



**Mereka & Company Advocates v Nicola Farms Limited (Environment & Land  
Miscellaneous Case E065 of 2023) [2025] KEELC 4014 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4014 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E065 OF 2023**

**JG KEMEI, J**

**MAY 26, 2025**

**BETWEEN**

**MEREKA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**NICOLA FARMS LIMITED ..... RESPONDENT**

**RULING**

1. The background of this cause is that the applicant successfully taxed its Advocate Client bill of costs dated the 16/2/24 before the taxing master leading to the issuance of the certificate of taxation dated the 6/5/24.
2. Subsequently the applicant moved the court by way of Notice of Motion dated the 13/5/24 seeking orders that the court enters judgement for the sum of Kshs 406,997.34 in terms of the certificate of taxation aforesaid.
3. The Advocate/Applicant filed an application dated 13/05/2024 for entry of Judgement in the sum of Kshs. 406,997.34/= in terms of the Certificate of Taxation dated 6/03/2024 together with interest at 14 % from the said. The Application is premised on the grounds that the Advocate filled a Bill of Costs dated 16/02/2023 for a sum of Kshs. 1,700, 611/=.
4. That the Bill was taxed on 6/03/2024 at a sum of Kshs. 406,977.34/= . The Applicant avers that the Certificate issued thereon has not been set aside. The application is further supported by the Affidavit of David Mukii Mureka, the Applicant's Senior Partner sworn on 13/05/2024.
5. In response to the application, the Client/ Respondent filed a Preliminary Objection and Grounds of Opposition both dated 10/12/2024. It is the said Preliminary Objection that is subject of this Ruling.
6. The Client/ Respondent's Preliminary Objection is premised on the following grounds;



- a. That the Jurisdiction of the Environment and Land Court (ELC) is limited by Article 162 (2) (b) of the Constitution and Section 13 of the Land Court Act to presiding over matters of environment, use and occupation of and title to land and hence this Honourable Court lacks jurisdiction to hear and determine the Advocate/Applicant Application dated 13/05/2024 in the manner framed and advanced.
- b. That the dispute herein arises out of a contested Advocate and client contractual relationship and the jurisdiction to adjudicate a dispute arising out of that relationship as relates to the fees due to Advocate and for Judgment to be entered on taxed costs under Section 51 (2) of the Advocates Act vest in the High Court as the Advocates Act, at Section 2 defines the “Court” as the High Court.

The Client therefore prays that the application be dismissed with costs.

7. The Court directed parties to file their written submissions in respect of the Preliminary Objection on 24/2/2025. Despite service upon the Client’s Counsel on record, the Client did not comply. On the other hand, the Advocate filed his submissions dated 19/3/2025.

### **The Advocate’s Submissions**

8. In his submissions, the Advocate identifies two issues for submission. The first issue is whether this Court has jurisdiction to hear and determine a Reference filed under Section 51 (2) of the Advocates Remuneration Order. The Applicant cites the provisions of Article 162 (2) (b) of the Constitution and Section 13 of the Environment and Land Court Act on the jurisdiction of this Court and avers that the Court has jurisdiction to determine the Reference.
9. Counsel relies on the case of Lubulellah and Associates Advocates –vs- Gilbi Construction Company Limited (Environment & Land Miscellaneous Case E151, E152, E153 & E154 of 2023) (2024) KEELC 4389 (KLR) and the case of Kinyua Munya & Co. Advocates –vs- Kenya Ports Authority Oensin Scheme & 8 Others (2017) Eklr where the Courts held that the ELC Court has jurisdiction to deal with References on Bills of Costs emanating from environment and land use disputes. Further, that in the absence of an amendment to the Advocates Remuneration Order the taxing officer being a Registrar of the Court or the Deputy Registrar or a Judge thereof, this Court being a Superior Court with equal status of the High Court, has jurisdiction to determine the Application for entry of Judgment.
10. The second issue is whether there is a dispute as to the retainer. The Applicant submits that the issue of the retainer was never raised before the Deputy Registrar during taxation, hence it cannot be raised now. Counsel further submits that even if the Client was to raise the issue, he argues that the Client issued oral instructions which were acted on. In addition, the Client signed Affidavits and pleadings prepared and filed by the Advocate. To that end, Counsel cites the case of Ochieng’ Onyango Kibet and Ohaga Advocates –vs- Akiba Bank Ltd. (2007) Eklr, where the Court held that instructions need not be in writing but can be inferred from the conduct of the parties.
11. Counsel argues that the Preliminary Objection lacks merit as it was filed to deny the Advocate the fruits of his labour. He argues that the Certificate of Costs having not been set aside and in the absence of a Reference, the application be allowed as prayed.

