



**Kitur v National Land Commission & another (Environment and Land Case 4 of 2019) [2025] KEELC 7297 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7297 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND CASE 4 OF 2019  
LA OMOLLO, J  
OCTOBER 23, 2025**

**BETWEEN**

**SYLVIA CHEPKORIR KITUR ..... PLAINTIFF**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction.**

1. This ruling is in respect of the 2<sup>nd</sup> Defendant/Applicant's Chamber Summons application dated 25<sup>th</sup> April, 2023. It is expressed to be brought under Rule 11(1) & (2) of the Advocates Remuneration Order, Order 42 Rule 6 (1) & (2) of the Civil Procedure Rules and Sections 1A, 1B, 3 & 3A of the [Civil Procedure Act](#) Chapter 21, Laws of Kenya.
2. The application seeks the following orders;
  - a. Spent.
  - b. Spent.
  - c. That a determination be made as to who, between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants ought to bear the Plaintiff's costs of the suit, within the context of the Court's order dated 30.5.2022, or otherwise, in addition, who between the Plaintiff and the 1st Defendant, should bear the 2<sup>nd</sup> Defendant's costs of the suit too. (sic)
  - d. That the ruling of the Taxing Officer delivered herein on 12<sup>th</sup> April 2023 on all items of the Plaintiff's Bill of Costs dated 12<sup>th</sup> September 2022, be set aside, except for the Taxing Officer's findings on items 7, 8, 10, 11, 14 - 19, and 25 of the said Bill of Costs, and the said Bill of



Costs be ordered to be taxed before a different Taxing Officer, with appropriate directions on principles of such taxation by way of guidelines. (sic)

- e. That the costs of this instant application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of Jude Ragot, counsel for the 2<sup>nd</sup> Defendant/Applicant. It is sworn on 25<sup>th</sup> April, 2023.

### **Factual Background.**

4. The Plaintiff/Respondent commenced the present proceedings vide a Plaint dated 21<sup>st</sup> January, 2019 and filed on 1<sup>st</sup> February 2019. She sought the following prayers;
  - a. An order that the 1<sup>st</sup> Defendant's offer of Kshs. 18,643,575/= dated 4<sup>th</sup> October, 2018 being compensation for the compulsory acquisition of the portion of the land parcel known as title No. Kericho Municipality Block 2/2 previously known as LR No. Kericho Municipality 691/694 in Kericho measuring 0.1000 hectares, be set aside.
  - b. An order that the Plaintiff be awarded the sum of Kshs. 31,385,085/= as compensation for compulsory acquisition of the portion of the land parcel known as title No. Kericho Municipality Block 2/2 previously known as LR No. Kericho Municipality 691/694, in Kericho, measuring 0.100 hectares.
  - c. Damages for breach of constitutional and statutory duty by the Defendants.
  - d. Costs of this suit.
  - e. Interest on (b), (c) and (d) above.
5. This Court vide its order issued on 30<sup>th</sup> May, 2022 marked the suit as compromised on conditions stated by counsel appearing. The Court noted that parties had not agreed on costs and directed the Plaintiff/Respondent to tax the Bill of Costs. The Court went on to order that the Defendants to cause the suit land to be degazetted within the next 30 days and directed that the suit be mentioned for further orders on 27<sup>th</sup> July, 2022.
6. On 27<sup>th</sup> July, 2022 the matter was mentioned before the Judge who noted that orders of 30<sup>th</sup> May, 2022 had not been complied with and rescheduled it for mention on 1<sup>st</sup> November, 2022.
7. On 1<sup>st</sup> November, 2022, the Court issued directions that the party and party Bill of Costs dated 12<sup>th</sup> September, 2022 be transmitted to the Deputy Registrar for assessment and taxation. The Court directed that the Plaintiff/Respondent follows up with the 1<sup>st</sup> Defendant/Respondent on the issue of compliance with the directions issued on 30<sup>th</sup> May, 2022, the 2<sup>nd</sup> Defendant/Applicant was released from the proceedings in so far as the issue of compliance with the orders of 30<sup>th</sup> May, 2022 was concerned and the matter was rescheduled to 14<sup>th</sup> December, 2022 for compliance.
8. The Court record shows that that the file was subsequently dealt by the Deputy Registrar and he delivered his ruling on taxation on 12<sup>th</sup> April, 2023. This ruling is the subject of the application under consideration.
9. The Application first came up on 24<sup>th</sup> October, 2023 for directions when the Court directed that it be served upon the Respondents and that it be heard by way of written submissions. The Court also issued an order that the status quo obtaining as at 24<sup>th</sup> April, 2023 be maintained. The application was to be mentioned on 23<sup>th</sup> November, 2023 for a ruling date.



