



**Chokaa t/a V Chokaa & Co Advocates v Local Authorities Provident Fund Board (LAPFUND)
(Civil Appeal 71 of 2020) [2026] KECA 347 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KECA 347 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 71 OF 2020
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA
FEBRUARY 27, 2026**

BETWEEN

V CHOKAA T/A V CHOKAA & CO ADVOCATES APPELLANT

AND

**LOCAL AUTHORITIES PROVIDENT FUND BOARD
(LAPFUND) RESPONDENT**

*(Being an appeal from the Ruling and order of the High Court of Kenya at Kisii,
(Ougo, J.) dated 11th March, 2017 in HC. Misc. Civil Application No. 36 OF 2017))*

JUDGMENT

1. This is an appeal from the ruling and order of the High Court of Kenya at Kisii delivered on 11th March 2020 in Miscellaneous Civil Application No. 36 of 2017 by Ougo J. The ruling arose from the taxation of an Advocate–Client bill of costs between V. Chokaa t/a V. Chokaa & Co. Advocates, “the appellant”, and the Local Authorities Provident Fund Board, (LAPFUND) “the respondent”.
2. The dispute originated from Kisii HCCC No. 17 of 2016, in which the appellant had been retained by the respondent to sue the County Government of Kisii to recover Kshs.2,412,474,210.87/- in unremitted statutory deductions due to the respondent. Though the appellant acted on the instructions and filed the suit, it did not pursue it to its logical conclusion, resulting in the suit being dismissed for want of prosecution. A disagreement over costs thereafter arose between the appellant and the respondent which led the appellant filing an Advocate–Client bill of costs for taxation. The bill was initially taxed at Kshs.1, 589,725/- by the taxing officer. Dissatisfied with the taxation, the appellant successfully filed a reference in the High Court, and the bill of costs was remitted back for fresh taxation before another taxing officer.
3. Subsequently, when the taxation came up again, the taxing officer struck it out on the basis that no Advocate–Client relationship had been established between the appellant and the respondent. The



appellant again moved to the High Court challenging the aforesaid ruling and order. The High Court once again set aside the taxing Officer's ruling and order and directed that the bill of costs be taxed afresh. The bill of costs was subsequently taxed at Kshs.54,804,907/-, and a certificate of taxation duly issued. Judgment was thereafter entered in favour of the appellant for the taxed sum together with costs and interest. A decree was subsequently issued.

4. In execution of the decree, the appellant commenced garnishee proceedings against, the respondent's bankers, the Kenya Commercial Bank Ltd, resulting in a decree Nisi Order attaching funds in its accounts with the bank. It was at this stage that the respondent moved to court, seeking to set aside the taxation proceedings contending that it had not been represented in the proceedings, had not been served with the bill of costs, and had only become aware of the proceedings upon service of the garnishee order. The respondent argued that the taxation process was in the premises flawed, that the taxing officer had applied wrong principles in assessing instruction fees, and that there existed an oral fee retainer capping the appellant's remuneration at Kshs.18 million.
5. The appellant opposed the application, maintaining that the respondent had been duly served with the taxation notice, that its advocates failed to attend court for the taxation without explanation, and that the alleged retainer was unsubstantiated. It further argued that the proper remedy for the respondent was to file a reference or an appeal, not an application to set aside the taxation proceedings.
6. The High Court, upon considering the depositions, submissions and the law, determined that the taxation proceedings be set aside, as the respondent could not suffer for the default of its former advocates. The court also set aside the certificate of taxation and all consequential orders and directed that the bill of costs be taxed afresh on condition that the respondent deposited Kshs.2,000,000/- in a joint interest-earning account in the parties' respective advocates names.
7. Being dissatisfied with the said ruling and order, the appellant has moved to this Court on appeal on grounds that the learned Judge erred in: dealing with and determining an application that had been improperly and irregularly filed in court contra the directions given by Majanja J; determining an alleged reference on taxation under Rule 11(1) of the Advocates (Remuneration) Order when no competent and valid reference had been filed in court; interfering with the taxing Officer's decision without indicating how in principle the taxing officer erred; failing to invite and accord the appellant an opportunity to be heard on the respondent's objections and the garnishee proceedings.
8. When the appeal came up for hearing, Mr. Keyonzo, learned counsel appeared for the appellant, whereas, Mr. Limbe holding brief for Ms. Julie Karegi, learned counsel appeared for the respondent. Both counsel opted to entirely rely on their respective written submissions that they had filed and exchanged in disposing of the appeal.
9. Counsel for the appellant submitted that the Bill of Costs was subjected to several taxations before different taxing officers and was eventually taxed at Kshs.54,804,907/-. That the respondent, though initially represented by counsel, nevertheless failed to attend taxation proceedings and later changed advocates. Counsel emphasized that submissions filed by counsel for the respondent was by a stranger, as no Notice of Appointment or Change of Advocates had been filed, and further that the submissions contained factual inaccuracies.
10. Counsel submitted that the learned judge erred in entertaining an application irregularly filed contrary to the directions of Majanja J. which sought orders beyond the scope permitted, including setting aside the taxation and garnishee proceedings, which breached the principle of fair hearing. Counsel further submitted that the learned judge wrongly determined a reference on taxation under Rule 11(1) of the Advocates (Remuneration) Order when no valid reference was before the Court, noting that the application was filed out of time and was therefore incompetent. He added that even assuming a



