



REPUBLIC OF KENYA



**Mwaniki Gitau & Co. Advocates v Njoroge (Civil Miscellaneous Application
82 of 2016) [2023] KEHC 18101 (KLR) (Civ) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS APPLICATION 82 OF 2016

AN ONGERI, J

MAY 29, 2023

BETWEEN

MWANIKI GITAU & CO. ADVOCATES APPLICANT

AND

ESTHER WAMBUI NJOROGE RESPONDENT

RULING

1. This is a reference from the ruling of the Taxing Master dated September 15, 2022 in respect of the bill of costs dated February 29, 2016.
2. The applicant submitted that the Taxing Master awarded Kshs 63,374 on item one but erred in awarding a different figure of Kshs 198,309 in the final tabulation.
3. It was further submitted that the ½ of the Kshs 198,309 was erroneous and also the 16% VAT.
4. I have perused the bill of costs and the ruling. I find that the Taxing Master awarded Kshs 63,374 as instruction fees but there were other items which made the sub-total amount of Kshs 198,309.
5. I find that it is not true that the figure 198,309 was in respect of the instruction fees alone.
6. The only amount which is not drawn to scale is the 16% VAT which is Kshs 31,729 instead of 47,594.16.
7. I accordingly tax off Kshs 15,865 from the amount awarded in respect of VAT. I find that the rest of the bill of costs is drawn to scale.



8. I find no reason to tamper with the discretion of the Taxing Officer. In *Republic vs Ministry of Agriculture & 20 Others Ex-Parte Muchiri W' Njuguna [2006] eKLR*, Ojwang J (Retired) stated as follows:-

' 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, 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 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.'

9. The amount of Kshs 15,865 is accordingly subtracted from to the amount awarded of 50,042 making a total award of Kshs 34,177.50.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 29TH DAY OF MAY, 2023.

.....

A. ONGERI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

