



**Kangoli & Company Advocates v Ndwaru (Environment and Land Miscellaneous Application E029 of 2021) [2025] KEELC 4377 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4377 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E029 OF 2021**  
**MD MWANGI, J**  
**JUNE 5, 2025**

**BETWEEN**

**KANGOLI & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**ANN NJERI NDWARU ..... RESPONDENT**

**RULING**

(In respect of the notice of motion dated 26<sup>th</sup> September 2024 seeking to review, vary and or set aside the entire ruling delivered on the 17<sup>th</sup> July 2024)

**Background**

1. The application under consideration is the notice of motion dated 26<sup>th</sup> September 2024 brought under the provisions of Order 45 rule 1, 2(1), (2) and 3(2) of the Civil Procedure Rules and Sections 1A, 1B and 3A of the *Civil Procedure Act*. The applicant prays for one substantive order that this court be pleased to review, vary and or set aside the entire ruling delivered on 17<sup>th</sup> July 2024 and do rehear and issue a fresh ruling to the application dated 30<sup>th</sup> November 2023 capturing the true position of the Bill of Costs noting that the trial (Magistrate's) Court has no jurisdiction to tax a bill of costs for work done in the superior court.
2. The application is based on the grounds on the face of it and on the supporting affidavit of Kevin Omondi sworn at Nairobi on the 26<sup>th</sup> September 2024. The applicant asserts that the ruling of 17<sup>th</sup> July 2024 ordered that the Bill of Costs dated 20<sup>th</sup> May 2021 be taxed by the trial court at Ngong in ELC No. 85 of 2018, but dismissed the application on the wrong understanding that the suit was instituted at the Magistrate's Court while the case had actually originated from the Environment and Land Court in Nairobi.



3. The applicant avers that there is an error apparent on the face of the ruling. The transfer of the matter to the Magistrate's Court for taxation has created an uncertain situation since the Magistrate's Court has no jurisdiction to tax an Advocate-Client bill of costs.
4. The applicant has attached to his supporting affidavit the impugned ruling delivered on 17<sup>th</sup> July 2024. The ruling was in respect of the Chamber summons application dated 30<sup>th</sup> November 2023 which was a reference principally brought under the provisions of rule 11 of the Advocates Remunerations Order. It sought to challenge the ruling of the Deputy Registrar of this Court in respect of the advocate/client bill of costs herein.
5. Whereas the court found that the Deputy Registrar made no error in assessing the costs in the manner she did, it on the other hand held that she erred in taxing the bill as she did in her capacity as the Deputy Registrar of this court when there was no trial before this court. It was the court's view that she ought to have instead sent it to the Chief Magistrate's court at Ngong for taxation. The court therefore dismissed the summons dated 30<sup>th</sup> November 2023 with costs and went further to order that the advocate/client bill of costs dated 20<sup>th</sup> May 2021 be taxed by the trial court at Ngong in case No. ELC 85 of 2018.

### **Submissions by the applicant**

6. The applicant filed submissions in support of his application which I have had occasion to read and consider in writing this ruling. The respondent did not participate in the hearing of the application despite having been served.

### **Issues for determination**

7. The proceedings in this matter relate to an advocate-client bill of costs under the provisions of the Advocates Remunerations Order. The applicant's application has however been brought under the provisions of the *Civil Procedure Rules* and the *Civil Procedure Act*.
8. A critical issue that arises from that scenario is whether the provisions of the Civil Procedure Rules and the *Civil Procedure Act* apply to matters of taxation under the Advocate Remuneration Order.
9. The 2<sup>nd</sup> issue is whether a Magistrate has the jurisdiction to tax an advocate client bill of costs. The final issue is whether any recourse is available to the applicant.

### **Analysis and determination.**

10. I will address all the three issues concurrently. In doing so, I will make reference to various provisions of the *advocates act* and the Advocate Remunerations Order.
11. Under the *Advocates Act*, the taxing officer for purposes of taxation of bills under the Advocates Remunerations Order is the Registrar, or District or Deputy Registrar of the High Court, or such other qualified person as the Chief Justice may in writing appoint.
12. The Deputy Registrar of this court therefore had the jurisdiction to tax the advocate-client bill of costs presented by the applicant herein, the subject matter of these proceedings as she did. The Chief Magistrate in Ngong as any other Magistrate for that matter, who is not designated as a deputy Registrar has no authority to tax a bill under the *Advocates Remuneration Order*.
13. I too must be clear that the Advocates Remuneration Order does not provide for taxation of costs in the Magistrates' courts in matters between an advocate and a client. Only party and party costs can be assessed by the same court that heard and determined the dispute as clarified by Aburili J in the case



of *Ogolla –vs- Onyango Otunga & Co. Advocates* (Civil Appeal E101 OF 2023) (2023) KEHC 27214 (KLR).

14. The Magistrate’s Court at Ngong does not therefore have the jurisdiction to tax the advocate-client bill of costs placed before it.
15. Ringera J (as he then was) in the case of *Machira –vs- Magugu* as cited by the court of appeal in *Machira & Company Advocates -vs- Arthur K. Magugu* (2012) eKLR, held that the Advocates Remuneration Order is a complete code on its own, implying that the Civil Procedure Rules and the provisions of the *Civil Procedure Act* have no application in matters canvassed under the provisions of Advocates Remuneration Order. The Court of Appeal stated that;

“Reviews, however would require provisions akin to those of Section 80 of the *Civil Procedure Act*, of discovery of new and important matters, errors on the face of the record and so on. In our view, the rules committee intended to avoid all that and provide for a simple and expeditious mode of dealing with the decisions on advocates bill of costs through references under rule 11 of the Advocates Remuneration Order to a judge in chambers”.

16. The import of the above holding is that the provisions of the *Civil Procedure Act* and the Civil Procedure Rules do not apply to matters of advocate-client bills of costs.
17. This brings me to the third and final issue. What recourse then is available to the applicant?
18. In my considered view, the only recourse available to the applicant is to be found in Paragraph 11(3) of the Advocates Remunerations Order, which provides that;

“ Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may with leave of the judge, but not otherwise, appeal to the court of appeal”.

19. The applicant is at liberty to appeal to the court of appeal, with leave of this court, against the ruling of 17<sup>th</sup> July 2024.
20. The upshot is that the application dated 26<sup>th</sup> September 2024 is disallowed. The court however makes no orders as to costs considering that the respondent did not participate in this application.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Omondi for the Advocate/Applicant

N/A for the Respondent

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

