Case Number:	Environment & Land Miscellaneous Application 15 of 2018
Date Delivered:	20 Jun 2019
Case Class:	Civil
Court:	Environment and Land Court at Garissa
Case Action:	Ruling
Judge:	Enock Chirchir Cherono
Citation:	Humphrey & Company Advocates LLP v Rural Electrification Authority [2019] eKLR
Advocates:	Mr. Mbaye M/S Thuge
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Garissa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Notice allowed
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT GARISSA

ELC MISC. APP.NO. 15 OF 2018

HUMPHREY & COMPANY ADVOCATES LLP.....APPLICANT

VERSUS

RURAL ELECTRIFICATION AUTHORITY.....RESPONDENT

RULING

A. INTRODUCTION

1. The Respondent's herein (Humphrey & Company Advocates LLP) filed their bill of costs dated 26th September, 2018 against the applicants(Rural Electrification Authority), where the same was taxed and assessed by Deputy Registrar of this Court, who vide a ruling delivered on 8th April, 2019 assessed and taxed the Respondents bill at Kshs. 231,018,100/=.

2. The Applicant's being dissatisfied by the Deputy Registrar ruling filed the instant objection vide the Chamber summons application dated 23rd April, 2019 with a supporting affidavit of even date sworn by SHARON TUGEE the applicant's Legal Services Manager seeking the following Orders:-

1. THAT service of this application be dispensed with in the first instance and the same be certified as extremely urgent.

2. THAT the Honourable Court be pleased to set aside the taxing master decision delivered on the 8th April, 2019.

3. THAT this Honourable Court be pleased to reassess the fees due to item No. 1 and 2 in respect of the bill of costs and make a finding of the same.

4. THAT in the alternative and without prejudice to the foregoing, this Honourable Court be pleased to remit items No. 1 and 2 in respect of the bill of costs dated 26th September, 2018 for review and reconsideration with directions on the taxation.

5. THAT the costs of this application be provided for.

3. In response to the application, the Respondent filed a Replying Affidavit dated 6th May, 2019 sworn by EDDIE OMONDI the managing Partner of the Respondent Firm of Advocates.

B. BACKGROUND

Applicant's case/Submissions

4. The applicants in their submissions sought the court to issue the above prayers in their chamber summons Application and their supporting affidavit.

5.The gist of the applicant submission is that the taxing master in arriving at the fee of Kshs. 231,018,100/=.misdirected himself and acted contrary to the established principles of taxation of Party to Party bill of costs. They challenged the taxing master figures of Kshs. 154,000,000/= as Instructions fees and Kshs. 77 Million as half the instruction fees, arguing that the same was too high in view of the fact that the Respondents only opposed a notice of motion application and filed a defense in the matter**.**

6. It was their submissions that items 1 and 2 of the Respondent's bill of costs were taxed unreasonably high and that the taxing officer failed to take into account the value of the subject matter and the fact that the respondents only attended to the matter in court twice when the matter never proceeded**.**

7. In addition, the applicants submitted that the taxing master failed to give reasons why he taxed items 1 and 2 at exceptionally high figures despite the fact that there was no direction from the trial judge indicating that the suit in question was particularly important and had impact to the society or that the suit was complex or raised a noble question to justify the high scale. In this regard they stated that they wrote a letter dated 8/4/2019 to the taxing officer to avail reasons pursuant to Paragraph 11(1) of the Advocates Remuneration Order, but to date they have never received any response. And that the taxing master went ahead and issued a certificate of taxation to the Respondent thus prejudicing the applicant**.**

8. Additionally, the applicant submitted that the taxing master failed to consider the submissions of the Attorney General who had been instructed to appear for the Respondent despite filing a notice of change to act and that the Taxing master erroneously found that the AG had no locus to act for the respondent.

9. Further, the applicant submitted that the bill of cost is contrary to the service level agreement in place between the Applicant and the Respondent, they argued that the same provides that the Respondent shall always charge the minimum fees provided for under the Advocates Remuneration Order, and that where the fee exceed Kshs. 500,000/= the Respondents were to notify the applicants and agree on the basis of charging, and that in this case the Respondent's went contrary to the agreement.

