



REPUBLIC OF KENYA



**Joseph Kiarie & Company Advocates v Mwenda (Miscellaneous Application E044 of 2024)  
[2025] KEHC 8104 (KLR) (Anti-Corruption and Economic Crimes) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8104 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
MISCELLANEOUS APPLICATION E044 OF 2024**

**LM NJUGUNA, J**

**JUNE 11, 2025**

**BETWEEN**

**JOSEPH KIARIE & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**ANN KANANU MWENDA ..... RESPONDENT**

**RULING**

1. What is before the court for determination is the Chamber Summons dated the 12<sup>th</sup> February, 2025 brought under Paragraph 11 of the Advocates Remuneration Order, Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law, seeking the following Orders;
  1. This Honourable court be pleased to review and/or set aside the taxation passed by the Deputy Registrar, Hon Evelyn Gaithuma on the 24<sup>th</sup> January, 2025 in relation to Misc. Application Cause No. E044 of 2024 and all sub sequential proceedings/ orders arising thereafter.
  2. The Bill of costs dated the 28<sup>th</sup> August, 2024 be taxed afresh and the application dated the 2<sup>nd</sup> October, 2024 determined afresh by a different taxing master.
  3. The costs of the application be in the cause.
2. The application is premised on the grounds set out on the body of the same, and is supported by the annexed affidavit sworn by the respondent/applicant.
3. The respondent/applicant avers that, the Deputy Registrar misapplied principles of law in the taxation of the Bill of costs; that there is an error apparent on the face of the Record in that, the Bill was taxed without due regard to the capacity in which the Client/Respondent issued instructions for representation in the main Petition; the Deputy Registrar erred in law and in fact in determining the amount taxed off as the Petition was never set down for hearing and/or concluded ; the costs should



be limited to proper remuneration for work done and they should not be awarded so as to give rise to unjust enrichment, and it is in the interest of justice that the costs should be properly remunerated for work done.

4. The respondent/applicant depones that the taxation arose out of proceedings on the services the Advocate provided to the Client herein, in which the Client as the Deputy Governor nominee, Deputy Governor and Governor, instructed the Advocate to represent her in various Petitions which had been filed challenging her appointment, vetting and/or assumption of office.
5. That subsequently, the Advocate filed the Bill of costs dated the 28<sup>th</sup> August, 2024. That in response, she, the Client, filed an application dated the 2<sup>nd</sup> October, 2024 and a response to the Bill of costs dated the 8<sup>th</sup> November, 2024. That the taxing Master delivered a ruling on both the Bill of costs and the application on the 24<sup>th</sup> January, 2025.
6. The respondent/applicant further depones that, in the said ruling, the taxing Master misapplied the principles of law in the taxation of the Bill of costs in holding that the respondent/applicant instructed the Advocate in her personal capacity, thus neglecting the position and the capacity that she held at the material time.
7. She further states that the Deputy Registrar erred by concluding that the Court had jurisdiction to hear and tax the Bill of costs and proceeded to tax the same. She has urged the court to review the taxation passed by the taxing Master and order the same to be taxed by a different Taxing Officer and the application dated the 2<sup>nd</sup> October 2024 be determined afresh.
8. The Chamber Summons is opposed vide a replying affidavit sworn by the Advocate, on the 15<sup>th</sup> April, 2025 in which he has deponed that, the taxing Master was modest and rightfully applied the right principles of law under Schedule 6B of the Advocates Remuneration Order, 2014. That the Client has not explained in her supporting affidavit what principle of the law the Deputy Registrar erred, in taxing the Bill of costs.
9. That it is trite that once an Advocate has been issued with instructions to represent a client, they are entitled to payment of their fees for the services rendered upon conclusion of the Advocate/Client relationship and that instruction fees ought not be affected or determined by the stage at which the suit has reached.
10. The Advocate states that the court had jurisdiction to tax the Bill of costs under Orders 10 and 50 of the Advocates Remuneration Order, 2014 and that no good reason has been advanced by the client to warrant the granting of the Orders sought herein. That he stands to suffer great loss and prejudice if the application is allowed as this would deny him justice and prevent him from enjoying the fruits of his successful litigation for no justifiable cause.
11. The court gave directions on filing of submissions but only the respondent/applicant filed the same and identified two issues for determination;
  1. Whether the application dated the 2<sup>nd</sup> October, 2024 should be heard afresh.
  2. Whether the taxing Master misapplied the principles of taxation in taxing the Bill of costs dated the 28<sup>th</sup> August, 2024
12. On the first issue, the respondent/applicant relied on Section 133 of the County Government Act and submitted that having been a Governor nominee, Deputy Governor and the Governor, she was a member of the County Government and therefore, she could not be held personally liable for any



matter or thing that she did or omitted to do in her official capacity from 6<sup>th</sup> January, 2020 when she was the Governor nominee.

