



**Muasa v Kisini Nzyuko & Company Advocates (Environment and Land Miscellaneous Application E038 of 2024) [2025] KEELC 2880 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2880 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E038 OF 2024  
NA MATHEKA, J  
MARCH 27, 2025**

**BETWEEN**

**SAMMY MAITHA MUASA ..... APPLICANT**

**AND**

**KISINI NZYUKO & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. The application is dated 30<sup>th</sup> August 2024 and is brought under Paragraph 11(4) of the [Advocates Remuneration Order](#), Articles 50 and 159 of the [Constitution of Kenya 2010](#) seeking the following orders;
  1. That the Application be certified urgent and heard ex parte in the first instance.
  2. That there be a stay of execution of the Respondent's Bill of Costs dated 21<sup>st</sup> August, 2024 Ruling and all consequential orders in Machakos Misc. Application No. 015 of 2024 pending the hearing and determination of this Reference.
  3. That the Ruling of the Taxing Officer delivered on 21<sup>st</sup> August, 2024 in the Machakos Misc. Application No. 015 of 2024 and the Certificate of Taxation arising thereon be set aside/vacated.
  4. That this Honourable Court be pleased to assess/tax the costs lawfully payable to the Respondent in his Bill of Costs dated 21<sup>st</sup> February, 2024.
  5. That costs of the Application be borne by the Respondent
2. It is supported by the annexed Affidavit of SAMMY MAITHA MUASA, and is based on the general grounds that on 21<sup>st</sup> August, 2024 the Taxing Officer in Machakos Misc. Application No. 015 of 2024 issued a Ruling on the Taxation of the Bill of Costs therein. That the Applicant feels strongly and extremely aggrieved by the said Ruling and has set out to oppose it through a Reference to this



Honourable Court. That the Applicant is reasonably apprehensive that the Respondent will execute the said Ruling and unless this Application is heard urgently the Applicant will be greatly prejudiced. That the Applicant has good grounds for opposing the said Ruling hence if the same is executed before the hearing and determination of the Application there will be a miscarriage of justice. That the Application herein has been brought within the stipulated timeline by the law. That it is in the interest of justice that the orders sought herein do issue to allow the Applicant argue the Reference on merit.

3. This court has considered the application and the 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 v Shah and Others* [2002] EA 64 and *Joreth Ltd v 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 v Shah and Others* [2002] EALR 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 v 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. The Applicant in the instant application contends that being dissatisfied with the Taxing Officer's decision have filed this application. That the Taxing Officer erred in law and in fact in taxing the Instructions Fees with subject matter being Kshs. 8,000,000/= instead of kshs.7,000,000/=.
7. In *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'Njuguna* (2006) eKLR Ojwang, J (as he then was) expressed himself as follows:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award



somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other...The 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 manifestly excessive as to justify an inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the *Advocates (Remuneration) Order* itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. Needless to state not all the above factors may exist in any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment...A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved...Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularised justification of the mode of exercise of any discretion provided for... The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs..."

8. In *First American Bank of Kenya v Shah and Others* [2002] EALR 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”.

9. The Taxing Master in her ruling dated 21<sup>st</sup> August 2024 provided that the taxation of the matter would be based on Remuneration (Amendment) order of 2014. Under Item one the taxing master based her calculations on schedule 1 and 5 of the 2014 *Advocates Remuneration order* and taxed it at Kshs 205,000/=. She considered that the value of the subject matter was kshs. 8,00,000/=. Be that as it may, both the applicant and the respondent agree that the value of the subject matter plot No. 25 Kangundo Township was kshs. 7,000,000/=. I find an error in principle and in the circumstances the fees awarded are not correct. I find that there is an error by the Taxing Master in the assessment. Consequently, I find that the application is merited and make the following orders;

1. That the Ruling of the Taxing Officer delivered on 21<sup>st</sup> August, 2024 in the Machakos Misc. Application No. 015 of 2024 and the Certificate of Taxation arising thereon be set aside/ vacated.



2. That the bill of costs is to be taxed by a different taxing master.
  3. There will be no order as to costs.
10. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 27<sup>TH</sup> DAY OF MARCH 2025.**

**N.A. MATHEKA**

**JUDGE**