10. On 23<sup>th</sup> November, 2023 and 19<sup>th</sup> December, 2023 the application was mentioned and, on both days, the 2<sup>nd</sup> Defendant/Applicant was absent. The Court proceeded to reserve the application for ruling which ruling was delivered on 25<sup>th</sup> April, 2024. The Ruling had the effect of dismissing the Application dated 25<sup>th</sup> April, 2023 for want of prosecution.
11. The 2<sup>nd</sup> Defendant/Applicant filed an application dated 15<sup>th</sup> May, 2024 to set aside the dismissal. The application was heard and determined in favour of the 2<sup>nd</sup> Defendant/Applicant. The ruling delivered on 13<sup>th</sup> February, 2025 allowed the 2<sup>nd</sup> Defendant/Applicant to file its submissions on the application under consideration.
12. On 19<sup>th</sup> March, 2025 both parties confirmed having filed submissions. The Plaintiff/Respondent chose to rely on submissions dated 23<sup>rd</sup> November, 2023 as earlier filed and the 2<sup>nd</sup> Defendant/Applicant on submissions filed in May 2024. The application was then reserved for ruling.
13. The 1<sup>st</sup> Defendant/Respondent did not file a response to the application under consideration.

#### **The 2<sup>nd</sup> Defendant/Applicant's Contention.**

14. The affidavit in support of the application is sworn by Jude Ragot; Counsel for the 2<sup>nd</sup> Defendant/Applicant.
15. He starts by setting out the prayers sought by the Plaintiff/Respondent against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. These have been set out in preceding paragraph.
16. He contends that the 1<sup>st</sup> Defendant/Respondent Ms. National Land commission did not enter appearance, file and serve any Statement of Defence to the suit, while the 2<sup>nd</sup> Defendant/Applicant, filed its Statement of Defence dated 31<sup>st</sup> May, 2019 in which it averred at paragraphs 4, 5, 6, 7 and 8 as follows:
  - a. That it is the 1<sup>st</sup> Defendant which is vested, by law, with the sole legal responsibility to undertake the entire process of compulsory acquisition on behalf of any Government agency, like the 2<sup>nd</sup> Defendant.
  - b. That this sole legal responsibility includes, valuation of the property intended to be compulsorily acquired, and determination of any disputes thereon, before an appeal is subsequently lodged against any such determination with the Environment & Land Court.
  - c. Any dispute between the Plaintiff and the 1<sup>st</sup> Defendant on such valuation, is a matter entirely between the two parties, without any legal liability bestowed, by law, upon the 2<sup>nd</sup> Defendant, on the general principles of agency, unless there is an agreement between the Plaintiff and the 1<sup>st</sup> Defendant on the valuation, in which event, the 2<sup>nd</sup> Defendant, would be called upon to forward settlement of the agreed valuation to the 1<sup>st</sup> Defendant to settle the same.
  - d. That that (sic) it had communicated its decision to the 1<sup>st</sup> Defendant, that it no longer required the Plaintiff's portion of land sought to be compulsorily acquired and had requested the 1<sup>st</sup> Defendant to immediately degazette the said property as not being required for compulsory acquisition.
17. It is his contention that though the Plaintiff/Respondent filed her Reply to the 2<sup>nd</sup> Defendant/Applicant's Statement of Defence she did not dispute the 2<sup>nd</sup> Defendant/Applicant's categorical averments constituting the law on compulsory acquisition and instead opted to fix the case for hearing, on that admission of the legal position.



