Githongori & Harrison Associates Advocates v Leitmann (Family Miscellaneous Application E029 of 2025) [2026] KEHC 1800 (KLR) (17 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1800 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

FAMILY MISCELLANEOUS APPLICATION E029 OF 2025

HI ONG'UDI, J

FEBRUARY 17, 2026

BETWEEN

GITHONGORI & HARRISON ASSOCIATES ADVOCATES ..... APPLICANT

AND

LUCY WANJIKU LEITMANN ..... RESPONDENT

RULING

1. In the chamber summons dated 24th June 2025 the applicant prays for the following orders;

   i. That the decision of the taxing master dated 20th June 2025 delivered by Hon. Christine Menya (DR) in Nakuru HCFMISC E021 of 2024 with respect to items 1 and 2 in the bill of costs dated 6th June 2024 be set aside and the same be taxed afresh by this honourable court.

   ii. That in the alternative, the honourable court be pleased to order that the applicant's bill of costs dated 6 June 2024 with respect to items 1, and 2 be taxed afresh by another Taxing Officer.

   iii. That the costs of this application to be provided for.

2. The said application is premised on the grounds on its face and the affidavit of an advocate practising with the applicant firm sworn on even date. He deponed that he had diligently represented the respondent for a period of 7 years without an iota of payment and under the guise that the respondent would pay on conclusion of the suit. However, due to disagreements with the respondent the legal fees remained outstanding. Further, despite spirited efforts to have him pay the said fees, the respondent has remained adamant hence necessitating the filing of the advocates-client bill of costs dated 6th June 2024.

3. He further deponed that the learned taxing officer underestimated the work done on behalf of the respondent thus arriving at a manifestly low award of kshs. 500,000/= under Item I as instruction fee. Subsequently, she erred in taxing off item 2 of the bill of costs which constituted getting up fees.

He added that the award by the taxing master contradicts the spirit and principle of the advocates remuneration order with regard to fair and reasonable remuneration of advocates.

4. In response to the application the respondent filed a replying affidavit sworn on 14th November, 2025. She averred that the ruling of the taxing officer delivered on 20th June, 2025 was properly founded on evidence, the applicable schedule of the Advocates (Remuneration) Order and well-established principles on taxation. She further averred that it is settled law that a judge will only interfere with the taxing officer's discretion where an error of principle is shown or where the fee awarded is so manifestly excessive or low as to amount to an injustice. She added that the applicant's reference merely expresses dissatisfaction with quantum and does not disclose any specific error of principle or misdirection to justify interference by this court.

5. The application was canvassed by way of written submissions.

Applicant's submissions

6. The said submissions were filed by Githongori & Harrison Associates Advocates on 18th November 2025. Counsel gave a brief background of the case and identified two issues for determination.

7. The first issue is whether the taxing master erred in principle by disregarding the applicant's application dated 9th October 2024 seeking to adopt a valuation report thereby failing to properly ascertain the value of the subject matter and assessing the instruction fee and getting up fee at manifestly low amounts. Counsel submitted in the affirmative and added that Instruction Fee is to be assessed based on factors including the value of the subject matter, the care and responsibility involved, the complexity of the matter, the 'skill and specialized knowledge required, the number of documents prepared or perused and the time expended.

8. He further submitted that by ignoring the valuation application, the taxing master failed to consider the substantial value of the properties (ascertained in the report as exceeding Kshs. 2 Billion), which directly impacted the assessment. Thus, the said omission was equal to failure to apply the correct principles, warranting interference by this court. He placed reliance on the decision in Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] EA 162, where the Court of Appeal held that:

> " The taxing officer, in assessing the instruction fee, must take into consideration such factors as the amount involved, the nature, importance and difficulty of the case, the value of the subject matter, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge."

9. Counsel submitted that the taxing master erroneously held that the getting up fee was not warranted, despite clear evidence of a full trial, and without ruling on the valuation application that would have informed a higher assessment. Further, that an error in principle was occasioned when the taxing master utterly disregarded the very application that would have helped her to ascertain the value of the land. Reference on this was placed on the Court of Appeal decision in Kipkorir Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR which emphasized that where the taxing master fails to apply the correct principles or provides insufficient reasons, the high court should interfere and set aside the taxation. It stated:

> " 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."

10. The court's attention was also drawn to the decision in Joreth Lid v Kigano & Associates [2002] 1 EA 92.

11. The second issue is whether the taxation ruling should be set aside and the bills re-taxed afresh in the interest of justice. Counsel urged this court to set aside the said ruling and tax the bill afresh or order a fresh taxation by another officer to ensure a just assessment that considers the disregarded valuation application.

12. The court's attention was drawn to several decisions among them Wahuke & Another v Elija (Miscellaneous Civil Application E033 of 2022) KEHC 5399 (KLR), where the Court held that failure to provide reasons infringes on the objector's rights under Articles 47 and 50(1) of *the Constitution*, justifying a reference. The said court held as follows:

> "Going by the manner in which the ruling was rendered, that is without any reasons, and the refusal by the taxing officer to give the reasons for the taxation, then there is no way the taxation can be upheld. The Applicants have a right to be given the reasons so as to be able to exercise their right to file a reference in case of need and in instances where there is a complete failure then the Applicants rights under inter alia Articles 47 and 50[1] of *the Constitution* stand infringed."

13. In conclusion, he urged the court to allow the application with costs.

Respondent's submissions

14. These were filed by Muchiri Gathecha & Company Advocates on 14th November 2025. Counsel identified three issues for determination and the first one is whether the taxing officer erred in principle. She submitted that schedule 7B of the Advocates (Remuneration) Order grants the taxing officer discretion to determine a reasonable instruction fee guided by the nature and importance of the cause, the interest of the parties and the complexity and amount of work done. Thus, by awarding kshs. 500,000/= (enhanced by half), the taxing officer exercised her discretion properly.

