



**Bwosiemo & 2 others v Muchangi Nduati Ngingo t/a Muchangi Nduati  
& Co. Advocates (Environment and Land Miscellaneous Application  
34 of 2023) [2025] KEELC 816 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 816 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 34 OF 2023  
NA MATHEKA, J  
FEBRUARY 26, 2025**

**BETWEEN**

**IAN MAGARA BWOSIEMO ..... 1<sup>ST</sup> APPLICANT  
BRENDA KWAMBOKA BWOSIEMO ..... 2<sup>ND</sup> APPLICANT  
AL RUHIA ESTATES LIMITED ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MUCHANGI NDUATI NGINGO T/A MUCHANGI NDUATI & CO.  
ADVOCATES ..... RESPONDENT**

**RULING**

1. The application is dated 28<sup>th</sup> November 2023 and is brought under Rule 11(1) (2) and (4) of the Advocates Remuneration Order, 2014; Order 21 Rule 9 of the Civil Procedure Rules, Sections 1, 3A of the Civil Procedure Rules seeking the following orders;
  1. That the Ruling of Honourable Taxing Officer's delivered on 15<sup>th</sup> December, 2022 be set aside and taxed afresh by this court.
  2. There was no advocate appointed to act for the Applicant once he had withdrawn and forwarded his Bill of Costs and the matter is still pending at the ELC. Court Machakos.
  3. Costs of the Application be awarded to the Applicant.
2. It is supported by the Affidavit of Manwah Bwosiemo Magara and the grounds that the Taxing Officer disregarded MPESA payments and other payments amounting to Kenya Shillings 397,000/= that were paid informally through various persons including payments through the advocates clerk. That the Court failed to consider the total payments of Kenya Shillings 397,000/= paid to the Respondent as advocates fees through MPESA and cash which is attached to the Respondent's submissions dated



15<sup>th</sup> July, 2022. Taxation of Al Ruhia Estate Limited was deliberately mixed up to confuse the court. That the Ruling was headed Muchangi Nduati & Company Advocates vs. Al Ruhia Miscellaneous Civil Application Number 25 of 2022, while the Bill of Costs was Muchangi Nduati Advocates vs. Ian Magara & Brenda Kwamboka. That the Taxing Officer disregarded the Respondent's submissions, specifically items 7, 14, 15, 16 which show statistical payments made to M/S. Muchangi Nduati Advocates through MPESA payments of Safaricom. The Applicant was not aware of the delivery of the Ruling of Court.

3. This court has considered the application, supporting affidavit and submissions therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:

“(1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the 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.”

4. Be that as it may, the principles of varying or setting aside a Taxing Master's decision are set out in the cases of *First American Bank of Kenya vs Shah and Others* (2002) EA 64 and *Joreth Ltd vs Kigano and Associates* (2002) 1 EA 92, that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law. In *First American Bank of Kenya vs Shah and Others* (2002) E.A.L.R 64 the court held that;

“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”.

5. These principles reiterate the position of the Court of Appeal in *Joreth Ltd vs Kigano & Associates* (2002) eKLR, where the said Court held that a Taxing Master in assessing costs to be paid to an advocate in a bill of costs was exercising her judicial discretion and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously, and in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the Taxing Master is excessive to amount to an error in principle.
6. In the instant case the applicant submits that the Court made a fundamental error in disregarding his submissions dated 15<sup>th</sup> July, 2022, specifically Item, 14, 15 and 16 which show that he paid a total sum of Kenya Shillings 397,000/= to M/s Muchangi Nduati Advocates through MPESA and cash as it is demonstrated in the response to the Bill of Costs. The respondent submitted that the taxing master took into consideration all the items and the submissions tendered before her by the parties. That the wrong citation of the ruling was a mere technical error and this application is an abuse of the court process. I have perused the ruling of the taxing master and indeed she states that the amount alleged to have been paid up by the applicant was included in the submissions and not the replying



affidavit and hence she did not include the same. I find that it is in the interest of justice that the taxing master considers all the alleged amounts said to have been paid and determine whether there is enough evidence to consider the same. I find that this application is merited and I grant the following orders;

1. That the Ruling of Honourable Taxing Officer's delivered on 15<sup>th</sup> December, 2022 be set aside
2. That the bill of costs be taxed afresh by a different taxing master
3. There will be no orders as to costs

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26<sup>TH</sup> DAY OF FEBRUARY 2025.**

**N.A. MATHEKA**

**JUDGE**