10. In this regard they added that the letter of instructions to the Respondents does not direct them to have the matter assigned to two partners and neither is it provided for in the Service level Agreement entered into between the applicant and the Respondent.

11. Furthermore, the applicant addressed the court on the issue of the value of the subject matter used by the taxing master. They submitted that the matter as evidenced in the plaint filed in Court relates to compensation for a parcel of land measuring 210 acres located at Shabal Raiya Location, Garissa County, the general damages and in the alternative the cancellation /or revocation of the grant of the land.

12. In this regard they referred the Court to the written Submissions filed by the Attorney General before the taxing master and argued that the instruction fees used in the bill of costs was not correct as the Respondent's was aware that the County Government of Garissa had requested the Ministry of Energy to pay the sum of Kshs. 6.5 Million for the land and that the amount of kshs. 13.6 Billion used as the instructions fees has never been stated anywhere in the documents filed in Court.

13. The applicant submitted that the Respondent erroneously in their submissions before the taxing master stated that the subject disputed parcel of land was 518 Acres, yet the correct position is that the same is 210 acres. And that in the circumstances, it is not possible to ascertain the rationale used by the taxing master to arrive at the subject instruction fees as there was no valuation report on record. And that the taxing master ruling delivered on 8/4/2019 is contradictory as on one hand he states that the reason for arriving at the said instruction fee was the value of the project to the community, the interest of the parties, the size and the market value of the property and the value of the project and on the other hand admitting that the value of the subject matter is not ascertainable**.**

14. They went ahead and urged the court to take judicial notice that the value of a parcel of Land measuring 210 acres in Garissa County cannot be Kshs. 13.6 Billion used by the taxing master. They urged the court to take a global figure of Kshs. 500,000/= being the value of an acre of Land at Garrissa, the Respondents fees in such a case would amount to Kshs. 2.9 Million as per the Remuneration Order.

15. In this regard they relied on the case of **Joreth Limited vs Kigano and Associates** where the Court of appeal held that the value of the subject matter for purposes of taxation of a bill of cost ought to be determined from the pleadings, judgment or settlement and

that if the same cannot be ascertained the taxing officer may use his discretion.

16. Additionally, they relied on the case of **Republic vs Commissioner of Domestic Taxes ex Parte Ukwala Supermarket Limited & 2 Others(2018)e KLR** stating that the court reached a finding that the mere fact that the defendant does a research before filing a defence is not necessarily indicative of the complexity of the matter as it may also be indicative of the advocates unfamiliarity with the basic principles of law and that such unfamiliarity should not be turned into an advantage against the adversary.

17. Where the Court went further and stated that every case must be decided on its own merit and in every variable degree, the value of the suit property may be taken into account, the instruction fee ought to take into account the amount of work done by the advocate and where relevant the subject matter of the suit as well as the prevailing economic conditions.

18. Moreover, the Applicant submitted that the parties in the suit which is the subject of the taxation are engaged in an out of court settlement and that it is yet to be fully heard and thus it has no impact on the larger society and urged the court to consider the application, the supporting affidavit and annexures therein and allow the application.

Respondent's case/Submissions

19. The Respondents through Counsel Mr. Eddy opposed the application on various grounds. They argued that the reference by the applicants was time barred as it was filed out of time, it is their argument that the taxing master delivered his ruling on 8/4/2019 and the applicants Reference was filed on 24/4/2019, which amounts to a period of 16 days contrary to the 14 days period set under paragraph 11 of the Advocates Remuneration Order, 2014.

20. They argued that although there was a Holiday in between, the same should not be a ground to vary the days. Additionally, they submitted that although Order 11(4) of the Remuneration Order, 2014 gives this Court the power to enlarge time, they argued that the same has not been prayed for by the applicant and therefore the court cannot exercise such a discretionary power where it has not been sought.

21. In this regard they relied in the Court of Appeal case of **Caltex Oil Kenya Limited vs. Rono Limited[2006]e KLR,** where the court found that the courts do not have inherent jurisdiction to award what has not been prayed.

22. The second issues addressed by the Respondent's regards the applicant allegation that they have not been supplied with reasons for its decision by the taxing officer. The Respondent's argue that the said submissions sounds defeatist as the reasons are in the ruling and that if we were to go with the applicant's allegations then the Reference before this court is premature as it has been filed without the reasons.

