



**Muri Mwaniki & Wamiti Advocates v Gachemi (Environment and Land Miscellaneous Application 10 of 2017) [2025] KEELC 3424 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3424 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 10 OF 2017**  
**JM ONYANGO, J**  
**APRIL 29, 2025**

**BETWEEN**

**MURI MWANIKI & WAMITI ADVOCATES ..... APPLICANT**

**AND**

**JOSEPH MAINA GACHEMI ..... RESPONDENT**

**RULING**

1. What is before me for determination is the Chamber Summons dated 26<sup>th</sup> August 2024 seeking orders that:
  - a. This Honourable Court be pleased to set aside the ruling of the Deputy Registrar V. Kachuodho delivered on 22<sup>nd</sup> May 2018 and any resultant Certificate of Taxation to the extent that it relates to the reasoning and determination pertaining to taxation of the whole of the Advocate/Client Bill of Costs dated 8<sup>th</sup> February 2017.
  - b. This Honourable Court be pleased to tax the Advocate/Client Bill of Costs dated 8<sup>th</sup> February 2017.
  - c. In the alternative, to prayer 2 above, this Honourable Court do remit the whole of the Advocate/Client Bill of Costs dated 2<sup>nd</sup> November 2018 to another Taxing Officer for taxation with directions on taxation.
  - d. The Advocate/Applicant be awarded costs of this application.
2. The application is anchored on the grounds set out on the face of the Chamber Summons the main one being that the learned Taxing Officer erred in law and misdirected herself in failing to consider and find that in view of the Section 2 of the [Advocates Act](#), the definition of 'client' includes any person who is or may be liable to pay an advocate any costs. This is because the work undertaken by the advocate



involved the perfection of the Respondent's security (as the borrower) for purposes of taking a loan from the Bank.

3. . The said grounds are amplified in the Supporting affidavit of Martin Mwaniki Advocate sworn on the 26<sup>th</sup> day of August 2024. In the said affidavit he deposes that the learned Taxing Officer erred in law and principle in failing to apply her discretion on proper basis and wholly dismissing the Applicant's Bill of Costs. In particular, she failed to consider that the Respondent was the borrower and mortgagor in the subject transaction and was liable to pay the Applicant/Advocates fees and the Bill was therefore properly raised against him.
4. It was his contention that the definition of client in section 2 of the Advocates Act includes any person who is or may be liable to pay and advocates costs and that in terms of Paragraph 31 of the Advocates Remuneration Order the borrower is responsible for the costs of investigating title as well as preparation, completion and registration/perfection of the security.
5. He deposed that that the learned Taxing officer misdirected herself by failing to exercise the authority of a Taxing Officer by calling for the list and bundle of documents pursuant to Paragraph 13A of the Advocates Remuneration Order in order to establish the work done by the Applicant on the Respondent's instructions and for which he was billed in the Bill of Costs.
6. The application was zealously resisted by the Respondent vide his Replying affidavit sworn on 18<sup>th</sup> October 2024. He denies having instructed the Applicant to prepare, register and perfect any legal charge over title No. Thika Municipality Block 1/689 and denies that he is the owner of the said property.
7. He avers that the Applicant was under a duty to provide evidence of the work done and he cannot hide under the provisions of Paragraph 13A of the *Advocates Remuneration Order* as he who alleges must prove.
8. Furthermore, he objects to the Bill of costs as there is no evidence attached to support the disbursements claimed.
9. He terms the application , frivolous, vexatious and a waste of precious judicial time and urges the court to dismiss it with costs.
10. The application was canvassed by way of written submission which were duly filed by both parties.

### **Analysis and Determination**

11. I have read and considered the application, replying affidavit and the rival submissions. The singular issue for determination is whether the decision of the Taxing officer dated 22<sup>nd</sup> May 2018 should be set aside.
12. It is trite law that when a decision on a taxation is challenged through a reference, a judge will normally not interfere with the exercise of the Taxing Officer's discretion unless it is shown that the Taxing Officer misdirected himself on a matter of principle. In the case of First American Bank of Kenya v Shah and Others (2002) 1E.A 64 at 69 Ringera J ( as he then was) pronounced himself as follows:

“First, I find that on the authorities, this court cannot interfere with the taxing officer's decision 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 was based on an error of principle”



“These principles reiterate the position of the Court of Appeal in *Joreth Limited v Kigano & Associates* (2002) 1E A 92 wherein the said Court held that a taxing master in assessing costs to be paid to an advocate in a Bill of costs was exercising her judicial discretion, and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously and in abuse of proper application of the correct principles of law or where the amount of fees awarded by the taxing master is so excessive to amount to amount to an error in principle.”

