



REPUBLIC OF KENYA



KENYA LAW
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**Kinyanjui Njuguna & Company Advocates v African Merchant
Asurance Company Limited (Miscellaneous Civil Application
E033 of 2025) [2026] KEHC 2400 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS CIVIL APPLICATION E033 OF 2025
CW GITHUA, J
FEBRUARY 26, 2026**

BETWEEN

KINYANJUI NJUGUNA & COMPANY ADVOCATES APPLICANT

AND

AFRICAN MERCHANT ASURANCE COMPANY LIMITED RESPONDENT

RULING

1. The applicant, Kinyanjui & Company Advocates approached this court through a chamber summons dated 13th August 2025 seeking several orders which are as follows;
 - (i) Spent
 - (ii) That this Honourable court be pleased to set aside and or vacate the decision of the taxing officer delivered on 7th August 2025 in Murang'a HCCC MISC E033 of 2025.
 - (iii) That this Honourable Court be pleased to remit and/or refer the Advocate and Client Bill of Costs dated 6th March 2025 before a different taxing officer for fresh taxation.
 - (iv) That in the alternative, this Honourable Court be pleased to proceed to tax by itself the Advocate and Client Bill of costs dated 6th March 2025 on the disputed items.
 - (v) The costs of this application be in the cause.
2. The application is premised on the grounds stated on its face and the depositions made in the supporting affidavit sworn by Kinyanjui Theuri, the managing partner of the applicant.

In summary, the applicant contends that it filed an Advocate/client's bill of costs against the respondent seeking costs in the sum of Kshs.337,753.18; that the taxing officer taxed the bill at Ksh.122,225 but in his ruling delivered on 7th August 2025, he wrongly exercised his discretion and



acted on wrong principles by disregarding the provisions of schedule VII (B)(a) of the Advocates Remuneration Order of 2014 thereby arriving at an erroneous conclusion. It was the applicant's case that the application had merit and ought to be allowed as prayed.

3. The application is contested by the respondent. Ms. Janet Abayo, the respondent's Legal Officer swore a replying affidavit dated 24th August 2025 supporting the decision of the taxing officer. Ms. Abayo deposed that the taxing officer properly exercised his discretion and took into account the subject matter of the suit; the general conduct of the matter and found that the case did not warrant increase of the instruction fees by half.
4. According to the respondent, there was no good reason to justify disturbing the findings of the taxing officer; that the applicant was underserving of the orders sought and the application ought to be dismissed with costs.
5. The application was canvassed by way of written submissions which both parties duly filed and which I have carefully considered.

In its submissions, the applicant emphasized that although taxation of a bill of costs was an exercise of discretion by a taxing officer, that discretion must be exercised judiciously taking into account the relevant schedule of the Advocates Remuneration Order and the principles of taxation enumerated in the case of *Premchand Raichand Ltd V Quarry Services of East Africa Ltd* [1972] EA 162.

6. Further, the applicant re-iterated that the impugned decision ought to be set aside as it was based on an error of principle given that the taxing officer failed to adhere to the provisions of Schedule VII (B) (a) of the Advocates Remuneration Order of 2014 which required the taxing officer to increase the advocates and client fees by 50%.
7. On its part, the respondent in its submissions just replicated the depositions made in the replying affidavit filed on its behalf.
8. Having considered the application, the affidavits on record as well as the parties rival written submissions, it is clear that the applicant has not disputed or challenged the taxed costs on any of the items listed in the Advocate/Client bill of costs dated 6th March 2025.
9. The applicant's only grievance is that the taxing officer failed to increase the taxed costs by 50% as required by Schedule V11 (B) of The Advocates Remuneration Order. That being the case, the only issue arising for my determination is whether the taxing officer complied with Schedule V11 (B) of The Advocates Remuneration Order and if not, whether the omission amounted to an error of principle that would warrant intervention by this court.
10. The principles upon which this court can interfere with the decision of a taxing Officer are well settled. They were succinctly articulated in one of the cases cited by the applicant, namely, *Nyangito & Co Advocates Vs. Doinyo Creameries Ltd* [2014] eKLR in which the court expressed itself as follows;

“... The circumstances under which a judge of the High Court interferes with the taxing officer's exercise of discretion are now well known. These principles are,

- (1) that the 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 manifestly excessive as to justify an inference that it was based on an error of principle;
- (2) it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration



Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge;

- (3) if the court considers that the decision of the taxation officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset a taxation because in its opinion, the amount awarded was high.”

