



**Waiyaki & 2 others (Legal Representatives of the Estate of Simon Njogu Kanai  
- DCD) v Kuria t/a Kimamo Kuria Advocates (Miscellaneous Application  
E007 of 2025) [2026] KEHC 4810 (KLR) (15 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS APPLICATION E007 OF 2025  
RM MWONGO, J  
APRIL 15, 2026**

**BETWEEN**

**BETH MUTHONI KAMAU WAIYAKI, ANN MURINGO KANAI & MARY  
WAMARWA KANAI (LEGAL REPRESENTATIVES OF THE ESTATE OF SIMON  
NJOGU KANAI - DCD) ..... APPLICANT**

**AND**

**KIMAMO KURIA T/A KIMAMO KURIA ADVOCATES ..... RESPONDENT**

**RULING**

**The Application**

1. By a chamber summons dated 23<sup>rd</sup> June 2025, and supported by the grounds set out on the face of the application as well as the facts deposed in the supporting affidavit thereof, the applicant seeks orders as follows:
  1. That the Honourable Court be pleased to set aside/vary the decision of the Taxing Officer Hon. D. Endoo dated 13<sup>th</sup> May 2025;
  2. That the Respondent's Party and Party Bill of Costs dated 14<sup>th</sup> November 2024 be remitted back to the Taxing Officer for fresh taxation;
  3. That the fresh taxation be undertaken by a different Taxing Officer other than Hon. D. Endoo;
  4. That the costs of this application be borne by the Respondent; and
  5. That the costs of the Application be provided.
2. The applicants contend that the taxing master delivered a ruling on 07<sup>th</sup> May 2025 on taxation of the bill of costs dated 13<sup>th</sup> November 2024. The applicants object to the ruling through a notice of



objection dated 19<sup>th</sup> May 2025. In their objection, the applicants states that property parcel number Ngandori/Kirigi/7611 does not form part of the estate and its value does not make up part of the value of the estate; that the client retained a different advocate to re-apply for confirmation of grant. That the increment by 50% concerning part B of Schedule 7 is erroneous.

3. The taxing master directed that the applicants file a reference in which they contended that:
  1. The taxing officer erred in law and principle by assessing the instructions fees using the wrong suit value as result of which he arrived at the wrong instructions fees;
  2. The taxing master erred in law and in principle in including the value of the land parcel known as Ngandori/Kirigi/7611 which did not form part of the estate;
  3. The taxing officer misdirected herself and wrongly calculated the amount of instruction fees payable to the respondent;
  4. The taxing master erred in law and in principle in awarding "prescribed increment" without any reason and/or justification in light of the circumstance of this matter; and
  5. The taxing master erred in law and in principle in increasing the total by 50% pursuant to Part B of Schedule 7, which is clearly not applicable in a Succession Matter at the High Court.
4. In the supporting affidavit sworn by one of the applicants, she produced copies of official search and green card for parcel number Ngandori/Kirigi/7611 in the name of the deceased and an email from the advocate confirming that the named property had been subdivided and alienated by sale to 3 different buyers at the time of filing the suit. The applicants alleged impropriety by the respondent including forgery of their signatures during the fresh application for confirmation of grant after it had been revoked at the behest of 3<sup>rd</sup> parties who are the buyers of the subdivided portions of the land.
5. The applicants deposed that after revocation of grant, they retained new advocates and the respondent filed his bill of costs for Kshs.3,500,000/= which they opposed for reasons specified under paragraph 10 of the supporting affidavit. Among these reasons was that the respondent had overvalued the estate deliberately to an estimate of Kshs.150,000,000/= with glaring discrepancies appearing on valuation of some of the properties. In her ruling, the taxing master taxed the bill of costs at Kshs.6,182,284/= which the applicants find to be oppressive. The ruling is based on the exaggerated valuation of the estate of the deceased.
6. The applicants stated that Ngandori/Kirigi/7611 does not form part of the estate of the deceased and that was an undisputed fact. That the respondent herein is not entitled to increment by 50% given that the applicants had to retain another advocate to re-apply for confirmation of grant. On this basis, they prayed that the bill of costs be referred back for re-taxation by another taxing master.

### **Replying Affidavit**

7. The respondent filed his replying affidavit stating that the applicants provided him with a list of the assets of the deceased with their estimated value and he produced the relevant correspondence between them as evidence. He stated that it was not his role to value the property as this responsibility lay with the applicants and they presented the valuation estimated to him. That the applicants estimated the value of the estate to be Kshs.290,120,000/= and he was thus instructed.
8. After obtaining the grant, the applicants instructed the respondent that they had reached an agreement on distribution of the estate and that he should file summons for confirmation of the grant. He drafted it and shared a draft with the applicants to approve and they did, before he filed it. He appended the



applicant's electronic signatures on the documents with their approval before filing and this mode of signing was within their full knowledge.

9. He produced a copy of an email showing that the applicants had acknowledged filing of the summons as approved and signed. The applicants attended court and consented to the distribution because the documents were proper and properly filed. On 04<sup>th</sup> January 2024, the applicants informed him that the matter was concluded and a certificate of confirmation had been issued. He stated that the allegations made in the application are baseless and that he conducted himself in a professional manner throughout the proceedings. He urged the court to dismiss the reference.