valid reference existed, the learned judge failed to demonstrate how the taxing officer erred in principle. Counsel stressed that interference with taxation is only permissible where an error of principle is shown, citing *Thomas James Arthur v Nyeri Electricity Undertaking* [1961] EA 492 and *Rogan Kamper v Lord Grosvenor (No. 3)* [1997] KLR 203 for the proposition. Counsel further submitted that the learned judge erred in making orders regarding garnishee proceedings without affording the appellant an opportunity to be heard, thereby breaching the *audi alteram partem* rule.

11. He therefore urged the Court to allow the appeal and set aside the ruling and order of the learned judge. Counsel in the alternative proposed that the ruling and order be set aside on condition that the sum of Kshs.59,804,907/- held under garnishee orders are deposited into an interest-earning joint account in the names of the parties' advocates; that the respondent be granted liberty to file fresh proceedings challenging the Certificate of Costs within fourteen days; and that, costs of the appeal and the taxation proceedings be awarded to the Appellant.

12. Counsel for the respondent while opposing the appeal submitted that the taxation arose from a debt recovery suit between the respondent and the County Government of Kisii. The respondent instructed the appellant to institute proceedings against the County Government of Kisii for unpaid statutory deductions amounting to Kshs.2,412,474,210.87.

Counsel pointed out that despite receiving Kshs.10,000,000/- from the respondent for legal services rendered so far, the appellant failed to diligently prosecute the suit, which was eventually dismissed for want of prosecution, yet the appellant proceeded to file a miscellaneous application seeking Kshs.54,901,834/- in legal fees.

13. He went on to submit that the respondent's legal manager swore an affidavit explaining that the respondent had not been served with the bill of costs and only became aware upon being served with garnishee orders. Counsel argued that the respondent was prejudiced by lack of representation and was denied an opportunity to contest the bill of costs during taxation.

14. Counsel submitted that the learned judge acted within her jurisdiction under Rule 11 of the Advocates Remuneration Order, which provides for references against taxation decisions, and under Rule 11(4), which allows enlargement of time. He argued that the appellant's contention that the application was irregular and contrary to Majanja J's directions was misconceived, as the learned judge was merely properly exercising her discretion and original jurisdiction.

15. Counsel further submitted that the reference filed was valid and competent, having been filed under Rule 11, and that the learned judge was right to interfere with the taxation since the proceedings had been conducted *ex parte*, denying the respondent a fair hearing. He relied on *Machira & Co. Advocates v Arthur K. Magugu* [2012] eKLR and *First American Bank of Kenya v Shah & Others* [2002] EALR, which held that courts may interfere with taxation where there is an error of principle or where fees are manifestly excessive. Counsel emphasized that the respondent had already paid Kshs.10,000,000/- to the appellant and that the taxation was unjust and oppressive in the circumstances.

16. On the allegation that the appellant was denied a hearing, counsel submitted that the appellant was fully aware of the reference, filed a replying affidavit, and made oral submissions. He argued that the principles of natural justice were satisfied, as both parties were afforded equal opportunity to be heard. He took the view that procedural fairness is contextual and flexible, and that the learned judge acted within the bounds of fairness. Counsel also submitted that the learned judge did not err in addressing matters beyond Majanja's earlier directions, as she was entitled to consider all issues before her to ensure that justice was done.



