



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kuguru Food Complex Limited v Mashreqbank P.S.C & another (Civil Case 1287 of 1999) [2025] KEHC 12410 (KLR) (Civ) (4 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12410 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**CIVIL**  
**CIVIL CASE 1287 OF 1999**  
**PM MULWA, J**  
**SEPTEMBER 4, 2025**

**BETWEEN**

**KUGURU FOOD COMPLEX LIMITED ..... PLAINTIFF**

**AND**

**MASHREQBANK P.S.C ..... 1<sup>ST</sup> RESPONDENT**

**DUBAI BANK KENYA LTD (IN LIQUIDATION) ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before Court for determination is the Chamber Summons dated 22<sup>nd</sup> March 2024. The Applicant seeks to have the ruling of the Taxing Officer, Hon. Nyang'ara Osoro, delivered on 11<sup>th</sup> March 2024 in respect of items 1 and 2 of the Party-to-Party Bill of Costs dated 18th April 2023 set aside, and the Bill be taxed afresh by this Court, or in the alternative by another Taxing Officer.
2. The application is premised on the grounds on the face of the record and supported by the affidavit of Peter Kuguru. He avers that the Taxing Officer erred in taxing instruction fees under item 1 at Kshs. 109,973.20, on the basis that the subject matter was Kshs. 4,664,880.00. He contends that this Court delivered judgment awarding the Plaintiff the said sum plus interest at 12% per annum up to December 2022, amounting to Kshs. 17,539,948.80. Consequently, the instruction fees and getting-up fees ought to have been computed on this decretal sum.
3. In opposition, Leroy Misaro swore a replying affidavit asserting that the application is misconceived and that the Taxing Officer properly applied the law by taking into account only the claim as pleaded in the plaint, namely Kshs. 4,664,880.00. He submits that interest is ancillary to the decree and does not constitute part of the subject matter for purposes of taxation.
4. The application was canvassed by way of written submissions.



5. The sole issue that arises for determination is whether the Taxing Officer erred in principle by excluding interest awarded in the judgment when computing instruction fees under item 1 of the Bill of Costs.
6. In *Joreth Ltd v Kigano & Associates* [2002] 1 EA 92, the Court of Appeal held:

“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).”
7. In *First American Bank Ltd v Shah & Another* [2002] 1 EA 64, Ringera, J (as he then was) expressed himself thus:

“This 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... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors...some of the relevant factors include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial judge...not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him.”
8. Similarly, in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the Court of Appeal emphasized that:

“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 it is shown that the taxing officer erred in principle in assessing the costs.”
9. It is not in dispute that judgment of this Court delivered on 9<sup>th</sup> December 2022 awarded the Plaintiff Kshs. 4,664,880.00 together with interest at 12% per annum from the date of filing the suit until payment in full, culminating in a decretal sum of Kshs. 17,539,948.80. The Taxing Officer, however, taxed instruction fees on the principal sum of Kshs. 4,664,880.00.
10. The question therefore is whether interest awarded by the Court forms part of the “value of the subject matter” for the purposes of taxation.
11. I am persuaded by the reasoning in *Muriu Mungai & Co. Advocates v New Kenya Co-operative Creameries Ltd* [2012] eKLR, where the Court held:

“Where interest is expressly pleaded and awarded by the Court, the same forms part of the judgment sum and ought to be taken into account in assessing the instruction fee.”
13. In the present case, interest was not only pleaded but was specifically awarded by the Court in its judgment. It therefore became part and parcel of the decretal sum embodied in the decree. To exclude it from the computation of instruction fees is, in my view, to ignore the full value of the subject matter as adjudicated upon.
14. I have perused the Taxing Officer’s ruling that gave rise to this reference. There is no doubt that the Taxing Officer applied the Advocates Remuneration Order, 1997. The question, however, is what constituted the proper subject matter for purposes of instruction fees.



15. The Applicant argues that the subject matter ought to be the amount in the judgment together with interest, while the Respondent maintains that the Taxing Officer correctly adopted the sum pleaded in the Plaintiff.
16. The Taxing Officer restricted herself to the principal sum pleaded in the plaintiff, namely Kshs. 4,664,880.00. In my view, once judgment has been delivered, it is the decretal sum that should guide the assessment of instruction fees.
17. Interest awarded up to the date of judgment forms part of the judgment sum. It is not a mere ancillary relief but an integral component of the decretal sum which the successful litigant is entitled to recover.
18. Where a suit has been concluded and the judgment sum is discernible, that judgment sum constitutes the subject matter for purposes of taxation, and not merely the pleaded figure. To hold otherwise would undermine the reality of the adjudicated claim.
19. The above position was adopted in *Kenyariri & Associates Advocates v Salama Beach Hotel Ltd & 4 Others* [2014] eKLR, where the Court observed:

“If an advocate taxes his bill of costs before a matter is determined, then the taxing officer is supposed to base the instruction fees on the basis of the pleaded amount in the pleadings. However, once an award has been made by the court, then the taxing officer is supposed to use the figure awarded by the court in calculating the payable instruction fees while taking into account the other parameters in increasing such fees, if at all.”

20. In the circumstances, I am satisfied that the Taxing Officer took into account a wrong factor and consequently erred in principle by adopting the pleaded amount as the subject matter for instruction fees.
21. For the reasons set out above, the Chamber Summons dated 22<sup>nd</sup> March 2024 is hereby allowed in the following terms:
  - i. The Taxing Officer’s decision on item 1 (instruction fees) is set aside.
  - ii. Since item 2 (getting-up fees) is pegged on one-third of the instruction fees, it is equally set aside.
  - iii. The Party-to-Party Bill of Costs dated 18<sup>th</sup> April 2023 is remitted back for taxation before any other Taxing Officer, with directions to reconsider items 1 and 2 by applying the judgment sum of Kshs. 17,539,948.80 as the subject matter.
  - iv. Each party shall bear its own costs of this reference.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 4<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**PETER M. MULWA**

**JUDGE**

**In the presence of:**

N/A for Plaintiff

Mr. Misaro for 1<sup>st</sup> Defendants



Court Assistant: Carlos

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