

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL CASE NO. 5 OF 2018

MWAI **GITHINJI**.....

.....PLAINTIFF

VERSUS

BEATRICE **WAIRIMU**.....

DEFENDANT

RULING

1. Before this Court is the Notice of Motion Application dated **20th May 2025** by which the Applicant **MWAI GITHINJI** seeks the following orders:-

“1. THAT the Court be pleased to review and/or set aside assessment/taxed costs with respect to the Bill of Costs dated 3rd July 2024 raised on 14th May 2025.

2. THAT the Court be pleased retax the items at such sum as it deems reasonable and just.

3. **THAT** in the alternative court be pleased to remit the Party and Party Bill of Costs dated 3rd July 2024 taxed on 14th May 2025 by a different Deputy Registrar.

4. **THAT** the costs of this application be provided for.”

2. The application was supported by the affidavit of even date sworn by **MUHOHO GICHIMU** an Advocate of the High Court of Kenya.

3. The Respondent **BEATRICE WAMBUI** opposed the application through the Replying Affidavit dated **13th June 2025**.

4. The application was canvassed by way of written submissions. The Applicant filed the written submission dated **21st October 2025** whilst the Respondent relied upon her written submission dated **7th July 2025**.

ANALYSIS AND DETERMINATION

5. This reference arises from the Party and Party Bill of costs dated **3rd July 2024** filed by the Applicant. The said Bill was taxed by the Deputy Registrar **Hon. CHERUTO KIPKORIR,**

who vide a ruling delivered on **14th May 2024**, taxed the Bill at **Kshs. 183,630**. Being dissatisfied with the decision of the taxing Master the Applicant filed this reference.

6. I have carefully considered this reference, the reply filed thereto as well as the written submissions filed by both parties. It is evident from the submissions that the Applicant mainly takes issue with the amount of **Kshs. 150,000** which was awarded as Instruction Fees. None of the other orders have been challenged. According to the Applicant the amount awarded as Instruction Fees was excessive.
7. The circumstances in which the High Court may interfere with the decision of a taxing master were set out by the **Court of Appeal** in the cause of **KIPKORIR TITOO & KIARA ADVOCATES -vs- DEPOSIT PROTECTION FUND BOARD [2005] eKLR** as follows:-

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs. In Arthur v Nyeri

Electricity Undertaking [1961] EA 497, the predecessor of this Court said at page 492 paragraph

1. “where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases.”

8. The principles to be applied when assessing instruction fees in a suit are well settled. In **Joreth Ltd v Kigano & Associates [2002] eKLR** the **Court of Appeal** outlined the principle as follows:-

We would at this stage point out that the value of the subject matter of a suit for the purpose of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable, the taxing officer is entitled to use his discretion to assess such instruction fee as he

considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.

9. Further in **Peter Muthoka & another v Ochieng & 3 others [2019] eKLR** the same court expounded on the principles in **Joreth Ltd v Kigano & Associates (supra)** and set down the proper basis of taxing the instruction fees as follows;

It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value

of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.

10. In this matter the trial court did not enter judgment as the suit was not heard on merit but was dismissed for want of prosecution.
11. In her ruling the learned taxing officer did take note of the fact that the suit was a matrimonial cause and subject matter was matrimonial property whose value was not indicated.
12. From the Applicants Originating Summons dated **15th July 2013** it was revealed that the parties purchased property one at **Kshs. 850,000/=** as per the annexed Sale Agreement. There were also annexures which revealed Bank Accounts holding amounts over **Kshs. 2.0 Million**.
13. It is important to point out that the issue of taxation lies at the exclusive jurisdiction of the taxing Master and the High Court will be slow to intervene unless there is an error in law or wrong principles are applied.

14. In the case of **KAMUNYORI & COMPANY ADVOCATES - VS- DEVELOPMENT BANK OF KENYA LTD** the **Court of Appeal** stated that

“Authorities on taxation show that a Judge will normally not interfere with the Taxing Officers decision or taxation unless it is based on an error of Principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference an error of principle can be inferred if the instruction fees is arrived on the wrong principles it will be set aside.”

15. The decision of the taxing Officer to apply Schedule 6(a) as opposed to schedule 6(1) (a) of the **Advocates Remuneration Order** is also a matter of discretion.

16. Given that the value of the assets were shown to be over **Kshs. 2.0 Million** I find that the amount awarded as instruction fees was appropriate. I am not inclined to interfere with that award.

17. Finally I find no merit in this reference. The same is dismissed in its entirety. Costs are awarded to the Respondent.

Dated in Nyeri this 20th day of February 2026

.....
MAUREEN A. ODERO
JUDGE