



**Cristol Ceramica Limited v Hasham Lalji Properties Limited &
2 others (Miscellaneous Reference Application E034 of 2024)
[2025] KEHC 12487 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12487 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS REFERENCE APPLICATION E034 OF 2024
JWW MONG'ARE, J
SEPTEMBER 1, 2025**

BETWEEN

CRISTOL CERAMICA LIMITED APPELLANT

AND

HASHAM LALJI PROPERTIES LIMITED 1ST RESPONDENT

SEDCO CONSULTANT LIMITED 2ND RESPONDENT

PYRAMID AUCTIONEERS LIMITED 3RD RESPONDENT

RULING

1. on 26th November 2024, the Applicant/Appellant moved this Honourable Court by a Notice of Motion Application filed under Section 1A, 3B, 3A and 89 of the *Civil Procedure Act*, Rule 11 of the *Advocates Remuneration Order* and Order 21 Rule 9a of the *Civil Procedure Rules* seeking to set aside the ruling of 18th November 2024 by Hon Adisa on a Bill of Costs filed on 15th August 2024.
2. In filing the said application the Applicant takes issue with the finding of the taxing masters finding under item 1 on instruction fees and urges this court to place the said Bill of costs before another taxing master for fresh taxing master for re-taxation. The Applicant argues that the Bill of Costs arose from costs awarded by the court when the Appellant's appeal filed to challenge the a decision emanating from a decision of the subordinate court in CMCC E6411 of 2022 which appeal was withdrawn before proceeding for trial and that the taxing master relied on a figure of Kshs.1,600,000/= as subject matter value without laying any basis as to why the said sum was used as a basis for taxation.
3. The Applicant argues that the Appeal arose from a ruling on a unliquidated claim and therefore the taxing master erred in principle in returning an award of Kshs.132,000/= under item 1 on instructions



fees. Instead, the correct schedule that the taxing master ought to have used is Schedule 6(1) (a) of the Advocates Remuneration Order where the said item would attract a fee of Kshs.25,200/= for appeals.

4. In opposing the application both the 1st and 2nd respondents have filed written submissions. In their separate submissions, the respondents argue that there was no error on principle committed by the taxing master in that the sum of Kshs.1,600,000/= was apparent from the pleadings as it was the disputed rent arrears subject matter of the suit between the parties. They urge the court to be guided by the decisions of *Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & others* No.3(EA 162) and *Joreth Limited v Kigano & another* (2002)eKLR, where the Court of Appeal stated that in taxation of a bill of costs, the amount taxed as instruction fees should be based on the value of the subject matter ascertainable from the pleadings, judgment or settlement.
5. I have looked at the impugned ruling of Hon. Adisa on the disputed taxed amount under item 1 and I note that the taxing master correctly applied the schedule 6 of the Advocates Remuneration order and in returning the amount taxed under item 1 on instruction fees, she clearly based the said sum on the amount pleaded as rent arrears. I note that there was no misdirection on the part of the taxing master on this item. I also note that she provided reasons as to how she arrived at the same and in this regard, I find no reason to interfere with her ruling on the same.
6. On the second question on the stay of execution sought by the applicant, having found no reason to overturn the taxation on the Bill of costs from which this reference emanates, I will not proceed to consider the issue on merit, as there is nothing else pending for determination by the court, noting that the intended appeal was withdrawn by the Appellant, who is the applicant in the present application before this court.
7. In sum I find no merit in the reference as filed. The same is dismissed and the respondents are at liberty to proceed with the execution process. I direct that each party bears their own costs of the present application. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2025

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J.W.W. MONGARE

JUDGE

In The Presence Of

Mr. Mwinduko for the Appellant/Applicant.

Mr. Nadio for the 1st Respondent.

Mr. Kyalo holding brief Mr. Otwal for the 2nd Respondent.

Amos- Court Assistant

