



Kimani & another (Suing as the Legal Representatives of the Estate of the Late Caleb Ndungu Mwangi (Deceased)) v Lawfirm (Miscellaneous Civil Application E670 of 2024) [2025] KEHC 10257 (KLR) (Civ) (16 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10257 (KLR)

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

CIVIL

MISCELLANEOUS CIVIL APPLICATION E670 OF 2024

JK NG'ARNG'AR, J

JULY 16, 2025

BETWEEN

JOSEPH MWANGI KIMANI 1ST APPLICANT

NICETA MUTHONI NJAGI 2ND APPLICANT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
CALEB NDUNGU MWANGI (DECEASED)**

AND

MORGAN OMUSUNDI LAW FIRM RESPONDENT

JUDGMENT

1. Before court is a Chamber Summons application dated 30/1/2021. It was brought under rule 11(1, 2,4) of the *Advocate's Remuneration Order* and Section 1A & 3A of the *Civil Procedure Act*.
2. The pending order sought in the application was that the taxing officer's ruling of 18/12/2024 be varied or set aside or in alternative, the bill of costs dated 20/2/2023 be taxed afresh.
3. The application was supported by the affidavit and further affidavit of Joseph Mwangi Kimani sworn on 30/1/2025 and 28/2/2025. It was contended that in the said ruling of 18/12/2024, the taxing master taxed the bill of costs and awarded the respondent Kshs. 90,180/= and in so doing, she disregarded the applicant's documentation which proved that the applicant had already paid Kshs. 91,560/= for legal fees.
4. It was thus contended that the taxing master made a fundamental error in principle in disregarding the applicant's submissions and replying affidavit thus she failed to take account of vital issues of law and facts. That the ruling was erroneous and ought to have been set aside failure to which the applicant



would suffer prejudice. The applicant further contended that the notice of objection was filed within 14 days and the period between 21st December and 13th January was omitted from any computation of time.

5. The respondent opposed the application vide the replying affidavit sworn by Morgan Omusundi on 20/5/2025. It was contended that the application was defective as the notice of objection was filed on 15/1/2025 yet Rule 11 of the Advocates Remuneration Order demands that an objection to a taxation decision must be made within 14 days of the decision-making reference to the items the applicant was aggrieved of and why. It was thus contended that the application was incompetent and ought to have been dismissed. That the amount taxed by the respondent was owed to it thus the attached receipts were meaningless and even if they were considered, they would not cover the cumulative fees owed.
6. The application was canvassed by way of submissions. The applicant's were dated 3/3/2025 whereas the respondent's were dated 5/6/2025.
7. This court has considered the pleadings, evidence and written submissions filed by each party. The main issue for determination is whether the taxing officer's decision of 18/12/2024 ought to be reviewed and or set aside.
8. The application was brought under Rule 11 (2) of the *Advocates Remuneration Order*. Rule 11 provides that: -

“ 11. Objection to decision on taxation and appeal to Court of Appeal

- (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
9. The taxation rule was delivered on 18/12/2024. The notice of objection was filed on 15/1/2025.
 10. However, I do note that a 30 day stay of execution was granted and the applicant brought the application within that period. Noting that the above provision allows for enlargement of time, it then follows that the Act envisions circumstances which would warrant the expansion of the 14 days period. The application was not brought inordinately late, and the applicant acted within the stay period.



11. For the interest of justice and in line with Article 159 of the *Constitution* which enjoins this court to administer justice without undue regard to technicalities of procedure, this Court will proceed to determine the application on merit for the purpose of determining all issues in dispute between the parties.

12. As to whether the impugned ruling ought to be set aside, I do consider the circumstances where a judge can interfere with the decision of a taxing master. In so doing, I rely on the case of *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] eKLR wherein the court held that: -

“I have considered the above submissions. First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle. (See *Steel & Petroleum (e.a) Ltd v. Uganda Sugar Factory (Supra)*). Of course. It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates Remuneration Order itself, some of the relevant factors to take into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge. Needless to state not all the above factors may exist in any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the Taxing Officer for re-assessment unless the Judge is satisfied that the error cannot materially have affected the assessment. (see *Nanyuki Esso Service V Touring Cars Ltd; Steel & Petroleum (e.a.) Ltd v Uganda Sugar Factory; Thomas James Arthur v Nyeri Electricity Undertakers And Joreth V Kigano & Associates*).

13. In the case before me, the applicant maintained that the replying affidavit sworn on 8/10/2024 and filed before the taxing master, as well as the documents attached thereto were not considered by the taxing master in her decision. That the documents proved that the respondent’s legal fees had been fully settled and if the taxing master considered those documents, she would have arrived at a different decision.

14. I have seen and considered the subject ruling delivered on 18/12/2024. I do note that though the applicant filed pleadings contending that the legal fees had been fully paid. I further note that the applicant went a step further and attached proof of such payment. However, the taxing master failed to address the issue of payment or consider the evidence before her to determine whether the alleged payment were considered in the Bill of Costs and whether there were any pending payments.

15. As such, I do find that there was an error of principle so as to justify interference with the taxing master’s decision. It then follows that the application before court is merited and I hereby order as follows: -

1. The Taxing Master’s decision in the ruling delivered on 18/12/2024 be and is hereby set aside.
2. Item 1 is re-assessed from Kshs. 10,000/= to Kshs. 600,000/=.
3. The respondent’s bill of costs dated 20/2/2024 to be taxed afresh before any other taxing master aside from Hon. Chembeni L Adisa.
4. The applicant shall have costs of the application assessed at Kshs. 30,000/=.
5. 30 days stay granted.



It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JULY, 2025
IN THE PRESENCE OF;**

.....

J. NG'ARNG'AR

JUDGE

Adungu for the Appellant

Gilead for the Respondent

Mark/Siele (Court Assistants)

