient to note that the present suit was dismissed by dint of it being res judicata hence the relationship between the present suit and Nairobi HCCC Number 379 of 2005, Fina bank Limited vs Maizena Maize Millers Limited.

32. In the present suit, there was an admission that in the earlier suit (Nairobi HCCC Number 379 of 2005, Fina bank Limited vs Maizena Maize Millers Limited), Maizena Maize Millers Limited denied being indebted to the Applicant and further there had been an allegation that the Applicant had been increasing its interest rates without the sanction of the Minister as provided for in section 44 of the *Banking Act*. The net effect of this was that the amount of Kshs 124,957,947.78/= was disputed and it could therefore not be used as the base figure in assessing the instruction fee.

33. I disagree with the Applicant’s assertion that the amount of Kshs 124,957,947.78/= was ascertainable. In my view, and in light of the amount being disputed, the same could only be ascertainable through a Judgment. I am guided by the Court of Appeal in *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] KECA 587 (KLR) where it held: -

“The mere mention, without more, of a figure in a pleading cannot, per se, determine the value of the subject matter for purposes of taxation. The mere mention of a figure in the pleadings should not prevent a taxing officer from exercising judicial discretion and inquiring whether such figure is indeed representative of the value of the subject matter for purposes of taxation.....”

34. I have read the Ruling dated 3rd March 2023 that upheld the Applicant’s Preliminary Objection dated 4th May 2022 and I agree with the Taxing Master’s finding that from the said Ruling, the value of the subject matter was not discernible. As demonstrated by the authorities earlier, in the absence of a discernible amount, the Taxing Master has discretion to determine the instruction fee.



35. As indicated in *DK Law Advocates vs Zhong Gang Building Material Co. Ltd & another (supra)* and *Amuga and Company Advocates (supra)* above, this court can only interfere with such discretion if it is demonstrated that the Taxing Master's decision was based on fundamentally wrong principles. In the present case, there was no evidence of such error in principle. It is my finding that the Taxing Master properly exercised her discretion when he assessed the instruction fee at Kshs 450,000/=. I further agree with Ojwang J. (as he then was) in *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W'Njuguna & 6 others* [2006] KEHC 3504 (KLR) where he held: -

“.....The basic principle cited by counsel is set out in *Premchand Raichand Ltd & Another v. Quarry Services of East Africa Ltd & Another* [1972] E.A. 162. In the words of Spry, V-P. (at p.164):

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”

The Court of Appeal in that case had set out certain principles to be taken into account. These were as follows:

- (a) costs should not be allowed to rise to such a level as to limit access to the courts to the wealthy only;
- (b) a successful litigant ought to be fairly reimbursed for the costs he has to incur;
- (c) the general level of remuneration of advocates must be such as to attract recruits to the profession;
- (d) so far as practicable there should be consistency in the awards made.”

36. In my view, the Taxing Master made a Ruling that any reasonable man would. In *Conrad Maloba and Associates v Music Copyright Society of Kenya (MCSK)* [2021] KEHC 1036 (KLR), Makau J. held: -

“Notably, the duty of a Taxing Officer is an exercise of lawful discretion which therefore, this court should uphold, the correct perception of the discretion donated by, which is that such a discretion is only duly exercised when it is guided by transparent, regular, reliable and just criteria, which discretion requires the court to take into account relevant factors.”

37. Flowing from the above, it is my finding that the Taxing Master's Ruling dated 25th February 2025 was founded on a proper exercise of judicial discretion and consequently, this was not a suitable case for this court to interfere with the said decision of Taxing Master. For avoidance of doubt, the other items (items 2-111) remain as taxed.

38. In the end, the Chamber Summons dated 26th March 2025 has no merit and is dismissed. Each party to bear its own costs.

39. Leave to appeal is granted.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JULY, 2025.

.....

HON. JULIUS K. NG'ARNG'AR



JUDGE

Ruling delivered in the presence of Wangari for the Applicant present, Mabango for the Respondent holding brief present. Peter/Siele (Court Assistants)

