



REPUBLIC OF KENYA



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E.M Juma & Co Advocates v Chesyina (Environment and Land Miscellaneous Case E043 of 2024) [2025] KEELC 7308 (KLR) (28 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7308 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS CASE E043 OF 2024
MAO ODENY, J
OCTOBER 28, 2025

BETWEEN

E.M JUMA & CO ADVOCATES APPLICANT

AND

JEBET CHEBII CHESYINA RESPONDENT

RULING

1. This ruling is in respect of two applications. The first application is in respect of the Applicant's Notice of Motion application dated 24th January 2023, seeking the following orders:
 - a. That this Honourable Court be pleased to adopt the Certificate of Costs issued on 2nd September 2021 in respect of the taxation order made on 24th August, 2021 for the sum of Kshs 571, 710/= as Judgement and Decree of this court.
 - b. That an interest rate at 14% per annum be awarded on the principle amount as from 21st January 2021 when the date the bill was filed for taxation.
 - c. That the costs this application be borne by the Respondents.
2. The application is supported by the annexed affidavit of Evans Juma Matunda, Advocate, sworn on 24th January, 2023, where he deponed that they filed their client's bill of costs on 21st June 2021 as Miscellaneous Civil Application No 76 of 2021 against the Respondents for the sum of Ksh 17,586,737/=. It was his deposition that the said Bill of Costs was taxed on 24th August, 2021 against the Respondent at Ksh 571,710/= and a certificate of costs was issued on 2nd September, 2021.
3. The applicant deponed that the Respondent has refused to settle the said certificate of costs making the issuance of the orders sought necessary.
4. The second application is the Respondent's Notice of Motion Application dated 17th June, 2025 seeking the following orders:



1. That the court be pleased to enlarge the time to make reference in this matter as the Respondent had filed reference in Nakuru High Court Miscellaneous Civil Application E76 of 2021, which was not heard and determined on its merits.
 2. That the Certificate of Taxation dated 2nd September 2021 was issued pursuant to taxation proceedings conducted in High Court Civil Division Miscellaneous Application No E076 of 2021, a court that lacked jurisdiction to tax an advocate-client bill arising from an Environment and Land Court matter contrary to Article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
 3. That there be a stay of execution of the certificate of Costs issued on 2nd September 2021 in respect of the taxation order made on 24th August 2021 in Nakuru High Court Miscellaneous Civil Application E76 of 2021 certifying costs due to the Applicant from the Respondent at Kshs 571,710/= pending the hearing of the reference.
 4. That the said Certificate of Taxation is null and void ab initio for want of jurisdiction and cannot form the basis of a judgment of this Honourable Court.
 5. That the application for reference be deemed to have been duly, properly lodged and filed within time as prescribed.
 6. That the reference be placed before the court for speedy determination.
 7. That the Taxation Ruling dated 24th August 2021 delivered in Miscellaneous Civil Application No 76 of 2021 be set aside and or varied.
 8. The Bill of Costs dated 24th March, 2021, in its entirety be taxed afresh before another Taxing Officer or the Honourable Court Tax it.
 9. The Cost of this Application be provided for.
5. The application is supported by the annexed affidavit of Jebet Chebii Chesiyina, the Respondent sworn on 17th June, 2025, where she deponed that the Bill of Costs taxed on 24th August, 2021 in Nakuru HC Misc. Application No E076 of 2025 was filed by E.M Juma & Ombui Advocates who never had a retainer with her or the deceased. She deponed that the only document filed in court by the said advocate was a Notice of Change of Advocates but no pleadings in the suit.
 6. The Respondent further deponed that the advocate filed the bill more than three years after the matter was initiated in 2016 and over two years after the death of deceased in 2020 thus being time barred. She deponed that the taxation was conducted in the High Court Civil Division which lacked jurisdiction over an Environment and Land Court matter and the certificate is thus invalid.
 7. Mr. Evans Juma Matunda filed a Replying Affidavit sworn on 23rd June, 2025, and deponed that this court lacks jurisdiction to entertain the application as there is no reference that has been filed by the Applicant as per the tenets of paragraph 11 (1) of the Advocates Remuneration (Order) and urged the court to dismiss the application with costs.

Applicant's Submissions

8. Ms. Obura, counsel for the Applicant filed submissions dated 29th July, 2025, and identified the following issues for determination:
 - a. Whether the Certificate of Costs dated 2nd September 2021 is valid and enforceable?



