



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
MISCELLANEOUS CIVIL CASE NO E002 OF 2023

MUGAMBI NJERU & COMPANY ADVOCATES.....APPLICANT/RESPONDENT
VERSUS
FRANCIS NYAGA NGINYINYI..... RESPONDENT/APPLICANT

RULING

[1] The applicant filed a Notice of Motion dated 15th September, 2025 seeking the following orders:

1. Spent.
2. Spent.
3. That the honourable court be pleased to set aside the taxing master ruling delivered on the 31st October, 2023 and the consequent Certificate of Slated Costs issued on the 22nd May, 2024.
4. That the honourable court be pleased to order the Respondent's bill of costs be taxed afresh and heard on merits.
5. That the costs of this application be awarded to the Applicant.

[2] **The application is based on the grounds on the face of the application and the supporting affidavit of the applicant.** The applicant's case is that he instructed the Respondent herein to represent him in Kerugoya ELC Case No. 17 of 2013 and they agreed on the legal fees payable. The Respondent filed an advocate -client bill of costs dated 18th January, 2023 seeking costs of Kshs. 1,579,022.16/= against him.

[3] The applicant avers that the bill of costs was heard in his absence and ruling delivered by the honourable taxing master on the 31st October, 2023 awarding costs of Kshs. 1,041,760/= . The Respondent was thereafter issued with Certificate of costs of the 22nd May, 2024. The Respondent filed an application for entry of judgement and decree on

taxed amount and the same was allowed in a decree passed by the Honourable Judge on the 22nd May, 2024.

- [4] Further, the Respondent applied for execution of decree through warrants of attachment of movable property where the same were issued on the 3rd September, 2025. The Respondent then instructed Quickline Auctioneers to attach the applicant's movable property. He received a Proclamation Notice on the 10th September, 2025 giving him seven (7) days to pay Respondents costs of Kshs. 1,225,568/= and auctioneers' costs of Kshs. 182,500/=
- [5] Moreover, the applicant avers that the Respondent in drawing and taxing his bill of costs intentionally failed to inform the taxing master he had been paid legal fees of Kshs. 246,000/=
- [6] Lastly, it is in the interests of justice that the honourable taxing master ruling of 31st October, 2023 be set aside to enable the Applicant participate in fresh taxation.
- [7] The Respondent deposed to a Replying Affidavit and avers that the application for stay of execution has been made after significant delay as the Judgment was delivered on 22nd May, 2024 and the applicant/respondent filed the application on 23rd September, 2025 which is more than one year later.
- [8] Further, the applicant's application to set aside the Taxing Master's Ruling is an abuse of the court process. The applicant had every opportunity to participate in the taxation process but failed to do so, despite proper service having been effected upon their advocate.
- [9] Moreover, the respondent avers that the applicant should pay the taxed costs with interests less the Kshs.246, 000/= which he had paid as legal fees plus auctioneer's fees.
- [10] Lastly, the applicant has not offered or provided any credible security for the due performance of the decree as required by law and should the Court be inclined to grant orders of stay of execution, he should be ordered to deposit the entire decretal amount in an interest earning account jointly held by both parties pending hearing and determination of the application.

Applicant's submissions

On stay of execution

[11] The Respondent contends that the present application was filed after an inordinate delay, given that the Certificate of Costs was issued on 22nd May, 2024 and this Motion was filed on 23rd September, 2025. They aver that the alleged delay is both explained and excusable. Further, the Applicant had no knowledge of the taxation proceedings.

[12] They submit that it was only upon receiving a Proclamation Notice from Quickline Auctioneers in September 2025 that the Applicant became aware of the matter, whereupon he acted immediately to file his application. Therefore, we humbly urge this Honourable Court to find that any lapse of time before then cannot be considered inordinate delay as the Applicant could not challenge a process he did not know existed.

On erroneous taxation and certificate of costs

[13] It is not disputed that the Respondent was paid Kshs. 246,000/= pursuant to a retainer agreement for the legal services rendered in the adverse possession suit. However, in filing the Advocate-Client Bill of Costs, the Respondent deliberately omitted to disclose this payment to the taxing master.

[14] The applicant submits that that the Respondent's concealment of payment distorted the taxing master's assessment, leading to unjust enrichment at the expense of the Applicant.

Respondent's submissions

[15] The Applicant claims to have never been served with the notice of taxation, mention, or ruling. It is our submission that the Applicant was duly served with the requisite notices as per the rules. Evidence of this service, including an Affidavit of service, mention notices and hearing notices and WhatsApp screenshot indicating service upon the Applicant has been provided in the Respondent's Replying Affidavit filed herein dated 6th October, 2025.

