Mwananchi Credit Limited v Mwangi (Civil Appeal E064 of 2021)
[2026] KEHC 1076 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1076 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E064 OF 2021

RN NYAKUNDI, J

FEBRUARY 5, 2026

BETWEEN

MWANANCHI CREDIT LIMITED ..... APPELLANT

AND

BONIFACE CHEGE MWANGI ..... RESPONDENT

RULING

1. Before this Court is an Application dated 20th November 2025 brought under Rule 11of the Advocates (Renumeration) Order 2014 and all other enabling provisions of the law. The Applicant moved this court seeking the following orders;

    a. That this honourable court be pleased to set aside the entire ruling of the taxing master Hon. Caroline M. Wattimah, delivered on the 31st July 2025 in respect to the respondent's bill of costs dated 17th August 2024.

    b. That without prejudice to prayer 1 above, this honourable court be pleased to set aside the ruling of the taxing master Hon. Caroline M. Wattimah delivered on the 31st July 2025 in respect to the respondents' bill of costs dated the 17th August 2024 and particularly on items 1, 4, 5,6, 7, 8, 9, 10, 11, 13,14,19 and 20.

    c. . THAT this Honourable court be pleased to re-tax in its entirety or remit back to a different taxing officer the above bill of costs dated 17th August 2024 for reassessment and/or award as by law required or for the re-assessment of the specific items referenced in prayer 2 above.

    d. That costs of this application be provided.

2. The Application is made on the following grounds:

    i. The Respondents' Bill of costs dated 17th August 2024 was on 31st July 2025 assessed and taxed at Kshs 178,200.00.

ii. That a notice to object to the assessed bill of costs was duly filed on the 13th August 2025 within the 14 days legal window to file an objection to a taxed bill.

iii. That the taxing officer in her ruling of 31st July 2025 as per law required never gave her reasons as to why she assessed the bill of costs dated 17th August 2024 as she did.

iv. The taxing officer in her ruling went on to rule that the bill of costs and the items disputed were drawn to scale when a look at the bill it does not in fact disclose under what schedule it is said to be drawn so as to affirm whether the items as charged are in fact to any particular schedule so as to be said to have been drawn to scale.

v. That the Appellant feels very aggrieved with taxing officer's assessment of the bill dated 17th August 2024.

vi. No prejudice shall be occasioned to the respondent, if this application is allowed.

3. The Application is supported by an Affidavit sworn and deponed as follows;

i. That I am a male adult Advocate of the High Court of Kenya, with instructions to act on behalf of the Appellant in this matter conversant with the facts herein therefore competent to swear this affidavit. ii. THAT on the 31st July 2025, the taxing officer rendered a decision on the Respondent's bill of costs dated 17th August 2024, assessing and taxing it at Kshs 178,200/=. (Attached and marked "ASK1" is a copy of the ruling).

iii. That upon my client's instructions and having sight of the ruling by the taxing officer, I filed the notice of objection to the assessment of costs in respect to the bill and I did this on the 13th August 2025 which is within the 14 days ultimatum as per rule 11 (1) of the Advocates (Remuneration) order.

iv. That ever since the objection I am yet to receive the taxing officers' reasons for the decision on the award a looking at her ruling it is evident that reasons for assessing the items as she did are not given as per law required.

v. That a look at the bill of costs dated 17th August 2024, it does not indicate on its title under which schedule the items are charged and the fact that the taxing officer did not address this fact but went ahead to state that the bill is drawn to scale was totally erroneous.

iii. That the items as charged it cannot therefore be deciphered whether charged pursuant to schedule 5 or schedule 6 and as such the omission to address this fact the assessment erroneous for lack of clarity.

iv. That if I am to address the items vehemently objected to as per the notice of objection, the instruction fee of Kshs 120, 000/= is manifestly excessive and based on an alleged debt of Kshs 907,814.38 but the subject matter of the appeal was not about a debt but was seeking to overturn a decision of the magistrates court looking at the memorandum of appeal, the decision as to whether to issue an injunction or not and more particularly the decision to release the subject car on running attachment.

v. That item 2 looking at the memorandum of appeal it was 2 pages and as such the same could not constitute 20 folios to be charged Kshs 1,000/= as assessed.

vi. That taxing officer also erred in assessing the attendances as she did and in fact, as the court record will disclose there was no attendance on the part of the respondent on the dates said to

have attended court and the figures assesses thereto are not justifiable at Kshs 7,100/= before the judge as indicated.

vii. That on item 7 which was itemized as preparing a supplementary record of appeal but remember the Appellant in this case is the objector herein and he was the one to prepare the appeal and any supplementary record of appeal if at all and as such allowing the figure of Kshs 17,500/= for work clearly not done by the respondent but the appellant is grossly erroneous. The appeal was by the objector and it does not make sense that again the respondent prepares a supplementary record of appeal

viii. That after 10 above, item 8 was erroneously charged and not justified in the circumstances.