- b. Whether the court should adopt the Certificate of Costs as a judgment and decree of the court?
 - c. Whether the Respondent is liable to pay interest on the taxed amount?
9. On the first issue, counsel submitted that there is no dispute on the retainer and the failure to challenge the taxation renders the certificate both valid and enforceable as a matter of law. Counsel relied on the cases of *Machira & Co Advocates vs Arthur K. Magugu* [2002] eKLR and *Mayers & Another vs Hamilton & Others* [1975] EA 13.
 10. On the second issue, whether the court should adopt the certificate of costs as the Judgment and decree of the court, counsel submitted that all conditions under Section 51 (2) of the *Advocates Act* have been met and urged the court to exercise its discretion and allow the application as prayed, Counsel relied on the case of *Kithi & Company Advocates vs Menengai Downs Ltd* [2015] eKLR.
 11. On the third issue, counsel submitted that the applicant delivered its Bill on 21st June, 2021 and over three years have lapsed and the Respondent has not made any payment or raised any objections. Counsel relied on Rule 7 of the Advocates Remuneration Order and the cases of *Wambugu Motende & Company Advocates vs Shebesh* [2013] eKLR and *Kerongo & Company Advocates vs Africa Assurance Merchant Co. Limited* [2019] eKLR, and urged the court to order that the applicant is entitled to interest at 14% per annum to run from 21st July, 2021, until full payment.
 12. Counsel for the Applicant further opposed the Respondent’s Notice of Motion application dated 17th June, 2025, on jurisdiction of this Honourable Court, and submitted that the Respondent fully submitted to the jurisdiction of the court by participating in the taxation proceedings without objection. Counsel relied on the doctrines of waiver and estoppel and the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR.
 13. Ms. Obura further submitted that the Respondent’s motion is defective and cannot pass for a reference within the meaning of Rule 11 (1) and (2) of the Advocates Remuneration Order. Counsel submitted that the purported application filed on 10th September 2021 does not meet the requirements of a reference as it lacked the foundational Notice of Objection. Counsel relied on the case of *Machira & Co Advocates vs Arthur K. Magugu* [2012] eKLR.
 14. It was counsel’s submission that the Respondent’s allegation that there was no retainer is legally inconsequential at this stage as the taxation process presupposed the existence of services and a client-advocate relationship. Counsel relied on the case of *Lubulellah & Associates Advocates vs N.K Brothers Limited* [2014] eKLR. Counsel submitted that the Respondent’s application is an abuse of the court process and relied on the case of *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others* [2014] eKLR, and urged the court to dismiss the Respondent’s Notice of Motion application dated 17th June, 2025, with costs.

Respondent’s Submissions

15. Mr. Mukoya, counsel for the Respondent filed submissions dated 15th July, 2025, and identified the following issues for determination:
 - a. Whether the taxing officer erred in law and fact by taxing the bill without proof of retainer or instruction?
 - b. Whether the bill was properly founded on services rendered rather than speculative commercial value?
 - c. Whether the Advocate was entitled to costs having not taken substantive steps in the suit?



- d. Whether the taxation was valid in light of the client's substitution and the settlement of the matter before trial?
 - e. Whether the adoption of the certificate of costs in a different court/division is procedurally proper?
16. Counsel relied on Section 45 and 51 (2) of the *Advocates Act* and submitted that the absence of an instruction note or communication from the deceased plaintiff fatally undermines the foundation of the bill. Counsel relied on the case of *Okwaro & Co Advocates vs Mary Wambui Munene* [2020] eKLR. Counsel further submitted that the bill was prepared on the approximate refund or commercial value (Ksh 16,000,000/=) rather than on professional services rendered in clear violation of Rule 18 of the Advocates (Remuneration) Order and relied on the case of *Machira & Co Advocates vs Arthur K. Magugu* [2012] eKLR.
 17. It was counsel's submission that from the time of instruction to the death of the original plaintiff (17th July, 2020) and eventual substitution on 24th September, 2020), the suit was not actively prosecuted and the firm did not file any applications, submissions or attend hearings. Counsel relied on the case of *Wambugu Motende & Co Advocates vs Gerald Gichohi Kanini* [2020] eKLR, and on Rule 62 of the Remuneration Order and submitted that the Advocates move to tax a bill against a substituted party with whom there was no privity of contract or instruction is contrary to the principles of equity and procedural justice.
 18. Counsel relied on Rule 11 and 51 (2) of the *Advocates Act* and urged the court to set aside certificate of costs dated 2nd September, 2021, in its entirety and alternatively, the bill be remitted for fresh taxation before a different taxing master.

Analysis And Determination

19. The issues for determination are:
 - a. Whether this court should adopt the Certificate of Costs issued on 2nd September 2021 in respect of the taxation order made on 24th August, 2021?
 - b. Whether this court should enlarge the time for the Respondent to make reference in this matter?
20. There are two applications, by the Applicant and the respondent on adoption of certificate of costs issued on 21st September 2021 and the other one on enlargement of time to file a Reference.
21. It is on record that a reference was filed vide High Court Misc. Application No. 76 of 2021 which was dismissed for want of prosecution on 15th November 2022. This matter was filed in the High Court and was later transferred to the Environment and Land Court.
22. The Respondent also contends that the Certificate of Taxation dated 2nd September 2021 was issued pursuant to taxation proceedings conducted in High Court Civil Division Miscellaneous Application No E076 of 2021, a court that lacked jurisdiction to tax an advocate-client bill arising from an Environment and Land Court matter contrary to Article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
23. Paragraph 11 of the Advocates' Remuneration Order provides as follows:



1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he 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.
 3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
24. The Respondent also submitted that she had filed reference in Nakuru High Court Miscellaneous Civil Application E76 of 2021, which was not heard and determined on merits. The true position is that the same was dismissed for want of prosecution and the correct procedure was to file an application to reinstate the same in the High Court file.
25. The Certificate of Costs was issued by the High Court and the Applicant now seeks its adoption by this court. The Respondent argues that the High Court lacked jurisdiction to tax the Bill of costs. This matter having been transferred to this court for hearing and determination, I find that the court has jurisdiction to deal with the Applications.
26. The respondent's counsel submitted on a reference, which has not yet been filed, and not the application for enlargement of time to file a reference. The reference that had been filed in the High Court but was dismissed for want of prosecution. I find that the Applicant's application for adoption of the certificate of costs as a decree and judgment of the court has, merit and is therefore allowed as prayed. The Respondent's application dated 17th June 2025, lacks merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