23. The third issue addressed by the Respondents' is in respect to the Service level agreement entered into with the applicant. It is their submission that the subject Service level agreement is not binding as the same had lapsed at the time the suit which is the subject of this reference was filed. In this regard they invited the Court to look at Clause 1:1 of the Service Level Agreement, which clause provides that the agreement was for a period of 2 years commencing on 1/7/2015 to 31/6/2017 and the suit herein was filed on 11/4/2018.

24. Additionally, they submitted that even if this court was to find that the Service Level agreement was in existence, they argued that the same does not bar them from taxing their bill as there was no clear and fixed amount relating to the specific matter before the court. In this they rely on section 45(6) of the Advocates Remuneration Act and the case of **Muriu Mungai & Co. Advocates vs China Civil Engeneering Construction Limited [2018] eKLR.** In this regard they argue that their bill of costs was properly and legally lodged as well as taxed contrary to the applicants assertions

25. The fourth issue addressed by the Respondent regards the value of the subject matter of the suit. It is their submissions that the value of the subject matter is ascertainable from the pleadings. They submitted that the developments in the land form and add to the valuation. In this regard they referred to the applicant annexures including a copy of the Project Contract between the Government and China Jianxi Cororation, where the value of the project was RMB 867,293,233.33 in Chinese currency, which if converted to shillings amounts to the sum of Kshs. 12,627,789,472.20/=. It is this sum that they argue should form the value of the

subject matter for purposes of taxation.

26. It is their argument that the project formed the Applicant defence and arguments in the suit, as they heavily relied on the project to establish their case in the High Court. It is on this basis that they argue that the project was what was sought to be protected. Further, they argued that this fact can be supported by the fact that the Applicants application in the High Court dated 11th April, 2018 was to seek an injunction against the project, in which they were exposed to losses to the tune of billions, and therefore it is their argument that the project which is the subject of the suit involved billions of shillings.

27. In answer to the Applicants submissions that the value of the subject land was Kshs. 6.5 Million which the County Government of Garissa had requested to be paid, the Respondent's denied the same arguing that if indeed that was the case then the matter would have been sorted. It is their contention that the said sum of Kshs. 6.5 Million allegedly paid covered allocation fees, registration fees and planning and survey costs and has nothing to do with the value of the subject matter of the suit.

28. The final issue addressed by the respondents regards the applicant's allegations that the taxing master failed to apply known principles of taxation. It is their submissions that the taxing master indeed applied established principles of taxation. In this regard, they referred the Court to page 3 of the Taxing Master ruling where he held that he addressed his mind to the importance of the case, community land, interest of the parties, the importance of the project to the community (and the Country), size and market value of the land involved and the value of the project itself arguing that it proves that the taxing master applied known principles of law contrary to the applicants assertions. In addition, they submitted that instructions fees are earned the moment an advocates acts on the instruction of the client.

C. ISSUES AND ANALYSIS

The following are the issues that arise in my opinion

a. Whether the references is incompetent for being filed contrary to paragraph 11 of the ARO

b. Whether the taxing provided reasons for taxation

c. Whether the Level Service Agreement was binding

d. Whether the Taxing Officer erred in the law and principle while taxing the Advocate client bill of costs herein and thereby reached a wrong assessment.

e. Whether the court should interfere with award of costs as certified by the Taxing officer.

a. Whether the references is incompetent for being filed contrary to paragraph 11 of the ARO

29. The Respondent's contend that the applicant filed the instant reference out of time contrary to paragraph 11 of ARO. They submitted that the Taxing Officer delivered his ruling on 8/4/2019 and the applicants Reference was filed on 24/4/2019 that amounts to a period of 16 days contrary to the 14 days provided for.

30. It is clear under the Advocates Remuneration Order that after the taxation of the bill of costs, the procedure for the challenge of the results therefrom is provided under Paragraph 11 of the said Order which 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.

31. Paragraph 11(4) of the ARO further provides:-

“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.”

32. It is therefore apparent from the above provisions of the law that the timelines for filing a reference is a period of 14 days, in this instant case the Respondent contends that the applicant waited for 16 days and therefore since the applicant hasn’t requested the court to enlarge the said time, the application ought to be dismissed. It is surprising that the respondent admit that there was a holiday in between; however, they argue that the same should not be used in favour of the applicant.

