



Cheslut & 3 others v Mbatu Kirui & Associates Advocates (Miscellaneous Application E049 of 2023) [2025] KEHC 5657 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5657 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E049 OF 2023**

SM MOHOCHI, J

MAY 8, 2025

BETWEEN

LINER CHEPKEMOI CHESULUT 1ST APPLICANT

CHALODY CHEBET CHESULUT 2ND APPLICANT

MAUREEN CHELANGAT CHESULUT 3RD APPLICANT

MERCY CHEPKEMOI CHESULUT 4TH APPLICANT

AND

MBATI KIRUI & ASSOCIATES ADVOCATES RESPONDENT

RULING

1. Before Court for determination is the Applicant's Chamber Summons Application dated 3rd September, 2024 brought under Order 11 (2) of the [*Advocates Remuneration Order*](#). The Applicant is seeking:-
 - a. Spent;
 - b. That, the ruling delivered on 23rd August, 2024 on the taxation of the Advocate-Client bill of costs dated 17th August, 2023 be set-aside and items number 1 and 2, being the instruction and getting up fees be re-taxed;
 - c. That, in the alternative the Court refers the bill of costs dated 17th August, 2023 to another Taxing Officer for re-taxation;
 - d. That, Kshs. 250,000/- paid to the advocate be deducted and considered as paid upon re-taxation of the bill of costs dated 17th August, 2023.
 - e. That, the costs of the application be in the cause.



Applicant's Case

2. The Application is preceded by a Notice of Objection to Taxation Under Rule 11 (1) of the Advocates Remuneration Order and is predicated on the following four (4) grounds at face value and supported by the sworn Affidavit of Mercy Chepkemoi Chesulut;
 - a. That, the bill of costs dated 17th August, 2023 was taxed at Kshs.950,540/- an amount which is manifestly excessive and oppressive to the Client/Applicant.
 - b. That, the taxing officer misdirected herself on the established principles, practice and law of taxation of the Advocate/Client Bill of Costs.
 - c. That, the Deputy Registrar erred by exercising her discretion wrongly and awarding an excessive amount as instruction fees from which the getting-up fees was derived contrary to the Advocates Remuneration Order 2014.
 - d. That, the Taxing Officer failed to deduct Kshs. 250.000/- which had already been paid to the advocate and was not contested;
 - e. That, the Taxing Master misapplied the exercise of her discretion and arrived at an unjustifiable punitive award;
3. She deposes that, the bill of costs dated 17th August, 2023 was taxed at Kshs.950,540/- an amount which is manifestly excessive and oppressive to the Client/Applicant. Exhibiting a copy of the ruling marked MCC 1.
4. That she has been advised by her advocate on record that if she is dissatisfied with the taxation by the taxing master, the proper procedure is to issue a notice of objection to the taxation to the taxing master and upon receipt of the notice of objection to the taxation, the taxing master gives reasons for her decision.
5. That as a matter of compliance with the rules, her advocate on record has issued a notice of objection to the taxation but the reason for the taxation are contained in the ruling delivered by the taxing master.
6. She prays that the bill of costs dated 17th August, 2023 be re-taxed so that the end of justice can be met.

Respondent's Case

7. The Application is undefended despite service and multiple opportunities afforded to the Respondents to defend the motion.

Analysis and Disposition

8. Directions were issued to the Applicant's counsel and the Respondent's counsel on the 18th December 2023 and on the 20th March 2025 in the absence of the Respondent's counsel and previous directions by the Deputy Registrar issued to both Applicant's counsel and the Respondent's counsel on the 17th October 2024.
9. I have equally considered the return of service dated 24th September 2024 by Dismus Musana a Court process server.
10. It is thus beyond peradventure that the Respondent was not only properly served with the motion but Mr Kirui Advocate did appear before Court on more than one occasion as directions were being issued.



11. This Court finds that the Application is undefended and it is in the interests of justice to allow this motion as prayed.

Final Orders

- i. That, the ruling delivered on 23rd August, 2024 on the taxation of the Advocate-Client bill of costs dated 17th August, 2023 be set-aside and items number 1 and 2, being the instruction and getting up fees be re-taxed;
- ii. That, in the alternative the Court refers the bill of costs dated 17th August, 2023 to another Taxing Officer for re-taxation;
- iii. That, Kshs. 250,000/- paid to the advocate be deducted and considered as paid upon re-taxation of the bill of costs dated 17th August, 2023.
- iv. That costs of this Application to be borne by the Respondent.

It is So Ordered.

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 8TH DAY OF MAY, 2025.

MOHOCHI S.M

(JUDGE)

