



Gicheru & Company Advocates v County Government of Uasin Gishu (Civil Miscellaneous Application E209 of 2025) [2026] KEHC 5860 (KLR) (4 May 2026) (Ruling)

Neutral citation: [2026] KEHC 5860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL MISCELLANEOUS APPLICATION E209 OF 2025
RN NYAKUNDI, J
MAY 4, 2026**

BETWEEN

GICHERU & COMPANY ADVOCATES APPLICANT

AND

COUNTY GOVERNMENT OF UASIN GISHU RESPONDENT

RULING

1. Before this Court is an Application dated 31st July 2025 brought under Articles 25(c), 47, 50, 159(2) (a) & (d) of Kenyan Constitution, 2010 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. The Honourable Judge be pleased to set aside in entirety the ruling dated 18/7/2025 from the Taxing Master Hon. E.C. Chelule Deputy Registrar that emanated from 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 in accordance with the applicable Advocates (Remuneration) Order.
 - c. In the alternative to order (b) above, the Honourable Court be pleased to refer the Advocate/Client bill of costs dated 17th December, 2013 for fresh taxation before a different Taxing Master with precise guidelines.
 - d. The costs of this application be borne by the Respondent.
2. The Application is made on the following grounds;
 - i. A ruling was delivered on 18th July, 2025 in Eldoret Taxation Cause No.187 of 2013 by Hon. E.C. Chelule sitting as a Deputy Registrar at the High Court in Nairobi.



- ii. The ruling was resultant from a Bill of Costs dated 17th December, 2013 and filed on the 18th of December, 2013.
- iii. The ruling was uploaded onto the Court online portal on the delivery date of 18th July, 2025.
- iv. The taxation was done by the Deputy Registrar in Nairobi as a Rapid Response Initiative Program had been initiated by the presiding Judge at the High Court Eldoret to clear the backlog of the many matters pending in the Deputy Registrar's Chamber, Eldoret.
- v. In this matter the Deputy Registrar Hon. E. C. Chelule ordered that the primary file (parent file) documents be scanned for the Court to appreciate the extent of the matter and tax the same appropriately.
- vi. That the primary files to be scanned were bulky and therefore took time for the process to be completed.
- vii. Due to the shortage of time an error was made while uploading the documents to the CTS.
- viii. We uploaded the primary documents of the parent Court file number CMCC No.14 of 2012 instead of CMCC No.120 of 2012 which the Court acknowledged at the time of ruling.
- ix. We interchanged the primary documents of two files being CMCC No.14 of 2012 and CMCC No.120 of 2012 save that primary documents from both files were ably before the Taxing Master.
- x. That the error was done due to the time shortage we had in uploading over 60 files to the C.T.S.
- xi. That this error was not intentional and could have been rectified had the Court raised the issue instead of delivery ruling to meet fairness.
- xii. That we were only doing the scanning of the documents from the parent files to aid Court as officers of the Court.
- xiii. That the proper manner was for the Eldoret High Court to send the parent file together with the taxation file so that the assigned Deputy Registrar could adequately tax the bill of costs.
- xiv. That by dismissing our bill of costs because we had erroneously scanned and inadvertently interchanged the primary parent file documents is not only unfair but manifestly unjust and a violation of inter-alia Article 47 and 50 of *the Constitution* of Kenya, 2010.
- xv. That our advocate-client bill of costs was dismissed on a technicality thus violating the principles of Article 159(2)(d) of *the Constitution*.
- xvi. That under Rapid Response Initiative Program we had more than 60 files that were listed for taxing and were heard before seven (7) distinct Deputy Registrars across the country.
- xvii. That all other deputy registrars gave us ample time to trace and scan the documents in the primary files before delivering their rulings and even correcting errors before rendering their rulings.
- xviii. That being a firm undergoing winding up we were only two advocates dealing with more than sixty (60) files and hence we couldn't accomplish all the work within the RRI period of one week taking into account the magnitude of scanning and uploading all the relevant documents in the parent files.



- xix. The Court online filing portal was equally undergoing maintenance during the period of Rapid Response Initiative Program was rolled out and due to the traffic in the Court tracking system the judiciary system collapsed plethora of times making filing impossible and subjecting us to the errors as explained.
 - xx. That it is necessary that the impugned ruling be set aside and the matter be taxed in accordance with the Advocates (Remuneration) Order taking into account the availed primary file documents.
 - xxi. That in the alternative we pray that the matter be referred back to the Deputy Registrar Eldoret High Court for taxation.
 - xxii. That counsel expended great resources to defend the Respondent over several years and it will be unfair if the matter stands dismissed without any recourse simply because there was an inadvertent error in interchanging the scanned parent file documents.
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 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] eKLRReasons: 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/she 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 why she dismissed the Bill of Costs hinges on a violation of Article 50 of *the Constitution* on due process rights. There is no evidence as to why the Taxing Master could not remand the Bill of Costs and enlarge time for the parties to file further additional evidence in any event. In my view just by an observation of the record this is what I often refer to as microwave justice where decisions are hurriedly considered by prioritizing speed over procedural fairness and the outcome of it is always delivering justice but at the same time promoting injustice. Therefore, this decision by the Taxing Master cannot be allowed to stand. As a consequence of it all the decision be and is hereby set aside and a retrial on the Bill of Costs be held before another Taxing Master other than Hon. Chelule. This case docket shall be placed before the Deputy Registrar to action accordingly. Status conference on 14/5/2026.

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

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R. NYAKUNDI

JUDGE