33. In the circumstances, this Court is inclined in view of the said Holiday to find that the application is merited and was not filed out of time and in any event the said period of 2 days can be compensated by the said holiday and in the alternative this court guided by Paragraph 11(4) finds no compelling reason not to exercise its discretion and enlarge time in the circumstances.

b. Whether the taxing officer provided reasons for taxation

34. From the parties’ submissions the issue as to whether the reasons for the taxing master decisions has arisen. The Applicant contends that they wrote to the taxing master requesting for the reasons to be supplied, however to date the same has not been supplied. The Respondent on the other hand has alleged that the reasons are captured in the ruling and that it is the basis upon which the applicant used to file the instant reference.

35. Odunga J In **Evans Thiga Gaturu, Advocate V Kenya Commercial Bank Limited [2012] eKLR** held in this regard that:-

“It is therefore clear that the interpretations by the Court especially the High Court on this issue is far and varied. In my own view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the Judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles.

However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference. Otherwise mere adherence to the procedure may lead to absurd results if the advocate was to continue waiting for reasons, as it happened in the case of Kerandi Manduku & Company vs. Gathecha Holdings Limited Nairobi (Milimani) HCMA No. 202 of 2005, where the taxing officer had left the judiciary. Where reasons are contained in the decision, I share the view that to file the reference more than 14 days after the delivery of the same would render the reference incompetent.”

36. Therefore looking at the reference before the court, it is clear that the Taxing Master herein rendered his written ruling on 8/4/2019, the same forms the basis of the instant reference and thus the question is as to whether the same contains the taxing master reasons. The relevant parts of the Taxing master ruling is at Paragraph 1 page 3 , where the taxing master seems to have explained the basis of his decision, where he held that:-

“…I have considered the importance of the case, being compensation for community land, the interest of the parties, the importance of the project to the community (and the Country), the size and market value of the land involved and the value of the project itself. In my view, the instructions fee is somewhat exaggerated, therefore, I tax off Kshs. 50, 000,000/= leaving the balance of Kshs. 154,000,000/=, increased by half , that is Kshs. 77,000,000/= adds up to Kshs. 231,000,000/=”

37. From the foregoing analysis it is my opinion that the Taxing master ruling does not contains reasons for the taxed amount for the two items contested by the applicant and therefore the certificate of costs cannot be allowed to stand.

38. Furthermore, the applicant has argued that the taxing master erroneously found that the Attorney General lacked locus to act for

the applicant in respect to the instant taxation. The applicant has alleged that the taxing master additionally failed to consider their filed submission despite them filing their notice of change of advocates in the matter. In this regard the applicant has relied on section 5 as read with section 17 of the Office of the Attorney-General Act, 2012.

39. Having perused the above sections of the law, it is my opinion that the Taxing master decision was contrary to the law and therefore he ought to have considered the Attorney General submissions herein. It is not in dispute the applicant is a state entity and is entitled in the circumstances to be represented in court by the Attorney General.

c. Whether the Level Service Agreement was binding

40. The applicant further argued that the bill goes against the parties service level agreement which required that the parties agree on the fees chargeable or the basis of charging fees where the same exceeds Kshs. 500,000/=. In respond to the same, the Respondent argued that by the time the subject suit was filed the said level agreement had expired and was not binding.

41. A perusal of the said service level agreement confirms the respondent assertions that the agreement was for a period of 2 years commencing on 1/7/2015 to 31/6/2017 and therefore the same can be challenged as having lapsed. I also agree with the Respondent's position that since there was no specific agreement applying to this specific matter, then nothing prevents them from taxing their bill.

d. Whether the Taxing Officer erred in law and principle while taxing the Advocate-client bill of costs herein

42. The Principles of taxation were aptly stated in **Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others No.3 (1972 EA 162)** where the court noted as follows on the principles on taxation:

"(a) successful litigant ought to be fairly reimbursed for costs he has had to incur (b) That costs be, not allowed to rise to such level as to confine access to justice to the wealthy. (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and (d) that as far as practicable there should be consistency in the awards made. (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically (g) the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party."

