

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. MISC. APPLICATION NO. E014 OF 2025**

**D.K. MUEMA & COMPANY**

**ADVOCATES:.....APPLICANT**

**VERSUS**

**HENRY KURIA KINUTHIA:.....RESPONDENT**

**RULING**

The application is dated 30<sup>th</sup> June 2025 and is brought under Section 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules and the Advocates Act seeking the following orders;

1. That Judgment be and is hereby entered for the Applicant and Decree be and is hereby issued for the taxed costs of Kshs. 715, 192/=.
2. That, costs of this application be paid by the Respondent

It is based on the following grounds and on the grounds deponed to the annexed affidavit of DANSON KISINI MUEMA and on the following grounds that the Applicant Bill of Costs was taxed at Kshs. 715,192/= and a Certificate of Taxation was issued to that effect. That it is necessary for the application be allowed to pave way for execution. That the Respondent is in process of winding operations. That it is in the interest of justice to grant the orders sought.

This court has considered the application and the supporting affidavit 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.”*

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 vs Shah and Others* (2002) EA 64 and *Joreth Ltd vs 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 vs 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.”*

These principles reiterate the position of the Court of Appeal in *Joreth Ltd vs 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.

In the instant case the respondent has not raised any objection and the application is not opposed. I find this application is merited and is granted as prayed with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF NOVEMBER 2025.**

**N.A. MATHEKA**

ORIGINAL