

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL MISCELLANEOUS APPLICATION NO. E206 OF 2025
GICHERU & COMPANY ADVOCATES.....APPLICANT
VERSUS
COUNTY GOVERNMENT OF UASIN GISHU.....RESPONDENT
Coram: Before Hon. Justice R. Nyakundi
M/s Gicheru & Co. Advocates
M/s County Attorney- U. Gishu

RULING

1. Before this Court is an Application dated 31st July 2025 brought under Order 47 & 49 of the Civil Procedure Rules, 2010 and Section 1A, 1B & 3A of the Civil Procedure Act, CAP 21 of the Laws of Kenya and Rule 11 of the Advocates (Remuneration) Order. The Applicant moved this Court seeking the following orders;
 - a. This Honourable Court be pleased to set aside the ruling on taxation by Hon. E. C. CHELULE (DR) delivered on 18th July, 2025 with respect to items numbers 1, 2, 3, 5, 7 & 8 in the matter of the taxation of the Advocate/Client bill of costs dated 17th December, 2013.
 - b. This Honourable Court be pleased to tax the Advocate/Client of bill of costs dated 17th December, 2013 a fresh in accordance with the Advocates (Remuneration) Order.
 - c. In the alternative to order (b) above, this Honourable Court be pleased to refer the Advocate/Client of bill of costs dated 17th December, 2013 for fresh taxation before a different Taxing Master with clear guidelines on the taxation principles to be employed during taxation.
 - d. Costs of this reference be borne by the Respondent.
2. The Application is made on the following grounds;

- i. The Applicant is dissatisfied with the ruling on taxation by Hon. E. C. Chelule (DR) delivered on 18th July, 2025 particularly on items 1, 2, 3, 5, 7 and 8 of the Advocate/Client of bill of costs dated 17th December, 2013.
- ii. The learned Taxing Master, Hon. E. C. CHELULE (DR) having rightfully determined the value of the subject to recovery of rates of Kshs. 22, 824, 983 and the applicable law being Schedule VII of the Advocates (Remuneration) Order, 2009 committed an error in principle by taxing off instruction fees of the Advocate/Client of bill under Schedule V of the Advocates (Remuneration) Order, 2009.
- iii. That item 8 of Schedule V of the Advocates (Remuneration) Order, 2009 expressly excludes application of the schedule in contentious matters such as the matter giving rise to this taxation proceeding.
- iv. That by relying on the wrong schedule (Schedule V of the Advocates (Remuneration) Order, 2009) the learned Deputy registrar arrived at a wrong calculation of instruction fees.
- v. The Applicant correctly relied on Schedule VII of the Advocates (Remuneration) Order, 2009 in drawing its Advocate- Client bill of costs which the Court also determined as the applicable schedule.
- vi. The learned Taxing Master, Hon. E. C. Chelule (DR) having wrongly calculated instruction fees subsequently under assessed item 2 been instructions fees increased by one-half.
- vii. Consequently due to the wrong assessment of items 1 and 2, item 3 being VAT (on both item 1 and 2) was wrongly taxed down.
- viii. The learned Taxing Master, Hon. E. C. Chelule (DR) equally disregarded the provided fees for attendances and service for items 5, 7 and 8 by taxing each at Kshs 1,000/= instead of Kshs. 2,000/= each.
- ix. The learned Taxing Master, Hon. E. C. Chelule (DR) thus failed to apply well laid down principles of taxation hence under assessed

the Applicant's Advocate/Client of bill of costs dated 17th December, 2013 which was drawn to scale.

3. In response to the Application, the Respondent filed a Replying Affidavit dated 4th November 2025 vehemently opposing the contents of the Application stating as follows;

- i. I am the Legal counsel of the County Government of Uasin Gishu, the Respondent herein, conversant with the matter and facts of the Chamber Summons herein and thereafter competent to swear the affidavit.*
- ii. I have read the Chamber Summons dated 31st July 2025, the annexed supporting affidavit together with its annexures and having understood the same wish to respond as follows:*
- iii. THAT the Respondent is opposed to the application in totality.*
- iv. THAT the Respondent avers that the Applicant has no legal basis upon which the Honourable Court should set aside the ruling delivered on 18th July 2025.*
- v. THAT the Taxing Master applied proper principles of law, concise guidelines in taxing the said Bill of Costs dated 17th December 2013 and that the Applicant's prayer that the Bill of Costs be taxed afresh is unmerited.*
- vi. THAT in the current circumstances, the Application dated 31st July 2025 ought to be dismissed with costs.*
- vii. What is deponed herein is true to the best of my knowledge*

4. The above motion and the corresponding Affidavits join issues as to the Taxation of the Bill of Costs and the decision which followed dated 18th July 2025

Decision

5. In our legal system the High Court is empowered to order a Bill of Cost to be taxed afresh by a different Deputy Registrar or commonly known as Taxing Master when the initial Taxing Master committed significant errors

of principle or failed to provide reasons for the decision or demonstrate bias. This is how the High Court has navigated the litigation reference landscape on decision arising out of the Taxing Master.