13. She submitted that Petition 1 of 2020 did not touch on her personal issues but those of Nairobi County and the public at large, and therefore, the Advocate represented her in her official capacity as the Deputy Governor nominee to protect the interest of Nairobi County. That for that reason, she cannot be held liable for any legal fees emanating from the said representation. Reliance was placed on the case of Joseph Kiarie & Co. Advocates vs. Kananu Mwenda: Misc. Petition Application No. E028 of 2024.
14. On the second issue, the respondent/applicant submitted on the principles of taxation as stated in the case of Premchand Ltd & another Vs. Quarry Services of East Africa Ltd & others No. 3 (1972) EA 162 and in the case of Kanu National Election Board & 2 others Vs. Salah Yakub Farah (2018) eKLR, Paragraphs 50 and 50A of the Advocates Remuneration Order. She submitted that there are no special grounds arising out of the nature and importance, difficulty or urgency of the case to warrant the use of a higher scale in taxation of the Bill of costs dated the 28<sup>th</sup> August 2024. Further, that the court did not make an order that there exists special grounds to warrant the use of higher scale in taxing the Bill of costs.
15. On the instruction fees, the respondent/applicant relied on the provision of paragraph 1 (j) of schedule 6 to the Advocates Remuneration (Amendment) order, 2014 that provides for instruction fees to present or oppose a Constitutional Petition and prerogative Orders and Sub paragraph i of paragraph I (j) and contended that the Petition from which the Advocate/Client Bill of costs arose, was neither complex nor difficult or novelty of the question raised. That in addition, none of the respondents filed a response to the said Petition, and on that account, the Bill of costs should be taxed under Sub paragraph i of paragraph i (j) and instruction fees of Ksh. 45,000 awarded in place of the Ksh 120,000 that the Taxing Master awarded, as instruction fees.
16. The respondent also took issue with the sum of Ksh.3, 000 that the Taxing Master awarded for mentions, yet, the court held that the mentions did not take more than half a day. Further, that the Taxing Master erred in relying on an authority on Election Petition when in real sense the subject matter in the Petition was a mere nomination and not a full Election.
17. The court has considered the application dated the 12<sup>th</sup> February, 2025 together with the supporting affidavit and the Submissions filed by the Applicant/Respondent in support of her application. She has urged the court to review and/or set aside the taxation passed by the Taxing Master in E 044 of 2024 and all the sub sequential orders. Further, that the Bill of costs dated the 28<sup>th</sup> august, 2024 be taxed afresh and the application dated the 2<sup>nd</sup> October,2024 determined afresh as the Taxing Officer did not have jurisdiction to tax the Bill of costs.
18. The principles governing interference with the exercise of the Taxing Master's discretion were authoritatively stated by a South African court in the case of Visser Vs Gubb 1981 (3) SA 753 (c) 754H-755C;

“The court will not interfere with the exercise of such discretion unless it appears that the Taxing Master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered or considering matters which it was improper to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the Taxing Master was clearly wrong but will also do so if it is in the same position as, or a better position than, the Taxing Master to determine the



point in issue. ...The court must be of the view that the Taxing Master was clearly wrong, i.e. it's conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