13. The above position has been restated in numerous other authorities including *Rv Kenyatta University & Another* (2018) eKLR, *Rachuonyo & Rachuonyo Advocates v National Bank of Kenya Limited* (2021) eKLR among others.
14. In the present case, it has been submitted for the Applicant that the Taxing Officer misdirected herself and erred in principle in failing to appreciate that the definition of “client” includes any person who is or may be liable to pay to an advocate any costs. He argued that the Respondent was the mortgagor who required to borrow money from the bank and it therefore follows that he was liable to pay the Applicant/Advocate.
15. The Applicant has also faulted that Taxing Officer for failing to exercise her discretion under paragraph 13A of the *Advocates Remuneration Order* which empowers a Taxing Officer to “summon to and examine witnesses, administer oaths, direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute.”
16. I have considered the Bill of Costs filed by the Applicant. Item 1 -under the sub-heading “Particulars of Services Rendered” the Applicant simply states:

“To receiving instructions from the Bank to prepare, register and perfect a legal charge of Kshs. 3,200,000 over title no. Thika Municipality Block 1/682 including conducting a post registration search.”
17. The name of the bank that instructed the Advocates is conspicuously absent. Also missing is the name of the owner of title no. Thika Municipality Block 1/682. How was the Taxing officer expected to establish a link between an unnamed bank and a title whose owner was not disclosed?
18. To make matters worse, the receipts in support of the disbursements are also not annexed to the Bill. As correctly submitted by counsel for the Respondent, he who alleges must prove. Indeed section 107 and 109 of the *Evidence Act* provides as follows:
19.
  107. Burden of proof
    - (1) “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”
  - 109 Proof of a particular fact

“The burden of proof in a suit or proceeding lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on a particular person”
20. Additionally, section 21 Rule 9A of the *Civil Procedure Rules* provides that:



- 9A “A party claiming costs at a Magistrate’s court shall file a written request, statement of costs and supporting documents with the court and serve it on the other parties with a breakdown of the costs sought.”
21. The above provisions of the *Evidence Act* make it clear that whoever wishes the court to decide in their favour must furnish the court with sufficient evidence. The onus of proving that the Applicant was entitled to the costs as presented in their Bill of Costs therefore lay squarely on them. Considering that the Bill of Costs which is the subject of this reference did not relate to a court case, it was incumbent upon the Applicant to furnish the court with all the particulars and documents in support of their claim.
22. After failing to provide the evidence of the services rendered in their Bill of Costs, the Applicant has faulted the Taxing Officer for failing to invoke her powers under paragraph 13A of the Advocates Remuneration Order to call for documents and summon witnesses, terming it an error of principle. I respectfully disagree. I do not think that Paragraph 13A was intended to fill in the gaps for an advocate’s lack of diligence in presenting their Bill of Costs but rather it was intended to enable the Taxing officer to call for additional evidence to aid him or her in arriving at a just decision.
23. The case of *Andrew Mukite Musangi T/A Mukite Musangi & Co Advocates v Naomi Wangai Maina & 2 Others* (2021) eKLR cited by the Applicant is distinguishable from this case as in the said case the name of the bank was disclosed and the Respondents admitted that they had approached Kenya Commercial Bank for a loan. In the instant case the Respondent denies that he is the owner of title no. Thika Municipality Block 1/682 of that he instructed the Applicant to prepare a charge over the said title.
24. In view of the inadequacies in the Applicants Taxation proceedings, I find no basis for interfering with the learned Taxing Officer’s decision. Accordingly, the application is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF APRIL 2025.**

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**J. M ONYANGO**

**JUDGE**

In the presence of:

Mr Irundu for Miss Murimi for the Respondent

Mr Lundi for the Applicant/ Advocate

Court Assistant: Hinga

