

**REPUBLIC OF KENYA**

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

**ELC. MISC. APPLICATION NO. E024 OF 2022**

**MUCHANGI NDUATI & CO. ADVOCATES:.....APPLICANT**

**VERSUS**

**JENNIFFER WAITHIRA NDEGE:.....1<sup>ST</sup> RESPONDENT**

**MANWA BWOSIEMO MAGARA:.....2<sup>ND</sup> RESPONDENT**

**AL-RUHIA ESTATE LIMITED:.....3<sup>RD</sup> RESPONDENT**

**RULING**

The application is dated 13<sup>th</sup> November 2024 and is brought under Section 51(2) of the Advocates Act Cap 16 Laws of Kenya and Rules 7 of the Advocate Remuneration Order seeking the following orders;

1. Judgment be entered for the Applicant/Advocate as against the Respondents in the sum of Kshs. 189,342.00/= being the taxed costs in this matter.
2. The Respondent do pay to the Applicant the said sum plus interest at 14% per annum from 22<sup>nd</sup> November, 2023 till payment in full.
3. The costs of this application be to the Applicant.

It is supported by the annexed affidavit of MUCHANGI NDUATI NGINGO and the following grounds that the Advocate-Client Bill of Costs to the Applicant/Advocate herein was taxed at Kshs. 189,342.00/= and a Certificate of Taxation duly issued by the Honourable Court. The award was not challenged despite the Respondent having been informed of the same. The Respondent has ignored our request to settle/pay the taxed costs despite several requests. The delay in making the payment has prejudiced the Applicant and kept him away from recovering his well-earned costs.

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**

**JUDGE**