43. In **Republic v Ministry of Agriculture & 2 Others Exparte Muchiri 2006 eKLR,** it was further stated that the jurisdiction by the High court to interfere with the decision of a taxing officer must only be on the basis that there were mis-directions amounting to errors of law in the findings of the certificate of costs in respect of the material issues and evidence placed before the taxing officer.

44.The applicant's contention is that the Taxing master herein erred in law and principle when he assessed the instruction fees in the Advocate-client bill at ksh.231, 000,000/=. It is their argument that the taxing master failed to apply established taxing principles.

45. The gist of the applicant's argument is that the Taxing Master erroneously used the wrong value of the subject matter of the suit. It is their contention that the suit in questions relates to the compensation of the parcel of land measuring 210 acres, which parcel of land is to be acquired from the community. They urged the court to take judicial notice that the value of such parcel land in Garissa cannot be valued to the tune of billions, and urged the court to take a global value of Kshs. 5000,000/= per acre and arrive at a fee of kshs. 2,900,000/= as instructions fee.

46. The Principle adopted for purposes of taxation of instruction fee was established in the case of **Jorerth Ltd v Kigano Advocates 2002 IEA 92** where the court held interalia that:

"The instructions fee is an independent and static item it is charged once only and it is not affected or determined by the stage the suit has reached."

47. In this case, the Respondent's filed their bill based on the value of the subject matter of the suit under Part A of the Schedule Vi

of the Advocates Remuneration Order. The taxing master herein was therefore obliged to first determine the subject matter of the suit and its value for purposes of assessing the instructions fees for purposes of taxation.

48. After perusing and considering the court record and the submissions by both parties, there is no dispute that the primary suit relates to acquisition of a parcel of land within Garissa County for purposes of undertaking the subject project. The petition which forms the basis of this taxation arose pursuant to the contestation regarding compensation for the subject parcel of land.

49. Consequently, it is my opinion that the taxing officer erred in principle by assessing the advocates instructions fees based on the project sum as opposed to the value of the parcel of land. Therefore in my view the value of the Subject matter herein refers to the subject parcel land in which the community is claiming compensation and that should form the basis for calculation of the Respondent's bill of cost.

e.Whether the quantum of advocates fees taxed should be interfered with

50. The Court of Appeal in **Kipkorir,Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR** in this regard stated as follows:-

"And if a judge on reference from a taxing officer finds that the taxing officer has committed an error of principle the general practice is to remit the question of quantum for the decision of taxing officer (see– D'Sonza v Ferrao [1960] EA 602). The Judge has however a discretion to deal with the matter himself if the justice of the case so requires (see Devshi Dhanji Naran Patel (No. 2) [1978] KLR 243)."

51. Again in the case of **Republic –Vs- Ministry of Agriculture & 2 others Exparte Muchiri W. Njuguna & 6 others (2006) eKLR** Ojwang J. (as he then was) held as follows:

"The taxing officer was wrong in law to incorporate profit levels of the tea production sector as an element in her taxation of costs in a Judicial Review proceedings, the judgment has not shown anything in the application to have arisen at all above the work of day to day chores of legal practitioners. It follows that the responsibility entrusted to counsel in the proceedings was quite ordinary and called for nothing but normal diligence such as must attend the work of a professional in any field…….There was nothing novel in the proceedings on such a level as would justify any special allowance in costs. There is nothing to indicate any time consuming, research involving or skill engaging activities as to justify an enhanced award of instruction fees. There is also no great volume of crucial documents which counsel for the Judicial Review application had to refer to, to prosecute their cause successfully. Further, the matter was not urgent for urgency would have mainly attached to prayers for orders of prohibition. The taxing officer was not properly guided when she conducted the taxation. Her exercise of discretion was done perfunctorily and as a mere formality. It is necessary to specify clearly and candidly how she had exercised her discretion since discretion as an aspect of judicial decision making is to be guided by principles, the elements of which are clearly stated and which are logical and conscientiously conceived. It is not enough to set out by attributing to oneself discretion originating from legal provision, and thereafter merely cite wanted rubrics under which that discretion may be exercised, as if these by themselves could permit of assignment of mystical figures of taxed costs…….Taxation of costs as a judicial function is to be conducted regularly, on the basis of rational criterial which are clearly expressed for the parties to perceive with ease. Regularity in this respect cannot be achieved without upholding fairness as between the parties; The taxing officer should avoid the possibility of unjust enrichment for any party and ought to refuse any claim that tends to be usurious; so far as possible the taxing officer should apply the test of comparability; the taxing officer should endevour to achieve objectivity when considering un-defined criteria such as public policy, interests affected, importance of the matter to the parties, or importance of the matter to the public; the taxing officer should clearly identify any elements of complexity in the issues before the court and in this regard should revert to the perception and mode of analysis and determination adopted by the trial Judge; the taxing officer ought to describe accurately the nature of the responsibility which has fallen upon counsel; the taxing officer should state clearly the nature of any novel matter in the proceedings; the taxing officer should determine with a measure of accuracy the amount of time and skill entailed in the professional work of counsel……private law claim do not fall in the same class as public law claims such as those in Judicial Review, in Constitutional application, in public electoral matters. Such matters are in a class of their own and the instruction fees allowable in respect of them should not, in principle be extrapolated from the practices obtained in the private law domain which may involve business claims and profit calculations."

