



**Nabongo Sacco Society Limited v Mzee (Civil Appeal
E066 of 2021) [2025] KEHC 4979 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E066 OF 2021**

**S MBUNGI, J
APRIL 24, 2025**

BETWEEN

NABONGO SACCO SOCIETY LIMITED APPELLANT

AND

MBWANA OMENDA MZEE RESPONDENT

RULING

1. The appellant/applicant herein filed the application dated 14th May 2024, seeking the following orders:
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 - a. Spent.
 - b. Spent.
 - c. That this Honourable Court be pleased to review and set aside its order dated 23/4/2024 allowing the respondent's bill of costs as drawn.
 - d. That the costs of this application be provided for.
2. The application is supported by the grounds on the face of the said application and the supporting affidavit of the applicant sworn on 14th May 2024.
3. The respondent opposed the Application and filed a replying affidavit sworn on 12th September 2024 and a further affidavit sworn on 23rd September, 2024 by Modrix Khakasa.
4. The Application was canvassed by way of written submissions, I have looked at the submissions .
5. The Applicant's complaint is that the taxing master assessed the respondents bill of costs dated 6th December, 2023 on 23rd April, 2024 without taking into account its response as submitted in its submissions dated 8th March, 2024 and filed in court on 16th May, 2024 by Khakasa advocate.



6. I have looked at the ruling dated 23rd April, 2024 it is true that the taxing master assessed the bill as drawn because after perusing the court record he did not see any response.
7. I have gone through the record as contained in the Court Tracking System (CTS) I have confirmed that the Applicant filed its submissions /response and paid for it on 13th March, 2024 .
8. It is possible that at the time the taxing master was taking the bill of costs a copy of the response had not been uploaded and placed in the court file.
9. If the taxing master had taken a step further to check in the CTS he would have found the applicants response and perhaps he would have arrived into a different decision.
10. The Applicant cannot be faulted at all and the only way to ensure justice is done to the Applicant is to set aside the taxing master's ruling dated and delivered on 23rd April, 2024 for there is clearly an error apparent on record and therefore do set aside the said ruling.
11. The bill of costs is referred back to the taxing master to consider it afresh taking into account the applicants response dated 8th March, 2024 and paid for on 13th March, 2024.
12. I will not award the costs of this application to the applicant because just as the court staff was obligated to ensure the copy of the response was uploaded from the CTS and placed in the court file the applicant also had a similar duty to ensure whatever filed in the CTS is placed in the physical court file for human being is prone to error unconsciously.
13. Mention 13th May, 2025 before the Deputy registrar for further directions.
14. Right of appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF APRIL, 2025

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Albright Sunguti