### **Analysis and determination**

12. This court having reviewed the Preliminary Objection and the Advocate’s submissions thereto finds that the issues for determination are:



- a. Whether the Preliminary Objection dated 10/12/2024 by the Client/Respondent meets the fundamental threshold of a preliminary objection.
  - b. Costs of the objection.
13. According to the Black Law Dictionary, a Preliminary Objection is defined as being:
- “In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”
14. The above legal proposition has been made graphically clear in the now famous case of Mukisa Biscuits Manufacturing Co. Ltd -VS- West End Distributors Ltd. [1969] E.A. 696. Where Lord Charles Newbold P. held that a proper preliminary objection constitutes a pure point of law. The Learned Judge then held that: -
- “The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary Objection is in the nature of what used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of Preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”
15. Further, in the case of Attorney General & Another -vs- Andrew Mwaura Githinji & Another [2016] Eklr :- It was stated that the nature and meaning of a Preliminary Objection as: -
- a. A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
  - b. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
  - c. The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.
16. On the ground that this court lacks jurisdiction to hear and determine the Plaintiff’s suit, the issue of jurisdiction is a pure point of law which can determine the matter without having to consider the merits of the case. It will not matter whether the facts of the Plaintiff’s case as outlined are true or not because without Jurisdiction this court will not have any powers to determine the case. This is because in any litigation, jurisdiction is central.
17. A court of law cannot validly take any step without jurisdiction. The moment a party in a suit successfully challenges the jurisdiction of the court, the said court must down its tools. The Supreme Court in the Matter of Interim Independent Electoral Commission [2011] eKLR held as follows:
- “Assumption of jurisdiction by Courts in Kenya is a subject regulated by *the Constitution*, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):
- “I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue



right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”

[30] The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the Recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.

18. The issue as to whether or not the court has jurisdiction to determine the Advocate’s application raises pure points of law and is therefore properly raised as a Preliminary Objection. The Court will proceed to consider it on its merits.

### **Whether the Preliminary Objection raised herein is merited?**

19. The broad jurisdiction of the Environment and Land Court is donated by Article 162(2) of the Constitution of Kenya. Article 162 of the Constitution provides thus:

162. System of courts

1. The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
  - a) employment and labour relations; and
  - b) the environment and the use and occupation of, and title to, land.
3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
4. The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

20. Similarly, Section 13 (1) and (2) of the Environment and Land Court Act confers upon this court jurisdiction to adjudicate all disputes relating to land. It provides thus:

“ 13. Jurisdiction of the Court

- 1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- 2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes-
  - a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b) relating to land administration and management;



- c) relating to land administration and management;
- d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- e) any other dispute relating to environment and land”

21. From the record, the Advocate’s Bill of Costs dated 16/2/2023, the subject of this proceedings emanates from the Professional Services rendered in defending the Client against a Bill of Costs under ELC Misc. App. No. 66 of 2019. The Bill of Costs was taxed on 6/3/2024 and a Certificate of Costs issued thereon. It is evident that the cause of action herein is costs payable to the Advocate for the legal services in defending a Bill of Costs in a matter before this Court.