[16] The Advocates (Remuneration) Order, which governs the taxation process, allows for the taxing officer to proceed ex-parte where a party fails to attend after being duly served. The Taxing Master, in the absence of the Applicant and having been satisfied with proof of service, was justified in proceeding with the taxation. A party alleging non-service cannot simply state they were not served.

[17] They must offer credible evidence to rebut the presumption of valid service, which the Applicant has not done in this case.

[18] The Applicant has raised the issue of a payment of Kshs. 246,000/= made to the Respondent, which he Applicant seeks to leverage this omission to have the entire taxation set aside and the matter referred for fresh taxation. The Respondent submits that while the omission was an oversight, it does not warrant setting aside the entire taxed bill. The proper and just remedy is for the applicant to be ordered to pay the taxed costs with interests less the Kshs. 246,000/= which he had paid as legal fees plus auctioneer's fees.

[19] The respondent submits that this Honourable Court's jurisdiction to interfere with a Taxing Master's decision is limited. The court will only interfere where the Taxing Master applied the wrong principle or made an error in law. The Applicant has not pointed to any such error.

[20] The Respondent relies on the case of ***First American Bank of Kenya Vs. Shah & others*** [2002], where Ringera J.said: -

“I find that on authorities this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision on taxation was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an interference that it was based on an error of principle.”

[21] In conclusion, it is the respondent's submission that the Applicant's application is fundamentally incompetent and an abuse of the court process due to non-compliance with the mandatory provisions of Section 11(1) and (2) of the Advocates (Remuneration) Order which states that:

“(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.”

Issue

[22] Whether the Respondent's bill of costs should be taxed afresh and heard on merits.

Analysis*Alleged non-service of taxation notices*

[23] The Applicant asserts that he was never served with the notice of taxation, mention notices, or ruling notice, and only learnt of the taxation upon receiving a Proclamation Notice from auctioneers in September 2025.

[24] The Respondent, on the other hand, maintains that service was duly effected, relying on an Affidavit of Service and WhatsApp screenshots exhibited in the Replying Affidavit.

[25] The applicant did not provide credible evidence to rebut the presumption of valid service.

[26] However, the Respondent did not file a further affidavit rebutting the specifics of the affidavit of service or the WhatsApp communication.

[27] Nevertheless, the taxation resulted. The overriding interest of justice tilts in favour of allowing the Applicant to participate in the taxation process.

Failure to disclose prior payment of legal fees

[28] It is not in dispute that the respondent received Kshs. 246,000/= from the Applicant as part payment for legal services. Under Rule 13A of the Advocates (Remuneration) Order, a taxing officer is entitled to consider all payments made and agreements entered into between the parties.

[29] The omission by the Advocate to disclose this payment deprived the taxing officer of material information essential to an accurate assessment of the instruction fee and other charges. Even if accidental, such an omission undermines the integrity of the taxation process.

[30] In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, which reiterated that failure to consider relevant factors or misdirection on principle justifies setting aside a taxation.

[31] Taxation must be conducted transparently and with full disclosure. The integrity of the process is compromised where essential financial information is withheld.

Compliance with Paragraph 11 of the Advocates (Remuneration) Order, 2014

[32] The respondent's submits that the Applicant's application is fundamentally incompetent and an abuse of the court process due to non-compliance with the mandatory provisions of Section 11(1) and (2) of the Advocates (Remuneration) Order.

[33] Ordinarily, failure to file a notice of objection or reference within time is fatal. However, where a party had no knowledge of the taxation or ruling, strict enforcement of timelines would occasion injustice.

[34] The Applicant has satisfactorily explained the delay, and the delay is excusable.

[35] The court has inherent jurisdiction under Section 3A of the Civil Procedure Act to prevent abuse of court process and ensure substantive justice.

[36] Lastly, the taxing officer's ruling should be set aside. Taxation is a statutory process designed to fairly determine costs between a client and advocate. Fairness can only be achieved where both parties participate fully and all relevant information is placed before the taxing officer. There was lack of participation of both parties due to defective service and non-disclosure of previous payment to the respondent. The defect also affects the amount of debt and therefore the decretal sum which is the basis of the auctioneer's charges in execution.

ORDERS

[37] Accordingly, for the reasons et out above, the Court finds that the application is merited and makes the following orders:

1. The taxing officer's decision is set aside;
2. The Applicant's Bill of Costs should be drawn and taxed afresh, taking into account the monies paid to the advocates by the Respondent client.

[38] Costs in the Cause.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mugambi Njeru for the Applicant.

Ms. Wambua for Mr. Opiyo for the Respondent.