



**Muasa v Kisini Nzyuko & Co. Advocates (Environment and Land Miscellaneous Application E036 of 2024) [2025] KEELC 4734 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4734 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E036 OF 2024**  
**NA MATHEKA, J**  
**JUNE 24, 2025**

**BETWEEN**

**SAMMY MAITHA MUASA ..... APPLICANT**

**AND**

**KISINI NZYUKO & CO. ADVOCATES ..... RESPONDENT**

**RULING**

1. The application is dated 30<sup>th</sup> August 2024 and is brought under Paragraph 11(4) of the Advocates Remuneration Order, Articles 50 and 159 of *the Constitution* of Kenya 2010 seeking the following orders;
  1. That the Application be certified urgent and heard ex parte in the first instance.
  2. That there be a stay of execution for the Respondent's Bill of Costs dated 21<sup>st</sup> August, 2024 Ruling and all consequential orders in Machakos Misc. Application No. E016 of 2024 pending the hearing and determination of this Reference.
  3. That the Ruling for the Taxing Officer delivered on 21<sup>st</sup> August, 2024 in the Machakos Misc. Application No. E016 of 2024 and the Certificate of Taxation arising thereon be set aside/vacated.
  4. That this Honourable Court be pleased to assess/tax the costs lawfully payable to the Respondent in his Bill for Costs dated 21<sup>st</sup> February, 2024.
  5. That costs of the Application be borne by the Respondent.
2. It is supported by the annexed Affidavit of Sammy Maitha Muasa, and is based on the grounds that on 21<sup>st</sup> August, 2024 the Taxing Officer in Machakos Misc. Application No. E016 of 2024 issued a Ruling on the Taxation of the Bill of Costs therein. That the Applicant feels strongly and extremely aggrieved by the said Ruling and has set out to oppose it through a Reference to this Honourable Court. That



the Applicant is reasonably apprehensive that the Respondent will execute the said Ruling and unless this Application is heard urgently the Applicant will be greatly prejudiced. That the Applicant has good grounds for opposing the said Ruling hence if the same is executed before the hearing and determination for the application there will be a miscarriage of justice. That the Application herein has been brought within the stipulated timeline by the law. That it is in the interest of justice that the orders sought herein do issue to allow the Applicant argue the Reference on merit. That the Applicant is ready to abide by terms set by this Honourable Court. That it is therefore in interest of justice that the orders sought herein are granted.

3. This court has considered the application and the submissions therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:

- (1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the 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.”

4. Be that as it may, the principles of varying or setting aside a Taxing Master's decision are set out in the cases of *First American Bank of Kenya v Shah and Others* [2002] EA 64 and *Joreth Ltd v Kigano and Associates* [2002] 1 EA 92, that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law. In *First American Bank of Kenya v Shah and Others* [2002] E.A.L.R 64 the court held that;

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”.

5. These principles reiterate the position of the Court of Appeal in *Joreth Ltd v Kigano & Associates* [2002] eKLR, where 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 excessive to amount to an error in principle.

6. The Applicant in the instant application contends that being dissatisfied with the Taxing Officer's decision have filed this application. That the Taxing Officer erred in law and in fact in taxing the Instructions Fees based on the value of the property which was Kshs. 13,000,000/= instead of kshs.100,000/= as had been agreed. That the wrong principal was applied and the correct one would be schedule 5 instead of schedule 1. That there is no proof of other instructions and hence the said items should be rejected.

7. In *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'Njuguna* [2006] eKLR Ojwang, J (as he then was) expressed himself as follows:

The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too



low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other...The 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 manifestly excessive as to justify an inference that it was based on an error of principle. 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 case 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 reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment...A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved...Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularised justification of the mode of exercise of any discretion provided for...The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs...”

8. In *First American Bank of Kenya v Shah and Others* [2002] E.A.L.R. 64 the court held that;  
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”.
9. In *KANU National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR, it was held that:  
The principles applicable to a review of a taxing master's decision
10. The general principles governing interference with the exercise of the taxing master's discretion were authoritatively stated by the South African court in the case of *Visser v Gubb* 1981 (3) SA 753 (C) 754H – 755C as follows:-

“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 for him 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 only 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. its 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.”



11. 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 clearly satisfied that the taxing master was wrong. This indicates 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. (See *Ocean Commodities Inc and Others v Standard Bank of SA Ltd and Others* [1984] ZASCA 2; 1984 (3) and *Legal and General Insurance Society Ltd v Lieberum NO and Another* 1968 (1) SA 473 (A) at 478G.)
12. It is settled law that when a court reviews a taxation it is vested with the power to exercise the wider degree of supervision. (*Johannesburg Consolidated Investment Co. v Johannesburg Town Council* 1903 TS 111).
13. The Taxing Master is required to take into account the time necessarily taken, the complexity of the matter, the nature of the subject-matter in dispute, the amount in dispute and any other factors he or she considers relevant. The ultimate question raised by the applicant for review/setting aside the taxation is therefore whether the Taxing Master struck this equitable balance correctly in the light of all the circumstances of this particular case.
14. The scope of this application requires this court be satisfied that the Taxing Master was clearly wrong before interfering with her decision. The quantum of such costs is to be what was reasonable to prosecute or defend the proceedings and must be within the remuneration order. The determination of such quantum is determined by the Taxing Master and is an exercise of judicial power guided by the applicable principles.
15. 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/she has not exercised his/her discretion properly, as for example, when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.' (Per SMIT AJP in *Preller v S Jordaan and Another* 1957 (3) SA 201 (O) at 203C - E.)
16. Guidance can also be obtained from the Canadian case of *Reese v. Alberta* {1993} 5 A.L.R. (3rd) 40 in which McDonald J. sets out the general principles applicable to awarding costs, at page 44:-
 

