

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**  
**MISC. APPLICATION NO. E026 OF 2024**

**MILLIMO, MUTHOMI & CO.**  
**ADVOCATES.....APPLICANT**  
**VERSUS**  
**MUNUNGA TEA FACTORY COMPANY**  
**LIMITED.....RESPONDENT**

**RULING**

**A. Introduction**

Before this Court is the Chamber Summons Application dated 22nd October 2025 by the Applicant, *Millimo, Muthomi & Co. Advocates*, seeking, principally, that this Court sets aside the ruling of the learned taxing master delivered on 20th May 2024 in respect of the Amended Advocate-Client Bill of Costs dated 14th February 2024, particularly as it relates to Item 1 (instruction fees) and Item 10 (getting-up fees), and that the same be taxed afresh.

The Application is premised on the grounds set out therein and supported by the affidavit of Jacqueline Busima Cynthia. It is opposed by the Respondent through the replying affidavit sworn by Mathews Odero.

## **B. Background**

The Applicant acted for the Respondent in Embu ELC No. 254 of 2014 upon instructions from Kenya Tea Development Agency Ltd. A dispute subsequently arose regarding payment of legal fees, prompting the Applicant to file an Amended Advocate-Client Bill of Costs dated 14th February 2024 in the sum of Kshs. 1,828,163/=.

Upon taxation, the learned taxing master assessed the Bill at Kshs. 1,119,492.44/=.

The Applicant is aggrieved by the manner in which the taxing master assessed instruction fees and consequential getting-up fees. In particular, the complaint is that the taxing master deducted a prior payment of Kshs. 588,769/= from the instruction fees instead of from the final taxed sum.

## **C. Issues for Determination**

From the pleadings and submissions, the following issues arise for determination:

1. Whether this Court has jurisdiction to interfere with the decision of the taxing master;
2. Whether the taxing master erred in principle in the assessment of instruction fees (Item 1);
3. Whether the error, if any, affected the assessment of getting-up fees (Item 10);

#### 4. What orders ought to issue.

The law on interference with taxation is well settled. A Judge will not interfere with the discretion of a taxing officer unless it is shown that:

- the taxing officer acted on a wrong principle;
- failed to consider relevant factors or considered irrelevant ones; or
- the award is manifestly excessive or low as to amount to an injustice.

This principle was succinctly stated in *First American Bank of Kenya Ltd v Gulab P. Shah & 2 Others* (2002) eKLR, and reaffirmed by the Court of Appeal in *Kamunyori & Company Advocates v Development Bank of Kenya Limited* (2015) eKLR.

Comparatively, similar principles obtain in other common law jurisdictions. In **Uganda**, the position in *Makula International Ltd v Cardinal Nsubuga & Another* is that an error of principle must be apparent before interference. In **England**, courts will interfere where there is a “manifest error” or misapplication of principle, as seen in *Re A Solicitor’s Bill of Costs*.

These authorities underscore that taxation is a discretionary exercise, but one that must be anchored on correct legal principles.

#### **E. Analysis**

**i. Whether there was an error in principle in the assessment of instruction fees**

The crux of the dispute lies in how the taxing master treated a payment of Kshs. 588,769/= made by the Respondent.

The record shows that the taxing master first identified instruction fees at Kshs. 1,021,250/=, but proceeded to deduct the said payment from that figure, arriving at Kshs. 432,481/= as the instruction fees.

With respect, that approach was erroneous.

Instruction fees are governed by the Advocates Remuneration Order and are determined based on the value of the subject matter, complexity, and other relevant considerations. They are a **primary and self-contained item** in a Bill of Costs.

The deduction of payments already made is not a factor in determining instruction fees. Such payments go to **settlement of the taxed costs**, not to the **assessment of individual items**.

The proper approach is that once the entire Bill is taxed and the total sum ascertained, any payments made are then credited against the final figure.

By deducting the payment at the stage of determining instruction fees, the taxing master effectively reduced the base figure upon

which other dependent items are calculated. This amounted to a misapplication of principle.

This Court agrees with the Applicant that such an approach distorts the structure of taxation and results in an unjust outcome.

Getting-up fees, under the Advocates Remuneration Order, are ordinarily pegged at one-third of the instruction fees.

Having improperly reduced the instruction fees, the taxing master inevitably arrived at a diminished figure for getting-up fees (Item 10).

It follows that the error in Item 1 directly infected Item 10.

The Respondent argued that the deduction was justified on account of prior payment. While the Court acknowledges the existence of such payment, the issue is not whether the payment should be accounted for, but **when and how**.

On this point, the law is clear: such payment is to be applied after taxation, not during the computation of individual items.

### **Legal Analysis and Determination**

In light of the foregoing, this Court finds that:

- The taxing master acted on a wrong principle in deducting the sum of Kshs. 588,769/= from the instruction fees;

- The error materially affected the assessment of both instruction fees and getting-up fees;
- The taxation, to that extent, cannot stand.

## **G. Orders**

Accordingly, the Court makes the following consequential orders:

1. The ruling of the taxing master delivered on 20th May 2024 is hereby **set aside** in respect of Item 1 (instruction fees) and Item 10 (getting-up fees).
2. Item 1 and Item 10 of the Amended Advocate-Client Bill of Costs dated 14th February 2024 are hereby **remitted for taxation afresh before a different taxing officer.**
3. The taxing officer shall:
  - Assess instruction fees strictly in accordance with the Advocates Remuneration Order;
  - Compute getting-up fees based on the properly assessed instruction fees;
  - Thereafter account for any payments made by the Respondent as a credit against the final taxed sum.
4. The rest of the taxation, not challenged, shall remain undisturbed.
5. The costs of this Application shall be **borne by the Respondent.**

It is so ordered

**DATED, SIGNED AND DELIVERED AT EMBU THIS 19<sup>th</sup> DAY  
OF MARCH 2026.**

.....  
**E.C CHERONO  
ELC JUDGE**

**In the presence of;**

- 1. Applicant/Advocate-absent.**
- 2. Respondent/Advocate-absent.**
- 3. Diana Kemboi C/A.**