15. Counsel further submitted that the applicant has failed to demonstrate any error of principle or that the award was manifestly low.

16. The second issue is whether the taxing officer erred in taxing off getting up fees. Counsel submitted that the said fees are only applicable in matters set down for trial within the meaning of paragraph 2 of schedule Vi. Further, succession proceedings, being in the nature of probate and administration, do not culminate in a trial as defined therein. Thus, the taxing officer correctly applied the law in disallowing the same. In support of her argument she placed reliance on the decision in Re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR, where the court held that getting up fees are not available in succession matters.

17. The third issue is whether the applicant has shown sufficient grounds for interference with the taxing officer's discretion. Counsel submitted that mere dissatisfaction with the quantum awarded is not a ground for interference.First American Bank of Kenya v Shah & Others [2002] 1 EA 64, where Ringera J (as he then was) stated:

This position was settled in

> " The court will not interfere with the exercise of the discretion of the taxing officer unless it is shown that either the decision was based on an error of principle or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle."

18. The court's attention was drawn to the Court of Appeal decision in Joreth Ltd v Kigano & Associates [2002] eKLR where court clarified that where the value of the subject matter is not ascertainable from the pleadings or judgment, the taxing officer has the discretion to assess instruction fees based on the nature and importance of the matter, the interest of the parties, and all relevant circumstances. Counsel submitted that the applicant had not identified any wrong principle, misdirection, or failure to consider relevant matters that would justify interference by this court. Thus, the taxing officer's reasoning mirrored the principle in Joreth Ltd v Kigano & Associates (supra) having found no specific monetary value of the estate, she exercised discretion within the parameters of the law. She urged the court to dismiss the application with costs.

Analysis and Determination

19. I have considered the application, the affidavits and the submissions plus the authorities cited by the parties. In my opinion, the only issue for determination is whether the applicant is entitled to the orders sought.

20. It is the applicant's case that the award on item 1 and 2 of the bill of costs dated 6th June 2024 by the taxing master contradicts the spirit and principle of the advocates remuneration order with regard to fair and reasonable remuneration of advocates. On his part, the respondent contends that the applicant's reference merely expresses dissatisfaction with quantum and does not disclose any specific error of principle or misdirection to justify interference by this court.

21. It is trite law that this court cannot interfere with the decision of the taxing master unless it is shown that it was based on the wrong principles `or that the fees was manifestly excessive or low or failed to take into consideration relevant factors. This was the decision in the case of First American Bank Ltd v Shah & another (supra) also relied on by the applicants, where the court held that;

> " 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... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors..."

22. I have closely examined the ruling by the Hon. Christine Menya (DR) delivered on 20th June, 2025 and note that in her decision she observed that there was no ascertained value of the subject matter in the decision by the judge save that the grant was revoked. Guided by the decision in Del Monte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Muranga Chapter & 2 Others [2021] eKLR, she gave a discretionary award of kshs. 500,000/= as legal fees under item 1 and the same was increased by half as per the provisions of schedule 7B of the Advocates Remuneration Order (ARO) making a total of kshs. 750,000/=.

23. The principles to be applied when assessing instruction fees in a suit are well settled. In Joreth Ltd v Kigano & Associates NRB (supra) the Court of Appeal outlined the principles 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."

24. Further, the Court of Appeal in Peter Muthoka & Another v Ochieng & 3 others NRB CA Civil Appeal No. 328 of 2017 [2019] eKLR expounded on the principles in Joreth Ltd v Kigano & Associates (supra) and held 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.....It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive."

25. I have looked at the judgment dated 12th October 2023 by Justice H. K Chemitei which the bill of costs arose from and I note that indeed the value of the subject matter could not be ascertained by it or from the pleadings. The valuation report which the application dated 9th October 2024 sought for orders of adoption of the same by the court was not relayed by the high court in its decision.I therefore, see no error in the deputy registrar's approach in exercising her discretion in assessing the instruction fees.

26. In addressing the issue of getting up fees, I rely on the decision in Okoth and Kiplagat Advocates v the Board of Trustees National Social Security Fund [2007] eKLR which is persuasive where Justice Warsame (as he then was) held as follows:

> "Getting up fees is only restricted to trial and a party is entitled to a getting up fees when he gets up or prepares a case for trial. In this case, the matter was set down for hearing and in the process preparation for trial was undertaken by the respondent. According to Schedule 6 a fee for getting up or preparing a case for trial is allowed in addition to the instructions fees, provided the case has been set down for hearing and preparation for its trial made by the Advocate. The Taxing master may also increase this fee as he may consider reasonable....."

27. From the judgment, the application for revocation of grant was heard by way of viva voce evidence. Thus, the same was set down for hearing and my view from the authority cited above the appellant/ applicant was entitled to getting up fees. In find the authority relied on by the taxing officer to be in regard to appeals, which was not relevant to the case at hand.

28. The upshot is that the taxing master's decision on the instructions fee is upheld while that on and getting up fees is set aside.All other findings on the taxation are upheld. The matter is remitted back for re-taxation of the getting up fees by the Taxing master Hon. Christine Menya (DR).

29. Each Party is to bear its own costs.

30. Orders accordingly.

DATED AND SIGNED THIS 20TH JANUARY, 2026 BY:

H. I. ONG'UDI

JUDGE

DELIVERED THIS 17TH FEBRUARY 2026 IN OPEN COURT AT NAKURU BY:

MOHOCHI S. M.

JUDGE