Mwananchi Credit Limited v Mwangi & 11 others (Miscellaneous Commercial Application E025 of 2025) [2026] KEHC 5790 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5790 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

MISCELLANEOUS COMMERCIAL APPLICATION E025 OF 2025

FN MUCHEMI, J

APRIL 30, 2026

BETWEEN

MWANANCHI CREDIT LIMITED ..... APPLICANT

AND

FRANCIS WAITHIMA MWANGI ..... 1ST RESPONDENT

JAMES KIRIMI FRANCIS ..... 2ND RESPONDENT

RACHAEL FRASIAH MWANGI ..... 3RD RESPONDENT

HENRY KIOGORA THIGA ..... 4TH RESPONDENT

NICHOLAS KIBURI IBRAHIM ..... 5TH RESPONDENT

MARY WANJA KINYUA ..... 6TH RESPONDENT

JANET NYAGUTHII NJOROGE ..... 7TH RESPONDENT

HENRY GITONGA M'IMUNYA ..... 8TH RESPONDENT

DESMOND MUTHEU MUTWIRI ..... 9TH RESPONDENT

CYPRIAN KAINGA MUTUOTA ..... 10TH RESPONDENT

SUSAN WANGARI MUCHIRI ..... 11TH RESPONDENT

JACKSON KIMANI NJENGA ..... 12TH RESPONDENT

RULING

Brief facts

1. The application for determination dated 26th September 2025 seeks to set aside the ruling and decision of the Deputy Registrar of 15th September 2025 in HCCOMM No. E013 of 2024 whereby the

applicant's Party and Party Bill of Costs was struck out despite costs having been expressly awarded by this court on 16th December 2024. The applicant further seeks that the court direct that the Bill of Costs dated 5th June 2025 be placed before a competent Taxing Officer for taxation on merits.

2. In opposition to the application, the 1st and 2nd respondents filed a Replying Affidavit dated 4th February 2026.

The Applicant's case

3. The applicant states that this court in its ruling dated 16th December 2024 expressly awarded costs to the defendants including the applicant herein upon withdrawal of the suit. The applicant further states that the duty of the Deputy Registrar under the Advocates Remuneration Order is to tax bills of costs where costs have been awarded and not to sit on appeal or purport to overturn a decision of the High Court.

4. The applicant argues that the Deputy Registrar misdirected himself in refusing to tax the Bill of Costs effectively setting aside or varying the order of the High Court which was beyond his powers. The question of filing a memorandum of appearance or notice of appointment was not raised or disputed before the trial Judge at the time costs were awarded, and could not be re-litigated before the Taxing Officer at the taxation stage. The applicant further argues that the Deputy Registrar erred in law and fact by delving into issues touching on representation, appointment of counsel and filing fees which matters were irrelevant to the taxation exercise and already subsumed under the High Court's award of costs.

5. The applicant states that the Deputy Registrar erred in law and fact by holding that the bill of costs was improperly before the court and striking it out on account of filing anomalies such as fees not being receipted despite the fact that such administrative issues could not vitiate the High Court's award of costs. Further the Deputy Registrar erred in law and in fact by ignoring that they filed submissions and list of authorities on 15th July 2025 in support of the bill of costs.

The 1st & 2nd Respondents' Case

6. The 1st & 2nd respondents state that the Deputy Registrar in dismissing the bill of Costs pondered over whether the applicant participated in the suit. The 1st & 2nd respondents state that they filed their suit and application on 7th November 2024 and paid the filing fees. Thereafter they obtained a court order on 13th November 2024 and duly served the same upon the defendants, including the applicant who affixed the company stamp on the face of the service documents. The 1st & 2nd respondents state that on 19th November 2024, their advocates received memoranda of appearance via email from both counsel for the 1st and 2nd defendants.

7. The 1st & 2nd respondents further state that they consulted with the defendants and they decided to pursue arbitration and resolved to withdraw the court case vide Notice of Withdrawal of Suit dated 9th December 2024 and their advocates filed and served the same upon the defendants via email and the 1st, 2nd and 4th defendants acknowledged receipt.

8. The 1st & 2nd respondents stare that on 16th December 2024 when the mater came up for mention for directions, notwithstanding that their advocates had informed the applicant of the said notice well in advance, they were surprised to be informed that the applicant had served their advocate a memorandum of appearance and a notice of preliminary objection. The court marked the suit as withdrawn and the applicant sought for costs and drew their bill of costs dated 5th June 2025.