- **Giro Commercial Bank Limited v Benlucks (K) Limited [2022] KEHC 45 (KLR) (31 January 2022)**

Reasons: The Deputy Registrar (Hon. S.A. Opande) allowed a Bill of Costs without giving reasons and failed to properly interrogate the bill, even though it was unopposed.

Order: The High Court set aside the ruling and directed the bill be taxed afresh by any other Deputy Registrar.

- **RULING ELCC E075 of 2021:** Review of Taxing Master's Decision (Strathmore University Law Case)

Reasons: The Taxing Master (Hon. Jane Kamau) erred in determining the value of the subject matter, leading to an incorrect, excessive cost calculation.

Order: The Court set aside the ruling and ordered the bill to be remitted to a different Taxing Officer for fresh taxation.

- **Evans M. Gakuu & 66 Others v National Bank of Kenya Ltd & 8 Others [2013] eKLR**

Reasons: The Taxing Master (A.K. Ndungu) used a wrong principle by applying a higher scale when the suit was withdrawn and failed to appreciate that the claims were distinct rather than a global claim. The fee was deemed manifestly excessive.

Order: The taxation was set aside, and the bill was ordered to be taxed afresh by a different Deputy Registrar.

- **Patel & Another v Mogaka Yantika & Co Advocates (2023)**

Reasons: The Taxing Master made a mathematical error, and there was a contradiction between the allowed items and the final findings.

Order: While the Court corrected the error in this instance, it highlighted the necessity for taxing officers to correctly account for all items

6. In exercising jurisdiction on reference filed before this Court from the decision of a Taxing Master the following principles which apply on substantive appeals from substantive judgment which emanate from the Magistrate Court or Tribunals apply *mutatis mutandis*. For the Court to interfere with the discretion of a single Judge or Taxing Master it must be shown that the single Judge or Taxing Master acted on matters which he/she should not have acted or he failed to take into consideration matters which he should have taken into consideration and in doing so he arrived at a wrong conclusion or that he was plainly wrong in his decision. See **African Airlines International Ltd v Eastern & Southern Africa Trade & Development Bank [2003] KLR 140 at 143.**
7. It is trite that Appellate Courts possess inherent and statutory jurisdiction to revise, modify or set aside lower Court decisions based on errors of law, facts, or procedure. Appellate Courts in our Kenyan legal system generally do no retry cases but review the trial records to ensure a fair trial or if they take on the matter fully they may also receive fresh evidence in rare circumstances.
8. For those reasons having reviewed the record of this impugned decision the reasons given by the Taxing Master as to the taxation of the various items as to concretize the letter and the spirit of the Advocates Remuneration Order remain largely unconvincing to the parties. The judicial discretion by a Taxing Master is purely not mathematical in the choice of one denominator with another given the brevity of the accompanying notes in the legislative scheme of the Bill of Costs. The Advocates of the High Court in filing their Bill of Costs ought provide material evidence under Section 107(1) of the Evidence Act to show and demonstrate the complexity of the issues involved, research undertaken, legal time spent to provide the necessary professional services to the

client. This is of fundamental importance to the Taxing Master in exercising judicial discretion to give effect to the work done by the Advocate to his or her client. This is very significant given the constitutional imperative under Article 48 on access to justice. This Court needs to emphasize that Advocate costs must be reasonable and not serve as a barrier to access to justice. I therefore hold the view that the choice of one figure and another as reflected in the impugned Ruling of the Taxing Master in terms of judicial discretion is not adding up. As consequence of this the Taxing Master Ruling on the Bill of Costs be and is hereby set aside for fresh taxation by the Deputy Registrar of the High Court. Status conference on 14/5/2026. It is so ordered

**DELIVERED, DATED AND SIGNED AT ELDORET VIA CTS THIS 4TH MAY
2026**

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**R. NYAKUNDI
JUDGE**