11. In addressing the issue isolated above, I wish to start by pointing out that there is no contest that the applicant’s Advocate/Client bill of costs arose from Murang’a CMCC No.113 of 2018 and therefore, the bill was properly taxed under Schedule V11 of the Advocates Remuneration Order of 2014.

12. Schedule V11 Part A deals with party and party costs while Schedule V11 Part B deals with Advocates/ Clients costs.

Schedule V11 Part B provides as follows;

“ As between Advocate and client, the minimum fees shall be

- (a) The fees prescribed in A above, increased by one-half; or
- (b) the fees ordered by the court increased by 50%; or
- (c) the fees agreed by the parties under paragraph 57 increased by 50%, as the case may be and the increase to include all proper attendances on the client and all necessary correspondence”

13. As correctly pointed out by the applicant, the applicable provision in this case was Schedule V11 Part B (a) since what was before the taxing officer for taxation was costs claimed by an advocate in an Advocate/client bill of costs not fees ordered by the court or costs emanating from an amount arrived at in an agreement by the parties.

14. A reading of Schedule V11 Part B makes it very clear that in taxing an Advocate/client bill of costs, the taxing officer after assessing costs in Part A must increase those costs by one half. This provision is couched in mandatory terms and does not leave any room for discretion by the taxing officer.

15. In this case, the record reveals that in his ruling dated 7th August 2025, the taxing officer after assessing costs payable to the applicant under Schedule V11 Part A left the matter there. He did not proceed to comply with Schedule V11 Part B (a) which required him to increase those costs by one half.

16. Given the mandatory nature of the provisions of Schedule V11 Part B, it is my finding that the taxing officer’s failure to comply with the provision of Schedule V11 Part B (a) amounted to an error of law and principle which led to an erroneous decision.

17. Having found as I have above, it is my conclusion that the applicant’s summons dated 13TH August 2025 is merited and it is hereby allowed in terms of prayer 2 with the result that the taxing officer’s decision dated 7th August 2025 is hereby set aside.

18. The next question for my consideration is, what happens now after setting aside the taxing officer’s decision?.



In prayer 3 and 4 of the summons, the applicant invited this court to either remit the Advocates/ Client bill of costs to a different taxing officer for fresh taxation or to proceed and tax the bill itself.

19. Having weighed both options, considering that the assessment of costs under Schedule V11 Part A is not contested, I find that remitting the bill of costs to a different taxing officer for fresh taxation is not necessary because what is required to correct the error made by the taxing officer is not fresh taxation but increasing the already assessed costs by one half as required by Schedule V11 Part B. In order to save judicial time and further costs by the parties, I will proceed to correct the error made by the taxing officer by complying with Schedule V11 Part B of the Advocates Remuneration Order of 2014.
20. As stated earlier, the uncontested costs assessed under Schedule V11 Part A in this case amounted to Kshs.122,225. A half of this amount translates to Kshs.61,112.5. The total amount that ought to have been awarded to the applicant as Advocate/Client costs was thus Kshs.122,225 + 61,112 which amounts to Kshs.183,337.5. The Advocate/client bill of costs dated 25th March 2025 is therefore taxed at Kshs.183,337.5.
21. Costs follow the event but are awarded at the court's discretion. The best order that commends itself to me on costs is that each party shall bear its own costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 26TH DAY OF FEBRUARY 2026.

HON. C. W. GITHUA

JUDGE

In the present of

Mr. Mabeya for the Applicant

Ms Njue for the Respondent

Ms Susan Waiganjo, Court Assistant

