

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E033 OF 2025

NAAMAN MUSES & COMPANY LTD.....

APPELLANT

=VERSUS=

SHUKRI

OMAR.....

.....RESPONDENT

**(Being an appeal from the Ruling of Hon. E. M. Kadima (PM) in
Taveta PMCC No. E016 of 2023 delivered on 15th May 2025)**

JUDGMENT

1. The trial court delivered a Ruling on 15th May 2025 assessing costs as follows:-

**(i) Instruction fees for an undefended suit where the
decretal sum was Kshs. 200,000/=**

Kshs. 30,000/=

(ii) Police facilitation Kshs. 30,000/=

(iii) Interest 14% p.a 14x100x50,000 Kshs. 7,000/=

Total Kshs. 57,000/=

2. The Appellant **NAAMAN MUSES & COMPANY LTD** has
appealed against the said Ruling on the following grounds:-

- (i) THAT the learned Magistrate erred in law and in fact by exercising his discretion in varying or slashing costs that were initially awarded by then Hon. Ndungi.**
- (ii) THAT the learned Magistrate erred in law and in fact by assuming the role of an Appellant court in varying costs that were tabulated through a party and party bill of cost.**
- (iii) THAT the learned Magistrate erred in law and misdirected himself by acting on wrong and unsound principles, case law and provisions of law.**

3. The parties filed written submissions as follows; The Appellant submitted that this Appeal should be allowed.
4. The core contention is that the learned Magistrate erred in law by improperly varying a finalized and taxed costs award, thereby exceeding his jurisdiction and acting on unsound principles.
5. The genesis of this matter lies in a default judgment entered in favour of the Appellant, following which a party-and-party bill of costs was lawfully taxed at Kshs 44,100.
6. A decree and certificate of costs were issued. Despite the Respondent's subsequent, unsuccessful application to set aside the judgment, the Appellant proceeded with execution to recover

the decretal sum and the awarded costs, which had accrued interest over time.

7. The partial payment of Kshs 145,405 by the Respondent left a balance of Kshs 90,349 in costs, which the Respondent later disputed orally before the trial court. It is the Magistrate's decision to entertain this casual dispute and subsequently slash the taxed costs from Kshs 90,349 to Kshs 37,000 that forms the crux of this Appeal.
8. The Appellant submits that the learned Magistrate committed a fundamental error by assuming an appellate jurisdiction he does not possess.
9. A trial court cannot sit on appeal over its own or a colleague's final orders on costs.
10. The proper recourse for a party aggrieved by a taxation is by way of a formal reference to the High Court.
11. The Magistrate, by purporting to review and vary the costs already assessed and decreed, effectively usurped this appellate function.
12. This action was not a proper exercise of discretion but a transgression of jurisdictional boundaries.
13. Furthermore, the Magistrate misdirected himself by acting on wrong principles.

14. The award of costs is a judicial discretion guided by Section 27 of the Civil Procedure Act, which establishes the principle that costs follow the event.
15. The Appellant, as the successful party in the original suit, was prima facie entitled to those costs.
16. The learned Magistrate provided no sound, reasoned basis grounded in law for depriving the Appellant of costs already incurred and lawfully taxed.
17. His interference with the prior judicial discretion exercised by Hon. Ndungi was capricious and not based on any demonstrated error in principle in the initial taxation, as required by established authorities such as **Joreth Ltd v Kigano & Associates and Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board.**
18. In conclusion, the impugned Ruling is unsustainable as it was rendered without jurisdiction and in contravention of settled legal procedure and principle.
19. The Appellant has been compelled to pursue this Appeal to correct this error and should not be prejudiced by the Respondent's belated and informal challenge to settled costs.
20. The appellant prayed that the Appeal be allowed, the Ruling of 15th May 2025 be set aside in its entirety, and the costs of this Appeal be awarded to the Appellant.