19. Differently put, before the court interferes with the decision of the Taxing Master it must be satisfied that the Taxing Master's ruling was clearly wrong, as opposed to the court being satisfied that the Taxing Master was wrong. This means that the court will not interfere with the decision of the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Master's view of the matter differs so materially from its own that it should be held to vitiate the ruling.
20. It is a well-established principle of review that the exercise of the Taxing Master's discretion will not be interfered with unless it is found that he has not exercised his/or her discretion properly for example if he has not applied his mind to the matter or has disregarded factors or principles which were proper for him/her to consider, or has considered others which it was improper for him or her to consider or has acted upon wrong principles or wrongly interpreted rules of law.
21. The applicant/advocate herein filed the Bill of cost dated the 28<sup>th</sup> August, 2024 and before the same could be heard, the respondent/ client filed the application dated the 2<sup>nd</sup> October 2024 seeking orders to have the Bill of costs struck out on the ground that the Taxing Master did not have jurisdiction to tax by dint of Section 11 of the *High court (Organization and Administration) Act*.
22. The other ground in support of the application was that the Petition that gave rise to the Bill of costs did not touch on the Client's personal issues but those of her appointment/nomination to an official capacity, the Nairobi County and the public at large. That subsequently, the client became the acting Deputy Governor of Nairobi County on the 15<sup>th</sup> January, 2021 and on ascension to office, all subsequent deeds were offered in her official capacity.
23. That by dint of Section 133 of the County Government Act, the client could not be held personally liable for any civil liability that arises from execution of any act, matter or thing done or omitted to be done by any person acting under the direction and/or instructions of the county Government.
24. It was also the Client's case that, the advocate, Joseph Njenga Kiarie was appointed by the Nairobi City County Public service Board as the legal advisor reporting directly to the Governor for the day to day allocation of duties subject to the discretion of the Governor during her term in office.
25. That as a legal advisor, the advocate was expected to offer legal advice and counsel to the County Government and its officials including the client, and in return, the advocate was entitled to a monthly consolidated salary of Ksh. 187, 430. That, it is in his capacity as a legal officer that the advocate represented the client in HCACEPET 1 of 2020 and was paid his dues, and is therefore not entitled to claim any other or further dues and /or legal fees from the Nairobi City County Public Service Board.
26. The Taxing Master heard both the Bill of costs and the said application and in her ruling delivered on the 24<sup>th</sup> January, 2024, she made the following findings;
  - a. The Taxing Master had jurisdiction to tax the Bill of costs.
  - b. The Client instructed the advocate in her personal capacity  
And she proceeded to tax the Bill of costs.
27. That ruling by the Taxing Master is the subject of the application herein.



28. Applying the principles that this court has set out herein above, this court has been called upon to determine whether the Taxing Master committed an error of principle in dealing with the application and the Bill of costs.
29. I will first address the issue of jurisdiction as raised by the advocate. In this regard, the advocate contended that the Taxing Master did not have jurisdiction by dint of Section 11 of the High court Organization and Administration) Act which provides for Divisions of the High court, and the advocate/client Bill of costs being a commercial Agreement could only be taxed at the Commercial & Tax Division of the High court and not in the Anti- Corruption and Economic Crimes Division.
30. This court has perused the record in Petition 1 of 2020 and the same was filed in the Anti-Corruption and Economic Crimes Division of the High court. As the Taxing Master rightly observed in her ruling, Section 11 (1) does not mention ACEC Division but Section 11 (1) (j) of the same Act gives powers to the Chief justice to set up any other Division of the High court, and in exercise of those powers, Emeritus Chief Justice Mutunga established the ACEC Division in 2016 vide Gazette notice number 9123. The Deputy Registrar of ACEC Division has powers and jurisdiction to hear and determine Bill of costs emanating from matters heard and determined in the Division.
31. The only issue that this court has with the Ruling by the Taxing Master is on the issue of the capacity in which the client instructed the advocate, and who exactly gave instructions to the advocate. The Taxing Master after analyzing this issue made a finding that there was an advocate- Client relationship between the Applicant and the Respondent. To this extent, the Taxing Master failed to bring her mind to bear on that issue and as a result, she was clearly wrong. The issue was on retainer and it is trite law that the Taxing Master has no jurisdiction to determine issues of retainer.
32. On account of that issue alone, it is the finding of this court that the application has merits and it is allowed and the following orders are made;
33. The ruling delivered on the 24<sup>th</sup> January, 2025 is hereby set aside. The application dated the 2<sup>nd</sup> October, 2024 to be heard afresh by a Judge in the ACEC Division of the High court after which the court will give directions on the Bill of costs.
34. Each party to bear its own costs of the application.
35. It is ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 11<sup>TH</sup> DAY OF JUNE, 2025.**

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**L.M. NJUGUNA**

**JUDGE**

In the presence of:-

Miss Wacheke holding brief for Mr. Kiarie for the Advocate/Respondent

Mr. Gathira for Dr. Kamotho for the Client/Applicant

Court assistant - Adan