### **Parties' Submissions**

10. In their submissions, the applicants reiterated that land parcel number Ngandori/Kirigi/7611 had been alienated in the year 2006 and that it no longer formed part of the estate of the deceased. That as a result of including the said property and its value into the estate, the findings of the taxing master's award resulted to an excessive amount of legal fees. They also argued that the 50% increment should not have been allowed for the same reasons stated in the supporting affidavit to the application. Moreover, they asserted that the taxing master did not give any reasons for granting the increment. They relied on Rule 51C of the Advocates Remuneration Order, 1962.
11. They also argued that Schedule 7 Rule B should not apply in succession cases before the High Court. For this, they relied on the case of *Keti v WK Ngenoh & Co Advocates* [2024] KEHC 7358 (KLR). Further reliance was placed on the cases of *Kipkorir, Titoo & Kiara Advocates v June Nduta Kinyua & another* [2012] KECA 52 (KLR), *Amuga & Co. Advocates v Joyce Nzisa & 4 others* [2018] KEHC 10028 (KLR), *Lawrence Oigoro Nyangito t/a Nyangito & Associates v Hawa Mohamed Abdalla* [2021] KEHC 4726 (KLR) and *Njeri v Mathenge* [2022] KEHC 14977 (KLR). They argued that the bill of costs is determined based on the rectified confirmation of grant indicating the correct value of the estate. They urged the court to set aside the ruling by the taxing master and then remit the matter back to another taxing master.
12. The respondent filed submissions arguing that when the applicants instructed him, they did not tell him to exclude land parcel number Ngandori/Kirigi/7611 and this has been proved. Therefore, the property ought to have formed part of the estate throughout the case. He relied on the cases of *Kulwant Singh Sihra v Peterson Githinji Mwangi t/a Githinji Mwangi and Associates* [2018] KEHC 9918 (KLR), *S.G. Mbaabu & Co. Advocates v Joseph Muoki Kakenyi & 2 others* [2019] KEHC 10944 (KLR) and *Joreth Ltd v Kigano & Associates* [2002] KECA 153 (KLR) in support of his argument. He urged the court not to disturb the findings of the taxing master and he cited the case of *Mbogo v Shah* [1968] EA 93.

### **Issues for Determination**

13. Whether the respondent's bill of costs ought to be allowed or remitted back to another taxing master for taxation.

### **Analysis and Determination**

14. The parameters for interfering with a taxing master's discretion are laid down in the case of *First American Bank of Kenya vs Shah and Others* [2002] 1 E.A. 64 at 69 where it was held thus:

“First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle". [Emphasis added]

15. From the adduced evidence, the applicants instructed the respondent who was their advocate at the time, to institute succession proceedings on their behalf. The respondent wrote to them requesting for the list of assets in the estate and their estimated value. The applicants wrote back to the advocates with a list of the properties in the estate and that list included land parcel number Ngandori/Kirigi/7611 which they acknowledged that it had been irregularly and unlawfully subdivided three ways and transferred to third parties. Regardless, the applicants included its value of Kshs.150,000,000/= into the cumulative value of the estate which the respondent considered in filing the suit.
16. The grant was issued on 06<sup>th</sup> June 2022 and was duly confirmed and a certificate of confirmation of grant issued on 06<sup>th</sup> November 2023 distributing all the property including land parcel number Ngandori/Kirigi/7611. The distribution was by a consent by the beneficiaries filed by the respondent. Later, summons for revocation of grant dated 16<sup>th</sup> January 2024 was filed against the applicants and all beneficiaries of the estate of the deceased. On 15<sup>th</sup> February 2024, the applicants' new advocate filed a notice of change of advocates, taking over the proceedings from the respondent, going forward.

### **Conclusions and Disposition**

17. From this history, it is clear that the applicants' instructions to the respondent ended after issuance of the certificate of confirmation of grant. Any further proceedings in the matter were, and are being, undertaken by a different advocate. The respondent was within his right to bill for costs in the manner that he did and by referring to the value of the estate as provided by the applicants. As stated in his replying affidavit, it is not within his role as an advocate to pursue valuation of the properties making up the estate of the deceased. Moreover, the correspondence exchanged between the parties demonstrates that the respondent was well instructed and the applicants did not express any reservations regarding parcel number Ngandori/Kirigi/7611. To that end, the taxing master did not err in her findings.
18. As regards the taxing master's findings that the total is increased by 50% in line with part B of schedule 7 of the Advocates Remuneration order, the taxing master did indeed err in stating as such because Schedule 7 refers to costs of proceedings in the subordinate court. The correct provision is Schedule 6 which guides on costs in the High Court. Part B thereof provides guidance that there be an increase of 50% of fees prescribed in Part A or as ordered. Therefore, the effect of this error does not change the outcome of the taxing master's ruling.
19. In the result, the application lacks merit and is hereby dismissed.
20. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 15<sup>TH</sup> DAY OF APRIL, 2026.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Ms. Nganga holding brief for Mrs. Kariuki for Applicant

Ms. Kamau for Respondent

Stella Kithinji - Court Assistant

