



V. Chokaa & Co. Advocates v County Government of Machakos (Environment and Land Miscellaneous Application 61 of 2017) [2025] KEELC 817 (KLR) (25 February 2025) (Ruling)

Neutral citation: [2025] KEELC 817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 61 OF 2017
NA MATHEKA, J
FEBRUARY 25, 2025**

BETWEEN

V. CHOKAA & CO. ADVOCATES APPLICANT

AND

COUNTY GOVERNMENT OF MACHAKOS RESPONDENT

RULING

1. The amended application is dated 29th October 2024 and is brought under section 51(2) of the Advocates Act Cap 16 Laws of Kenya, Rule 7 of the Advocates Remuneration Order, Order 36 Rule (1) (a) of the Civil Procedure Rules and Section 3 (a) of the Civil Procedure Act seeking the following orders;
 1. That Judgment be entered for the Applicant as against the Respondent in the sum of Kshs. 103,800/= in accordance with the Certificate of Taxation of Costs filed with the Plaintiff.
 2. That Respondent to pay the Applicant the said sum together with interest therein at 14% per annum with effect from 14th March, 2017 until payment in full.
2. It is based on the grounds that the sum of Kshs. 103,800/= is the amount taxed costs for professional work done by the Plaintiff for the Respondent. The said taxed costs neither been set aside nor altered by this court. Under Section 51(2) of the Advocates Act, the Applicant as an Advocate has the right to have the Judgment entered in his favour for the costs even without filing the suit for recovery. This suit for recovery of the taxed costs. The Defendant has no defence to the claim by the Plaintiff for his taxed costs. That the cost of this application be paid for by the Defendant/Respondent
3. The Applicant in his supporting affidavit stated that upon failure by the Defendant to settle my firm's fees notes, his firm was forced to file a Bill of Costs for Taxation of the fees due owing by the Defendant to his firm to be assessed by the Deputy Registrar of this court. That a copy of Bill of Costs which was Re-taxed by the Deputy Registrar in the sum of Kshs. 103,800/= is annexed and marked "VCA1".



That the APPLICANT has demanded for the said sum of money and the Respondent has refused and/or neglected to pay annexed and marked 'VCA II' is a copy of the Demand Letter. That the said Certificate of Taxation have neither been set aside nor altered in any way nor have they been paid by the Defendant. That the Respondent is truly and justly indebted to his firm in the sum claimed in the Plaintiff for the taxed costs and has no defence to his firm's claim against it. That Judgment be entered for him against the Defendant as prayed for in the Application.

4. This court has considered the application and the supporting affidavit 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."

5. 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".

6. 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.

7. In the instant case the Respondent has not raised any objection and the application is not opposed. I find this application is merited and is granted as prayed with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF FEBRUARY 2025.

N.A. MATHEKA

JUDGE