21. In response to the appellant's appeal, the respondent submits that the ruling of the Principal Magistrate was proper and should be upheld.
22. The respondent argues that the Magistrate correctly exercised his discretion to review and reduce the initially awarded costs of Kshs. 110,349.
23. This action was prompted by the respondent's legitimate objection that the costs were exaggerated and unsupported by receipts for services rendered, particularly given that the underlying suit was undefended and the decretal sum had been fully paid.
24. The respondent contends that it was not necessary to file a reference in the High Court, as the trial court possessed the inherent discretionary power to review its own costs.
25. Furthermore, the Magistrate did not erroneously assume an appellate role but rather performed a valid review in accordance with the Advocate's Remuneration Order, ultimately applying the correct scale to award a reasonable fee of Kshs. 30,000.
26. Consequently, the respondent asserts that the Magistrate committed no error in law or fact, nor did he act on unsound principles, and urges the court to dismiss the appeal with costs awarded to the respondent.

27. This Court has considered the Appeal before it, the grounds set forth, and the written submissions of both parties.

28. The Appeal arises from the Ruling of the Principal Magistrate delivered on 15th May 2025, which varied a previously taxed sum of party and party costs.

29. The core issue for determination is whether the learned Magistrate erred in law and in fact by entertaining an oral challenge and subsequently reducing costs that had been taxed and decreed.

30. The established legal framework in Kenya provides clear guidance on this matter.

31. The taxation of costs is a distinct judicial function, and a decision rendered thereon is a final ruling on that specific issue.

32. The avenue for challenging a taxation is a reference to the High Court under paragraph 11 of the Advocates Remuneration Order.

33. This principle is not a mere technicality but a cornerstone of procedural order and finality.

34. An order of taxation, once made, can only be challenged by way of a reference.

35. A trial court, sitting at the same level, cannot purport to sit on appeal over or review a taxation order made by a magistrate of competent jurisdiction.

36. By entertaining an oral application to set aside or vary the taxed costs, the learned Magistrate in this case assumed an appellate jurisdiction he did not possess.
37. His action was, with respect, a fundamental jurisdictional error. As was emphasized in **Joreth Ltd v Kigano & Associates [2002] eKLR**, a court should not interfere with the discretion of a taxing officer merely because it would have exercised the discretion differently, it may only do so where the taxing officer has erred in principle.
38. Furthermore, the finality of a decree is a sacrosanct principle under the Civil Procedure Act.
39. A decree crystallizes the rights and liabilities of the parties. The taxed costs in this matter had been incorporated into a decree and a certificate of costs had been issued.
40. The partial settlement of the decretal sum by the Respondent did not, in itself, invalidate the decree or the annexed costs.
41. The proper mechanism for challenging the quantum of costs post-decree, if not by way of a reference from taxation, would be a formal application for review under Order 45 of the Civil Procedure Rules, which has strict conditions that were not met in this instance.

42. The casual, oral objection raised by the Respondent before the trial court was procedurally improper and could not legally form the basis for varying a subsisting decree.
43. The learned Magistrate therefore misdirected himself by acting on this wrong procedural principle.
44. On the substantive issue of costs, while Section 27 of the Civil Procedure Code grants the court discretion to award costs, this discretion must be exercised judiciously and based on sound principle.
45. The default position is that costs follow the event. The Appellant was the successful litigant in the primary suit and was prima facie entitled to recover costs.
46. The learned Magistrate's ruling, which drastically reduced the taxed costs without identifying any error in principle in the initial taxation and without the benefit of a proper reference, was an arbitrary exercise of discretion.
47. It undermined the principle of finality and the specific statutory mechanism for challenging taxation.
48. Consequently, this Court finds that the learned Magistrate's Ruling of 15th May 2025 was rendered in excess of jurisdiction and is therefore unsustainable in law.
49. The Appeal succeeds on this primary ground.

50. In the final analysis, and for the reasons elaborated above, the Court hereby makes the following orders;

- (i) THAT the Ruling of the Principal Magistrate delivered on 15th May 2025 in Taveta PMCC No. E016 of 2023 is hereby set aside in its entirety.**
- (ii) THAT the certificate of costs and decree issued pursuant to the earlier lawful taxation are hereby reinstated.**
- (iii) Each party to bear their own costs of this appeal**

Dated, signed and delivered this 4th day of December 2025 in open court at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....**for the Appellant**

.....**for the Respondent**