22. Paragraph 2 of the Advocates Remuneration Order is specific that in matters remuneration between an Advocate and his client and the taxation of the Advocate’s costs and taxation between party and party costs. The provision states that:

“This Order shall apply to the remuneration of an Advocate of the High Court by his client in contentious and non-contentious matters, the taxation thereof and the taxation of costs as between party and party in contentious matters in the High Court, in subordinate courts (other than Muslim courts), in a Tribunal appointed under the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* and in a Tribunal established under the *Rent Restriction Act*.

23. Paragraph 10 of the Advocates Remuneration Order on the other hand provides that:

“The taxing officer for the taxation of bills under this Order shall be the registrar or district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule IV the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.

24. The Advocates Remuneration Order under Para 49 defines the court to mean the High Court or any Judge thereof or a resident Magistrate Court or any Magistrate sitting as a member of a resident Magistrate.

25. Moreover, section 7 of the Sixth Schedule of *the Constitution* of Kenya provides as follows;

“all laws in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations qualifications and exceptions necessary to bring it into conformity with this Constitution. (2) if, with respect to any particular matter; (a) a law that was in effect immediately before the effective date assigns responsibility for that matter to a particular state organ or public officer; and (b) a provision of this Constitution that is in effect assigns responsibility for that matter to a different state organ or public officer, the provisions of this Constitution prevail to the extent of the conflict.”

26. In light of the provisions of Article 162 (2) of *the Constitution* that this Court has equal status of the High Court, it follows that the Deputy Registrar had jurisdiction to tax the Advocate’s Bill of Costs dated 16/2/2023. The Certificate of Costs issued thereafter was therefore in accordance with the law.



27. Article 165 (5) (b) of *the Constitution* expressly bars the High Court from hearing and determining disputes exclusively reserved for the Environment and Land Court. The holding in *Karisa Chengo – vs- Republic & Others* (2017) eKLR is clear that the High Court and the two specialized courts of equal status are different and distinct such that one cannot exercise jurisdiction of the other.
28. Furthermore, in as much as disputes arising from taxation proceedings of bills of costs are not necessarily disputes in land and environment, as long as they are consequent to proceedings before the Environment and Land Court, then there is no reason why such bills after being taxed in this court, an application for entry of judgment in accordance with the Certificate of Costs should be filed in the High Court. This would force the High Court to call for court files from the ELC Court for perusal, consideration of the itemised bills and/or the Certificate of Costs and then return the file to the ELC Court. In my view, the law does not contemplate such a situation where files are allowed to fly from one jurisdiction to another jurisdiction especially in view of Article 159 of *the Constitution* requiring Courts to administer justice without procedural technicalities.
29. In the case of *Bruce Odeny & Co. Advocates v Pride Kings Security Services Ltd* (Miscellaneous Civil Application E113 of 2023) [2024] KEHC 5180 (KLR), the Court held that;
- “An Advocate who represents a client before an ELRC can only seek for taxation of his or her Advocate/client bill of costs before the ELRC superior court of equal status with the High Court. This is because it is that superior Court that has the power to exercise jurisdiction of calling for the lower court file in an ELRC matter and determine the issue of whether the bill of costs as taxed is proper.....That being the case, the Deputy Registrar of the High Court cannot, in that capacity, receive or call into this court an ELRC or ELC file for purposes of taxation of Advocate/client bill of costs where the services of an Advocate were retained and or sought in the ELRC matter. Such bills would be taxed before the Court where the services were rendered by the Advocate. To find otherwise will be tantamount to usurping jurisdiction of other courts and infusing them into the High Court. Jurisdiction is given or vested by law or *the Constitution*. No court can arrogate itself of the jurisdiction that it does not have.”
30. From the foregoing provisions of law and the persuasive authorities cited above, it is obvious that the Client/Respondent’s Preliminary objection is without any grounding in law.

### **Final orders for disposal**

31. Consequently, the Client/Respondent’s Preliminary Objection dated 10/12/2024 is unmerited
32. It is hereby dismissed with costs to the Advocate.
33. It is so ordered

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY, 2025 VIA MICROSOFT TEAMS.**

**J.G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

Ms Njoroge HB for Mr Mereka

N/A for the Respondent