17. In conclusion, counsel submitted that the ruling and order did not, in any event, prejudice the appellant but instead ensured that the respondent, whose lack of representation was due to its former advocates' fault, was not condemned unheard. He argued that dismissing the appeal was necessary to protect the respondent's scheme members from bearing an unjust financial burden, given that the respondent administers retirement benefits for county government employees.
18. In our view, the issue for determination in this appeal is whether the learned Judge erred in allowing the application.
19. In exploring the issue, we appreciate that in setting aside the ruling and order of the taxing officer, the learned judge was exercising her unfettered discretion. As has been constantly held by this Court, an appellate court can only interfere with a trial court's discretion if the trial court's findings were based on misdirection in law, misapprehension of the facts, or improper application of the legal principles. This includes situations where the Court took into account irrelevant considerations, failed to consider relevant factors or reached a conclusion that was plainly wrong or demonstrably unjust. See *Mbogo v Shah and Another v Shah* [1969] EA 93 and *Price & Another v Hidler* [1996] KLR 95 and *Kenya Ports Authority v Kuston (Kenya) Limited* [2009] 2 EA 212. We discern no such misgivings in the circumstances of this case. In other words, we are satisfied that the learned judge acted within the legal bounds when she exercised her discretion to allow the application. She cannot be faulted on any of the above grounds. She gave a detailed ruling and compelling reasons that led her to the conclusion that she reached.
20. We also note that Rule 11 of the Advocates (Remuneration) Order provides the procedure for challenging the decision of a taxing officer. A party dissatisfied with taxation must give notice in writing to the taxing officer of the items objected to, and thereafter file a reference before a Judge within fourteen days. The jurisprudence of this Court is clear that Rule 11 constitutes a complete code for ventilation of grievances arising from taxation. In *Machira & Co. Advocates v Arthur K. Magugu* (supra), this Court held that the Advocates Remuneration Order provides a simple and expeditious mechanism for dealing with taxation disputes, and that grievances must be pursued through references under Rule 11 rather than appeals or reviews.
21. The learned Judge in allowing the application, invoked her discretion under Rule 11(4) and Article 50 of *the Constitution*, which guarantees the right to a fair hearing. The respondent had contended that it was not represented during the taxation proceedings and was unaware of the taxation of the bill of costs until it was served with garnishee proceedings. The learned Judge found that the respondent ought not to suffer for the default of its former advocates. This approach is consistent with the principle enunciated in *Mbaki & Others v Macharia & Another* [2005] 2 EA, where the Court held that the right to be heard is a valued right, and it would offend all notions of justice if a party were prejudiced without being afforded an opportunity to be heard.
22. On whether the Judge erred in interfering with the taxation without demonstrating an error of principle, we recall the holding in *First American Bank of Kenya v Shah & Others* [2002] 1 EA 64, where Ringera J. (as he then was), stated that a court cannot interfere with a taxing officer's decision unless it is shown that the decision was based on an error of principle, or the fee awarded was manifestly excessive. In the present appeal, the Judge's interference was premised not on quantum but on the absence of representation, which she considered a fundamental breach of the rules of natural justice. The Supreme Court in *Evans Odhiambo Kidero & 4 Others v Ferdinand Ndungu Waititu & 4 Others* [2014] eKLR underscored that fair hearing incorporates the audi alteram partem rule, and courts must guard against condemning parties unheard.



23. As to whether the learned Judge acted beyond the directions of Majanja J., we note that while Majanja J. had directed the respondent to first apply to set aside the judgment, the application dated 26th August 2019 also sought to set aside the certificate of taxation and garnishee orders. The learned Judge considered the application in its entirety and granted reliefs beyond the narrow remit of Majanja J.'s directions. However, this Court has consistently held that a Judge has inherent jurisdiction to control proceedings before him to ensure justice is done. In any event, being courts of concurrent jurisdiction, the directions issued by Majanja J were not binding on her. She was at liberty to depart from them if the interest of justice would be better served that way and that is exactly what she did here.
24. In the circumstances of this case, the learned Judge was faced with an application raising issues of taxation, judgment, and garnishee proceedings. To confine herself strictly to Majanja J.'s directions would have been to ignore the broader justice of the matter. We are persuaded that her orders, though expansive, were aimed at safeguarding the respondent's right to be heard and ensuring that taxation was conducted fairly and proper use of valuable judicial time and resources pursuant to overriding objective under the *Civil Procedure Act* and rules made thereunder. To our mind, we see no prejudice that will be suffered by the appellant if re-taxation undertaken.
25. In conclusion, we find no basis to interfere with the discretion exercised by the learned judge. The appeal is accordingly dismissed with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF FEBRUARY, 2026.

ASIKE MAKHANDIA

.....

JUDGE OF APPEAL

H.A. OMONDI

.....

JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