9. The 1st & 2nd respondents further state that it is only after the Deputy Registrar read the ruling that they checked the CTS and it dawned on them that despite the applicant serving them with a memorandum of appearance and a preliminary objection its counsel was not properly on record for failing to regularize his appearance by paying the necessary court fees leading to the bill of costs being demised. The 1st & 2nd respondents argue that it is unfortunate that even after receiving the notice of withdrawal of suit, one week before the mention date of 16th December 2024 and acknowledging receipt, the applicant still instructed its counsel to come on record.

10. The 1st & 2nd respondents argue that the applicant's counsel did not upload the documents served on their advocate on the CTS neither did they pay any fees for them which would explain why the applicant has not annexed payment of receipts to its application presently before the court. the 1st & 2nd respondents further argue that from the CTS, the only documents uploaded by the applicant's counsel are on 5th June 2025 being the bill of costs.

11. The 1st & 2nd respondents state that court fees are a jurisdictional prerequisite for initiating legal action and failure to pay them means no valid case exists, thus precluding the award of costs to the defaulting party.

12. Directions were issued that parties put in written submissions and the 1st & 2nd respondents elected not to file any written submissions. The applicant on the other hand had not filed its submissions by the time of writing this ruling despite informing the court that they did.

Issue for determination

13. The main issue for determination is whether the applicant has made out a case for setting aside of the taxing master's ruling dated 15th September 2025.

The Law

14. Rule 11 of the Advocates Remuneration Order provides:-

    1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects

    2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

15. The taxation ruling was delivered on 15th September 2025 and the applicant filed the instant reference on 29th September 2025 which is within the 14 days for filing the current application. Thus, the application has been filed timeously.

Whether the applicant has made out a case for the setting aside of the taxing master's ruling.

16. The law is settled that a court will only interfere with the taxing master's decision where there is an error of principle. In Republic vs Ministry of Agriculture & 2 Others ex parte Muchiri W'njuguna & 6 Others [2006] eKLR it was held:-

> The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer,

> particularly where he is an officer of great experience, merely because it thinks that the award somewhat too high or too low; it will only interfere if it thinks the ward so high or so low as to amount to an injustice to one party or the other....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 interference that it was based on an error of principle.

17. In Machira & Co. Advocates vs Magugu [2002] 2EA where Ringera J (as he then was) held that:-

> As I understand the practice relating to taxation of bill of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to a judge in accordance with paragraph 11 of the Advocates Remuneration Order.

18. The applicant's party and party bill of costs is dated 5th June 2025 and was drawn for Kshs. 1,350,000/-. The taxing master found that the bill of costs was improperly before the court and hereby struck it out. On perusal of the record, the bill of costs was drawn pursuant to this court's orders dated 16th December 2024 where the suit against the defendants was withdrawn with costs to the defendants. It is trite law that costs follow the event. The question of whether the applicant participated in the commercial matter was raised to determine whether it was entitled to costs. From the Case Tracking System, the applicant herein did not file a notice of appointment or preliminary objection despite serving the 1st and 2nd respondents with the same. Therefore there is no evidence of the applicant ever instructing counsel to come on record and represent it and accordingly, the issue of instruction fees in the bill of costs dated 5th June 2025 cannot stand.

19. On further perusal of the CTS, the applicant filed their first document on 5th June 2025 being the bill of costs however they did not pay the filing fees of Kshs. 500/-. The tab shows that "batch file not paid" and "not actioned". The same being not paid, there was no action on the bill. Even presently, the same has not being paid nor has it being actioned. As such, the bill of costs cannot be said to be properly before the court as the same has never been paid for. That notwithstanding, the applicant did not annex any receipts for filing fees of the notice of appointment, preliminary objection and the bill of costs which supports the argument that the applicant never filed or paid fees for the purported application. It is clear that the bill of costs was improperly before the court and the Deputy Registrar rightfully struck it out. Consequently, this court cannot interfere with the taxing master's decision as the applicant has not shown that the decision was based on any error of principle.

20. Accordingly, the application dated 26th September 2025 is not properly before the court and it is hereby struck out with costs to the 1st and 2nd respondents.

21. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF APRIL 2026.

F. MUCHEMI

JUDGE