52. In the decision under review, the two items which the applicant is aggrieved with are the instructions fees and Advocate/Client increment by ½ as per the Advocates Remuneration Order, 2014.

53. The Learned Taxing Officer in the exercise of his undoubted discretion, taxed the instructions fee in the sum of Kshs.154,000,000 down from the sum of Kshs. 204,000,000/= that was claimed by the respondent. In his decision, the Learned Taxing Officer expressed himself with respect of the said item inter alia as follows;

"In the present case, the value of the subject matter is not clearly ascertainable from the proceedings. Therefore, in the exercise of my discretion, I have considered the importance of the case, being compensation for community land, the interest of the parties, the importance of the project to the community, the size and market value of the land involved and the value of the project itself. In my view, the instruction fee is somewhat exaggerated, therefore, I tax off Kshs.50,000,000/= leaving a balance of Kshs.154,000,000/= increased by ½ that is Kshs. 77,000,000/= adds up to Kshs.231,000,000/="

54. The Learned Taxing Officer in his ruling admitted that the value of the subject matter is not clearly ascertainable from the pleadings. That being the case, it was incompetent upon him to go beyond his un-defined criterial such as the importance of the case, the interest of the parties, the importance of the project to the community, the size and market value of the land involved and the value of the project itself.

55. The Learned Taxing Officer should state clearly the nature of any novel matter in the proceedings; the taxing officer should also describe with some decree of accuracy the nature of the responsibility which has fallen upon counsel, the nature of any novel matter in the proceedings, identify any elements of complexity in the issues before the court, the amount of time research, and skill involved in the professional work of the counsel who handled the matter.

56. In my view, this is a case where the Learned Taxing Master failed to properly exercise his discretion based on the set out principles and his decision therefore cannot stand and must be interfered with.

57. Therefore, in the circumstance of this case, I allow this reference, set aside the Taxing Officer's decision awarding Kshs.154,000,000/= in respect of instructions fees and substitute it with an instruction fees of Kshs. 5,452,500/= arrived at as follows;

a. Global figure of Kenya shillings one million (Kshs.1,000,000/=) being the approximate market price of land in Garissa County per acre which this Honourable court hereby takes Judicial Notice making the value of the subject property at Kshs.210,000,000/=

b. Advocate/Client fees payable is therefore worked out as follows;

That values exceeds Kshs.	but does not exceed Kshs.
0…….....….500,000	**Kshs.75,000/=**
500,000…….….750,000	**Kshs.90,000/=**
750,000……...1,000,000	**Kshs.120,000/=**
1,000,000……....20,000,000	**Kshs.500,000/=**
Over 20,000,000 (fees as for 20,000,000 plus an additional 1.5%.)	**Kshs.2,850,000/=**
TOTAL	**Kshs.3,635,000/=**
Add ½ Advocate/Client fees	**Kshs. 1,817,500/=**

TOTAL **Kshs. 5,452,500/=**

Read, delivered and signed in the Open Court this 20th day of June, 2019.

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E. C Cherono (Mr.)

ELC JUDGE

In the presence of:

1. Mr. Mbaye

2. M/S Thuge

3. Amina-Court Clerk.