



Mariaria & Company Advocates v Gitau t/a Gallant Investments (Miscellaneous Civil Application E750 of 2024) [2026] KEHC 2659 (KLR) (Civ) (22 January 2026) (Ruling)

Neutral citation: [2026] KEHC 2659 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E750 OF 2024
SIFUNA NIXON, J
JANUARY 22, 2026

BETWEEN

MARIARIA & COMPANY ADVOCATES ADVOCATE

AND

JESSE MBURU GITAU T/A GALLANT INVESTMENTS CLIENT

RULING

1. This ruling is on the Application dated 8th November 2024. The same is a Notice of Motion. Nyamboga Mariaria an Advocate trading as Mariaria & Company Advocates, Represented The Client Jesse Mburu Gitau who trade as Gallan Worldwide Investments. He Represented Him In Milimani Commercial Court Civil Case No. 1691 Of 2019 Jesse Mburu Gitau T/a Gallan Worldwide Investments V. Lucy Jepkemboi Ruto.
2. Thereafter he filed his Advocate-Client Bill of Costs in this Court. The Bill was subsequently taxed by the Taxing Officer in a ruling (taxation decision) dated 4th November 2024. That ruling was arrived at without any input from the Client. The Client then filed this Application dated 8th November 2024, to set aside the said taxation.
3. The Application as already stated in this ruling, is a Notice of Motion, is a review Application, invoking this Court's power of review under Order 45 of the Civil Procedure Rules. The Application is seeking the review and setting aside of the said Taxation so that the Client can file a response and the taxation done de novo.
4. The Advocate has filed his Replying Affidavit of 16th December 2024, opposed the Application. His opposition being mainly on the ground that the subject ruling being a taxation ruling, it can only be challenged by way of a Reference under Paragraph 11 of the Advocates Remuneration Order. To support this position, the Advocate has cited several legal authorities to that effect.



5. The Application proceeded by way of written submissions. With each party filing its submissions. The Client's submissions are dated 17th February 2025. While the Advocate's submissions in opposition, are dated 6th March 2025.

Analysis and Determination

6. I have considered the Application (together with its Supporting Affidavit), the Response by the Advocate, as well as the parties' respective submissions and legal authorities cited. I have also perused the entire record of the taxation proceedings before the Taxing Officer a Deputy Registrar of this Court. I have also considered the relevant provisions of the law, as well as the applicable legal principles which I am about to set out shortly in this ruling.
7. The arguments and the legal authorities the Advocate has cited in opposition to the Application, all relate to Taxation References. As attractive as they may seem, they relate to Taxation References. Hence do not crack the real contest in this Application.
8. Upon carefully distilling the Application, I am of the opinion that it is not a Taxation Reference. It is actually an Application to set aside ex parte taxation proceedings. It is hinged on the grievance that the proceedings proceeded without his input and participation; and that the consequent or resultant ruling was arrived at without his input and participation.
9. This being a court of justice and not a court of technicalities, it will not prioritize procedural technicalities and niceties of procedure over the ends of justice. This is what the Kenya Constitution which is the supreme law of the land, commands of it in Article 159 (2). Requiring courts to determine matters on substantive justice, and not on procedural technicalities.
10. The right to be heard and to determine disputes on their merits, is not only a fundamental tenet of natural justice, but one of the pillars of the right to a fair hearing as guaranteed under Article 50 (1) of *the Constitution*.
11. Constitutional imperatives such as this, are on a higher pedestal than the Advocates Remuneration Order, whose provisions the Advocate is seeking to take refuge in. That the Client did not participate or make an input in the said taxation proceedings, is a fact that the Advocate has not denied. The only question is whether the facts on record will persuade this Court to re-open the taxation proceedings and give him a chance to file a response and be heard; or let him be condemned unheard.
12. It is my considered view, that any legal proceedings that take place in the absence or without the participation of a party, may on sufficient reason being given by such a party, be set aside. The present case is one such.
13. The Client has explained that his failure to file a response and participate in those taxation proceedings, was a mistake by his Advocate. Which he pleads should not be visited on him. The mistake of the Advocate not filing a response despite promising the court to do so.
14. Of such blunders, Apaloo JA (as he then was) in case of Philip Kiptoo Chemweno & Another v. Augustine Kubende [1986] eKLR observed as follows:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made, that a party should suffer the penalty of not having his case determined on its merits.

“I think the broad equity approach to this matter, is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The



court, as it is often said, exists for the purposes of deciding the rights of the parties and not for the purpose of imposing discipline.”

15. As to whether this is a Taxation Reference, that had to be filed within the timelines prescribed in paragraph 11 of the Advocates Remuneration Order, I hold that it is not. Had this Application invoked paragraph 11 of the Advocates Remuneration Order, it could have been one. The Application speaks for itself.
16. It is clearly a review Application and has cited Order 45 of the Civil Procedure Rules, which together with Section 80 of the *Civil Procedure Act* (Cap 21 Laws of Kenya) are the functional provisions for the court’s review powers. This is also the proper court for this review Application, as the taxation proceedings were file in this Court; and Hon. G. Sitati the Taxing Officer in this matter was a Deputy Registrar of the Court.
17. Condemning anyone or any party unheard is one of the highest injustices. On the basis of the facts of this matter as well as the relevant provisions cited in this ruling, and the applicable legal principles, I am persuaded to allow this Application. Hence do hereby allow it, and make the following consequential orders:
 - a. The Taxation Ruling delivered on 4th November 2024 by Hon. G. Sitati (Taxing Officer), is hereby set aside in its entirety.
 - b. The Advocates’ Advocate-Client Bill of Costs dated 29th July 2024 shall be taxed de novo by Hon S. Motari (Taxing Officer).
 - c. The Taxation should be conducted and concluded within 60 days from the date of this ruling.
 - d. There shall be no orders as to the costs of this Application.

DATED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF JANUARY 2026.

PROF (DR) NIXON SIFUNA

JUDGE