“While the allocation of costs of a lawsuit is always in the discretion of the court, the exercise of that discretion must be consistent with established principles and practice. ... The costs recoverable are those fees fixed for the steps in the proceeding by a schedule of fees ....plus reasonable disbursements....”
17. In principle, costs are awarded, having regard to such factors as:- (a) the difficulty and complexity of the issues; (b) the length of the trial; (c) value of the subject matter and (d) other factors which may affect the fairness of an award of costs. The law obligates the taxing master to take into account the above principles.
18. Restating the principles of taxation of costs, the Ugandan Supreme court in *Bank of Uganda v. Banco Arabe Espanol SC Civil Application No. 23 of 1999 (Mulenga JSC)*.stated:-
 

"Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which



he has more experience than the judge. Consequently a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.

19. Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. In this regard, application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.
20. Thirdly, even if it is shown that the taxing officer erred on principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties."

...The principles guiding the review of taxation in this court were settled in *President of the Republic of South Africa and Others v Gauteng Lions Rugby Union and Another*:

"a. Costs are awarded to a successful party to indemnify it for the expense to which it has been put through, having been unjustly compelled either to initiate or defend litigation.

- b. A moderating balance must be struck which affords the innocent party adequate indemnification, but within reasonable bounds.
- c. The taxing master must strike this equitable balance correctly in the light of all the circumstances of the case.
- d. An overall balance between the interests of the parties should be maintained.
- e. The taxing master should be guided by the general precept that the fees allowed constitute reasonable remuneration for necessary work properly done.
- f. And the court will not interfere with a ruling made by the taxing master merely because its view differs from his or hers, but only when it is satisfied that the taxing master's view differs so materially from its own that it should be held to vitiate the ruling."

21. The applicant stated that they were instructed the respondent to represent them in a conveyancing agreement where himself and the vendor were to pay the respondent Kshs. 200,000/=, each party paying Kshs. 100,000/=. That the taxing Master awarded the respondent a sum of Kshs. 345,960/= which was excess and manifestly excessive.

22. The Taxing Master in her ruling dated 21<sup>st</sup> August 2024 provided that the taxation of the matter would be based on Remuneration (Amendment) order of 2014. Under Item one the taxing master based her calculations on schedule 1 of the 2014 Advocates Remuneration order. The taxing master contended that because the matter arose out of a conveyance, the advocate's instruction fees would not be assessed under Schedule 1 first scale of the Remuneration Order as regards to the instruction fees item 1. She then proceeded to tax the bill under Schedule V of the 2014 Remuneration Order on the other items. The question to be determined in this appeal is, was the taxing master right in taxing conveyance work under Schedule 1?

Schedule 1 provides that;

The scale fee shall be calculated cumulatively on the basis of the consideration or value of the subject matter as follows - i. from Kshs. 1 to Kshs. 5,000,000, 2% of the consideration or the value of the subject matter or Kshs. 35,000 whichever is higher. ii. from Kshs. 5,000,001 to Kshs.100,000,000, the fee prescribed in (i) plus 1.5% of the balance. iii. from Kshs.100,000,001 to Kshs. 250,000,000, the fee prescribed in (ii) plus 1.25 % of the balance. iv. from Kshs. 250,000,001 to Kshs.1,000,000,000, the fee



prescribed in (iii) plus 1% of the balance (v) in respect of an amount where the consideration or value is more than Kshs.1,000,000,000, the fee set out in (iv) plus 0.1% of the balance.

23. The Advocate Remuneration Order is a remuneration code which stipulates how an advocate is to be remunerated once the advocate is retained to render professional services. It contains a costing of the services ordinarily rendered by advocates. Because it is a code which specifies what a particular service would cost, it has been split into various schedules, each schedule containing the costing of a particular category of services. The First Part of Schedule 1 relates to services rendered by an advocate in relation to sales and purchases of land. The Second Part of Schedule 1 relates to services rendered by an advocate in relation to debentures, mortgages and charges. The third part of Schedule 1 relates to services rendered by an advocate in relation to negotiation of sale of property by private treaty or loan secured by mortgage.
24. It is not disputed that this bill of costs arises out of conveyancing instructions relating to sale over Machakos Municipality Block 2/415 which as per the agreement for sale was valued at Kshs. 13,000/=. I find that the applicable scale is indeed found in Schedule 1 first scale of the advocates Remuneration Order 2014. The taxing master did not err in taking into account the subject matter of Kshs. 13,000,000/=. The issue of whether or not there was a retainer agreement has not been proved and the same cannot be applicable. I find that the rest of the items 2 to 13 were reasonably taxed and are payable as the same relate to the said transaction and the subsequent legal fee note.
25. I concur with the respondent's submissions and I find that there is no error by the Taxing Master's in the assessment. Consequently, I find that the application is unmerited and dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF JUNE 2025.**

**N.A. MATHEKA**

**JUDGE**

