



**Monda v Odiya t/a Odiya & Associates Advocates (Miscellaneous Application E668 of 2024)
[2025] KEHC 12053 (KLR) (Commercial and Tax) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E668 OF 2024**

**PM MULWA, J
AUGUST 14, 2025**

BETWEEN

PATRICIA MONDA APPLICANT

AND

**JANE NUYABIAGE ODIYA T/A ODIYA & ASSOCIATES
ADVOCATES RESPONDENT**

RULING

1. What is before the Court for determination is the Applicant's Chamber Summons application dated 22nd August 2024. The Applicant seeks orders to stay the execution and set aside the decision of the Taxing Master delivered on 16th August 2024, and that the costs of the application be provided for.
2. The application is premised on the grounds set out therein and is supported by the affidavit sworn by Faraday Nyangoro. The Applicant deposes that the party and party Bill of Costs dated 24th May 2024, drawn in the sum of Kshs. 250,630.00 was taxed by the Taxing Master on 22nd July 2024 in the sum of Kshs. 150,545.00. The Applicant contests this decision on the grounds that the amount awarded was excessive and arrived at through an erroneous exercise of discretion. It is contended that the Taxing Master failed to consider Schedule 6 of the Advocates Remuneration Order, which governs costs in matters arising from subordinate courts.
3. The Applicant further avers that the underlying matter arose from Civil Appeal No. 103 of 2015, being an appeal against an award of Kshs. 119,000.00 by the Children's Court as upkeep. The Applicant takes issue with the fact that the Taxing Officer awarded instruction fees far above what would ordinarily be warranted in a matter of such nature and monetary value. It is the Applicant's position that the initial taxation was Kshs. 72,467.00 and therefore the subsequent award of Kshs. 150,545.00 indicates an error in principle.



4. The Respondent opposed the application through a replying affidavit sworn on 16th December 2024. She contends that the Taxing Master exercised discretion judiciously and in accordance with the provisions of the Advocates Remuneration Order, 2014. She asserts that the nature of the matter, its recurring subject matter, and the complexity involved were duly considered by the Taxing Master. It is the Respondent's case that the amount awarded was reasonable, justified, and within the legal framework.
5. Although the matter was canvassed by way of written submissions, only the Respondent filed submissions dated 16th December 2024.
6. Upon considering the application and the filed submissions the only issue for determination is whether the court should stay the execution of the order of the Taxing Master dated 24th May 2024.
7. The principles applicable in setting aside a taxation ruling are well settled. A court will only interfere with the decision of a taxing officer where it is demonstrated that the award is either manifestly excessive or low, or that the taxing officer misapprehended the law or facts, or proceeded on a wrong principle.
8. In the case of *Premchand Raichand Limited & Another v Quarry Services of East Africa Limited and Another* [1972] E. A 162, the principles were set out as follows:
 - a. That there was an error of principle.
 - b. The fee awarded was manifestly excessive or is so high as to confine access to court only to the wealthy.
 - c. That the successful litigant ought to be fairly reimbursed for the costs he has incurred.
 - d. That, so far as practicable, there should be consistency in the award.
9. These principles were further expounded in the Court of Appeal case of *Kipkorir, Tito & Kiara Advocates vs Deposit Protection Fund Board* (2005) eKLR, where the court stated that:

“On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer erred in principle in assessing the costs.”
10. For this Court to set aside the ruling of the Taxing Master, it must therefore be satisfied that any of the above grounds exist. In this case, the Respondent has clearly articulated that the Taxing Master properly considered the subject matter, complexity, time expended, and recurring nature of the dispute.
11. Upon a careful perusal of the ruling of the Taxing Master, it is evident that she properly applied the provisions of Paragraph 6 of the Advocates Remuneration Order. In determining the instruction fees, the Taxing Master considered the value of the subject matter by adopting the principles set out in the case of *Joreth Ltd v Kigano & Associates* [2002] eKLR, and exercised discretion to award Kshs. 50,000.00 as instruction fees.
12. Additionally, the Taxing Master taxed off fees claimed for trial preparation, having correctly found the claim devoid of merit. Regarding court attendances listed at paragraphs 8, 9, 11, and 12, the Taxing Master awarded a consolidated sum of Kshs. 4,400.00 and taxed off Kshs. 15,600.00, reflecting a reasoned and proportionate assessment.



13. I do not agree with the Applicant's assertion that the Taxing Master taxed the sum of Kshs. 72,467.00. Having gone through the ruling, I confirm that the Taxing Master taxed the Bill of Costs at Kshs. 101,687.00, not Kshs. 72,467.00. However, the final figure awarded was Kshs. 150,545.20, indicating a disparity not reconciled in the reasons given by the Taxing Officer.
14. It is my finding that while the taxing master correctly applied legal principles in most aspects of the taxation, including the assessment of instruction fees and disallowance of unsupported claims, there is an inconsistency between the taxed figure and the final award, which has not been explained in the ruling. This discrepancy points to a possible error in principle.
15. Given this unexplained variance, the Court is persuaded that the final award of Kshs. 150,545.20 may have been reached in error or oversight, and it is necessary to remit the file for re-evaluation of the taxed amount in light of the reasons given.
16. Accordingly, I find merit in the application to the extent that the final award is inconsistent with the taxed amounts outlined in the ruling of the Taxing Master. The decision of the Taxing Master dated 16th August 2024 is hereby set aside, and the matter is remitted for fresh taxation before a different Taxing Officer.
17. Each party shall bear their own costs of this application.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 14TH DAY OF AUGUST 2025.

PETER M. MULWA

JUDGE

In the presence of:

N/A for Applicant

Ms. Odiya for Respondent

Court Assistant: Godfrey

