



In re Estate of Japhet Kipkemboi Tenai (Deceased) (Miscellaneous Succession Cause E049 of 2023) [2026] KEHC 5869 (KLR) (4 May 2026) (Ruling)

Neutral citation: [2026] KEHC 5869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS SUCCESSION CAUSE E049 OF 2023
RN NYAKUNDI, J**

MAY 4, 2026

IN THE MATTER OF THE ESTATE OF JAPHET KIPKEMBOI TENAI (DECEASED)

BETWEEN

KOKWATAI INVESTMENT COOPERATIVE SOCIETY LIMITED APPLICANT

AND

JAPHET KIPKEMBOI TENAI RESPONDENT

RULING

1. Before this Court is an Application dated 19th December 2025 brought under Paragraph 11 of the Advocates Remuneration Order and Section 94 of the *Civil Procedure Act*. The Applicant moved this Court seeking the following orders;
 - a. The ruling of the Taxing Officer delivered on 11th December 2025 and any consequential orders and or certificate of costs arising thereon be set aside and or vacated.
 - b. The Respondent's Bill of costs be taxed afresh by a differently constituted Taxing Court, or in the alternative and in the interest of justice this Court be pleased to assess/tax the costs lawfully payable to the Respondent on the said Bill of Cost.
 - c. This Court do issue such other orders/directions as it may deem fit and just to issue to serve the ends of justice in the circumstances herein.
 - d. The costs of this application be provided for.
2. The Application is made on the following grounds;
 - a. The taxing officer delivered a ruling on the Respondent's bill of costs dated 3rd December 2024 on 11th December 2025.



- b. The Applicants are aggrieved by the said decision of the taxing officer and have filed this instant reference against it.
 - c. The Learned Taxing Officer erred in principle as she arrived at a decision which is contrary to the law applicable.
 - d. The Learned Taxing Officer misapprehended and misapplied the law and principles of taxation in assessing the instruction fees which is Item number 1 in the Respondent's bill of costs.
 - e. The Learned Taxing Officer erred in Law and Fact by failing to exercise the powers and discretion given to her under Schedule 10 of the Advocates (Remuneration) (Amendment) Order, 2014 properly, with reason, fairly and Judiciously.
 - f. The Learned Taxing Officer erred both in law and fact by relying on Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014 in taxing the bill of cost, and thus making an improper determination.
 - g. The Learned Taxing Officer did not consider the application, the Bill of Cost and the written submissions on the quantum of costs and thereby arrived at an erroneous decision.
 - h. The Taxing officer erred in principle by arriving at an erroneous decision on the taxation for reason of her failure to give due and/or proper consideration to the relevant factors of the case being Probate and Administration cause and including but not limited to the conduct of the proceedings, labour expended by the Respondent in the matter and all other relevant circumstances.
 - i. The Learned Taxing Officer misapprehended and grossly misdirected herself on the principles of law and/or misapplied them in the taxation herein thereby arriving at an erroneous decision.
 - j. The Learned Taxing Officer erred both in law and fact in awarding the Respondent costs which in all the circumstances of the Suit were manifestly disproportionate to the Suit, unreasonable and so inordinately high as to amount to substantial oppression and injustice to the Applicant.
 - k. The said decision of the Learned Taxing Officer is premised on the wrong principles of law and/or is without basis in law, unreasonable and unjust.
 - l. The Taxing officer's decision was based on error of principle as the award of taxed costs suffers from legal infirmity due to the variance of procedure and final outcome.
 - m. The award of costs by the taxing officer is excessive and inordinately high and the Applicant stand to be prejudiced if this application is not allowed.
 - n. It is in the interest of justice that the Orders sought herein are granted.
3. The above motion and the corresponding Affidavits join issues as to the Taxation of the Bill of Costs and the decision which followed dated 11th December 2025

Decision

4. 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

5. 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.
6. 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 not 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.
7. 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 so as to concretize the letter and the spirit of the Advocates Remuneration Order remains 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 are also under duty while lodging the bill of costs ought to provide material evidence 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 so as to exercise judicial discretion fairly and proportionately in the decision-making process on the bill of



costs. This is very significant given the constitutional imperative under Article 48 on access to justice. Punitive costs often awarded on Advocate-client scale other than the standard party and party scale should not be used by a Taxing Master to award costs as drawn by the Advocate which may end up to be a barrier on 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 a consequence of it all the decision be and is hereby set aside and a retrial on the Bill of Cost be held before another Taxing Master other than Hon. Wattimah. This case docket shall be placed before the Deputy Registrar to action accordingly. Status conference on 14/5/2026. It is so ordered.

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

.....

R. NYAKUNDI

JUDGE