ix. That the attendances before the judge as stated have been exaggerated and in fact as I had demonstrated in the replying affidavit dated 28th May 2025 opposing the bill of costs dated 17th August 2024, a reading of the said affidavit which is on record it clearly explains why the attendances have been assessed at a manifestly high figure contrary to the scale.

x. That all in all, I do believe the taxing officer erred in law and principle when she;

a. Failed to give reasons for her assessment of the items as she did contrary to rule 11 of the ARO.

b. Failed in principle to realize that a respondent never files a supplementary record of appeal which the taxing officer in her ruling awarded as charged.

c. Failed to appreciate in principle that mentions do not take the period as stated in the bill and had she considered our submissions which in fact in her ruling does not say she did, she would not have assessed the bill as she did.

d. Failed to appreciate the fact that the bill for failure to indicate the schedule under which the items were being charged, it was fatally defective and as such proceeded on a wrong assumption that it was drawn under the appropriate scale.

iii. That from the above I believe this reference is meritorious and should be allowed as prayed.

iv. That all I have stated herein above is true to the best of my knowledge, information and belief.

Decision

4. This is aggrievance by the Applicant against the Taxing Masters Decision with regard to the Bill of Costs arising out of the professional Legal Services which is provided for in our constitution as read with the Advocate Renumeration Order. This issue is alive in our legal system and various principles have been enunciated as demonstrated in the case of Kipkorir Tito and Kiara Advocate v Deposit Protection Fund Board (2005) eKLR the court held as follows:- " The learned judge like the taxing officer was exercising judicial discretion when he allowed the reference. This Court cannot interfere with the exercise of that discretion unless it is shown that the learned judge acted on the wrong principles of law. The appeal to this Court from the decision of a judge on reference from a taxing officer is akin to a second appeal and should be governed by Section 72 (1) of the *Civil Procedure Act*. In our view, such an appeal can only be allowed on any of the three grounds specified in Section 72 (1) of the *Civil Procedure Act*, that is to say, if the decision is contrary to law or some usage having the force of law; or the decision has failed to determine some issue(s) of law or usage having the force of law or where there is a substantial error or defect in the procedure provided by law which may possibly have produced error or defect in the decision on the case upon merits. Similarly, in the case of Kamunyori & Company Advocates v Development Bank of Kenya Limited (2015) Civil Appeal 206 of 2006, the

court stated: -"Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on 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 instructions fee is arrived at on the wrong principles, it will be set aside." (Underlining mine) Further, in the case of Peter Muthoka & another v Ochieng & 3 others [2019] eKLR, the Court of Appeal held: -"It is not lost to us ... that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in mis-justice, to borrow the holding in MBOGO -vs- SHAH

5. The Court of Appeal in Peter Muthoka & another vs Ochieng & 3others Civil Appeal No 328 of 2017 (2019) eKLR stated that "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. Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement. "We concur and approve of the foregoing findings by the Court of Appeal on the factors to take into consideration when determining the value of the subject matter."

6. The reference in question is based on many grounds including the failure to give reasons by the Taxing Master. It is trite that Judges, Magistrates, and Deputy Registrars have a fundamental duty to provide reasons for their decisions to ensure justice is seen to be done, enable appeals and foster Public Confidence. Reasons must address key agreements, evaluate evidence and explain findings on disputed facts. Failure to give adequate reasons can lead to appeals, as the Appellate court must understand the basis of the decision. A decision without reasons or with inadequate reasons is often considered an error of law or a violation of procedural fairness.

7. In my view, a Taxing Master must give a brief statement of those reasons which he or she anchored the decision on the Bill of Cost. The reasons should be sufficient to show that the Taxing Master has dealt with the issues remitted to him or her with regard to the Bill of Cost and what his or her conclusions are on those items and in consonant with the Advocate's Renumeration Order. In the Instant Reference the Appellant has shown that the reasons for the decision was absent and as a result it suffered substantial prejudice.

8. What the court is looking for in this Reference is to see that the Taxing Master understood the matter limited to her for a decision and as issued a decision on that matter. However, for our case here the reasons from the record were briefly stated and at times somehow to somewhat opaque

9. The key reasons for the duty to give reasons:

a. Transparency and Accountability: Reasons justify the decision to the parties involved, showing them that their arguments were considered.

b. Facilitating Appeals: Without adequate reasons, an appellate court cannot effectively evaluate whether a lower court erred.

c. Justice Must Be Seen To Be Done: Articulating the grounds for a decision builds public confidence in the judicial process.

d. Accuracy in Fact-Finding: Judges are expected to document their assessment of credibility and evidence, particularly when facts are in dispute

10. Indeed, on review of the decision by the Tax Master and careful steps taken to adjudicate on the Bill of Costs I am persuaded that there is merit to review the decision based on the reasons stated elsewhere in this ruling. As a consequence of which the decision be and is hereby set aside and same is remitted to Hon. Daniel Sitati the Deputy Registrar of the High Court for a re-taxation within 21 days from todays date. It is so ordered.

SIGNED, DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF FEBRUARY 2026

.....

R. NYAKUNDI

JUDGE