



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI LAW COURTS

CASE NUMBER: HCCHRPET/E114/2024

CITATION: COMMISSION FOR HUMAN RIGHTS AND JUSTICE VS METROPOL CORPORATION LTD AND METROPOL CREDIT REFERENCE BUREAU LTD AND 2 OTHERS

RULING

Introduction

The 1st & 2nd Respondents & Interested Party filed the Party to Party Bill of Costs dated 02nd December, 2024 to the order by Hon. Justice L. Mugambi dated 26th November, 2024 which dismissed the petition with costs.

The Petitioner did not file any response despite being served with the taxation notice.

Reasons for taxation

I have considered the items in the party to party Bill of Costs. The Advocates (Remuneration) (Amendment) Order of 2014 herein referred to as ARO applies with respect to all items since the Petition was filed in 2024. It is my considered view that the items therein are drawn to scale and/or are reasonable hence are taxed as drawn save for the following item;

Instruction Fee

The applicable provisions under this item on instruction fees is Schedule 6(A)(1)(j)(ii) of the 2014 ARO since the reliefs sought are in the nature of prerogative orders. Schedule 6(A)(1)(j)(ii) of the 2014 ARO provides

“Constitutional petitions and prerogative orders

To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate-

(i) where the matter is not complex or opposed such sum as may be reasonable but not less than Kshs. 45,000/=.

(ii) where the matter is opposed and found to satisfy the criteria set out above, such sum as may be reasonable but not less than Kshs. 100,000/=.”

In *Premchand Raichand Ltd v Quarry Services of East Africa Ltd* (1972) EA 162, the Court outlined the principles of taxation as follows;

“(a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy.



- (b) That a successful litigant ought to be fairly reimbursed for the cost he has had to incur.
(c) That 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 award made and
(e) 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.”

Similarly, in the case of Joreth Limited v Kigano & Associates [2002] eKLR the Court set out various factors that are to be considered in determining the instruction fee. These factors include the importance of the matter, general conduct of the case, the nature of the case, time taken for its dispatch and the impact of the case on the parties.

The court records indicate that no responses were filed and that the petition was dismissed at preliminary stage. The fees provided in such instances under Schedule 6(A)(1)(j)(ii) of the 2014 ARO is not less than Kshs. 45,000/=. Considering the importance of the suit to the parties, doing the best I can and guided by the relevant law I award Kshs. 60,000/= as instruction fees under item 1.

Getting up fee

Schedule 6(A)(2) of the 2014 ARO provides

“Fees for getting up or preparing for trial

In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:

Provided that-

- (i) this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;
- (ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15% of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;
- (iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.”

I have perused the proceedings and noted that the case had not been confirmed for hearing as per Schedule 6(A)(2)(ii) & (iii) of the ARO. The matter was dismissed at preliminary stage hence parties never prepared for trial at all. Consequently, item 2 is taxed off completely.

Conclusion

Based on the above analysis and reasoning, 1st & 2nd Respondents & Interested Party's Party to Party Bill of Costs dated 02ndDecember, 2024 is hereby taxed at a sum of Kshs. 108,425/= (One hundred eight thousand, four hundred twenty-five shillings only). A certificate of costs to issue forthwith. A total sum of Kshs. 80,000/= is hereby taxed off from the Bill of Costs. The court proceeded on maternity leave hence the delay in delivery of this ruling. Any inconvenience is highly regretted.

Ruling delivered in the presence of:

Petitioner/Counsel: Absent

1st& 2nd Respondent/Interested Party/Counsel: Mr. Ondigi

3rdRespondent/Counsel: Absent

Court Assistant: Ms. Hellen

SIGNED BY: HON. R. K. ONKOBA





THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT CONSTITUTION AND HUMAN RIGHTS
DATE: 2025-10-15 15:32:18+03