18. He further contends that at the hearing of the main suit, before any proceedings could be taken on 4<sup>th</sup> March, 2021, upon the 2<sup>nd</sup> Defendant/Applicant's observation to the Court and the Plaintiff/Respondent, that it had communicated its decision to the 1<sup>st</sup> Defendant/Respondent, that it no longer required the Plaintiff's portion of land sought to be compulsorily acquired, the Plaintiff/Respondent conceded and withdrew the suit, and that the Honourable Court, vide its Order dated 30<sup>th</sup> May, 2022 directed that the suit be marked as withdrawn or settled, subject to the 1<sup>st</sup> Defendant/Respondent degazetting the Plaintiff/Respondent's portion of land for compulsory acquisition. He goes on to state that the Plaintiff/Respondent was awarded costs of the suit.
19. Counsel for the 2<sup>nd</sup> Defendant/Applicant contends that parties did not address the Court on the issue of costs of the suit, and who was to bear it, either as between the two Defendants to the Plaintiff/Respondent, or the Plaintiff/Respondent to the 2<sup>nd</sup> Defendant/Applicant.
20. It is his contention that the said order did not specify which of the two Defendants, was liable to settle the costs and that the Court in the said Order, was silent on the issue of the 2<sup>nd</sup> Defendant/Applicant's costs of the suit or whose liability had given rise to the instant suit on the disputed valuation of the property. He adds that the 2<sup>nd</sup> Defendant/Applicant appears to be an innocent party in the entire dispute before the Court and whether the 2<sup>nd</sup> Defendant/Applicant was liable to bear the costs of the suit or was a proper entity to have been sued by the Plaintiff/Respondent, owing to the undisputed state of the pleadings. (sic)
21. Counsel for the 2<sup>nd</sup> Defendant/Applicant also contends that it is necessary, for the Court to reach a determination on which of the parties, including the Plaintiff/Respondent, and the two Defendants, ought to bear the costs of this suit, whether it is the costs of the suit for the Plaintiff/Respondent and that of the 2<sup>nd</sup> Defendant/Applicant, or whether it is the Plaintiff/Respondent and the 1<sup>st</sup> Defendant/Respondent who ought to bear the costs of the 2<sup>nd</sup> Defendant/Applicant. He reiterates that this is owing to the fact that the 2<sup>nd</sup> Defendant/Applicant appears to be an innocent party in the entire dispute before the Court, and adds that the 1<sup>st</sup> Defendant/Respondent and the Plaintiff/Respondent's dispute commenced at valuation.
22. It is his contention that notwithstanding the determination of who bears either the Plaintiff/Respondent's costs of the suit, or the 2<sup>nd</sup> Defendant/Applicant's costs of the suit, or both their costs, the Taxing Officer's Ruling on taxation of the Plaintiff/Respondent's Bill of Costs dated 22<sup>nd</sup> September, 2022, ought to be set aside in its entirety on the grounds that;
  - a. The learned Taxing Officer erred in law and in fact, in failing to appreciate the nature of the dispute leading to the filing of the suit, by adopting the Plaintiff/Respondent's disputed value of the subject of the suit of Ksh.31,385,085, which was not proved to be the correct value of the suit, since there was no trial and determination of the same, and instead ignored the correct and undisputed value of the subject matter of the suit, admitted by all parties to have been the basis of determination of instruction fees.
  - b. The learned taxing officer erred in law and in fact in failing to appreciate that the suit having been settled or withdrawn before trial in a summary manner, instruction fees ought to have been reduced to only 75% of the sum computed under paragraph 1 of schedule 6 of the Advocates' Remuneration Order.
  - c. On the rest of the items the learned Taxing officer erred in law and in fact in
    - i. Failing to appreciate that the Plaintiff had charged her claim for costs on the Higher scale, on other services rendered, like attendances, without any order of the learned



Judge permitting the same, as contemplated under Rule 50A of the Advocates Remuneration Rules, and instead awarded the same as drawn.

- ii. Awarding costs of alleged grant of Letters of Administration, which were not the subject the}} instant suit, and which were not otherwise proved, and whose nature could only have been awarded, if at all, at the trial by this Court, and, not otherwise by the Taxing Officer, sitting as a Deputy Registrar, without conducting the trial himself, suit having been settled and or withdrawn before trial.
  - iii. In relation to disbursements, he awarded the same without the benefit of any proof of expenditure by way of receipts issued or shown to him, at all, contrary to the express and mandatory provisions of Rule 74A of the Advocates Remuneration Rules.
23. He ends his deposition by stating that unless orders of stay of execution are granted immediately by this Honourable Court while pending the hearing and determination of the instant application, inter partes, the Plaintiff/Respondent is likely to execute the Judgment of the Court on the aspect of costs against the 2<sup>nd</sup> Defendant/Applicant which would render this application nugatory and of academic value. He adds that the determinations sought in the instant application, would give appropriate direction, as to which Party between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants ought to bear the costs of the Plaintiff/Respondent, and in addition, whether the 2<sup>nd</sup> Defendant/Applicant's costs of the suit ought not to be borne by the Plaintiff/Respondent and the 1<sup>st</sup> Defendant/Respondent or either of them.

#### **The Plaintiff/Respondent's Response.**

24. The Plaintiff/Respondent filed a Replying Affidavit sworn on 26<sup>th</sup> October, 2023.
25. She deposes that she instructed her advocates on record to file the present proceedings against the 1<sup>st</sup> Defendant/Respondent and the 2<sup>nd</sup> Defendant/Applicant seeking compensation. She adds that the Plaintiff in this matter was filed on 1<sup>st</sup> February, 2019.
26. She also deposes that she is advised by her advocates on record that the 1<sup>st</sup> Defendant/Respondent was sued on account of its quest to compulsorily acquire her parcel of land known as Kericho Municipality Block 2/2 previously known as Kericho Municipality Block 691/694 at the behest of the 2<sup>nd</sup> Defendant/Applicant.
27. She further deposes that she is advised by her advocates on record that for the 1<sup>st</sup> Defendant/Respondent to undertake compulsory acquisition, it ought to have received a request from the 2<sup>nd</sup> Defendant/Applicant. She goes on to state that the 2<sup>nd</sup> Defendant/Applicant admits to this in its pleadings.
28. It is her deposition that in the said circumstances, the Defendants were acting in concert and cannot be divorced from each other.
29. It is also her deposition that both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are jointly and severally liable for their actions.
30. It is further her deposition that the 2<sup>nd</sup> Defendant/Applicant did not disclose in its Statement of Defence that it immediately requested the 1<sup>st</sup> Defendant/Respondent to degazette the Plaintiff/Respondent's property upon reaching the decision that it no longer required the land.
31. She deposes that costs follow the event and therefore she is entitled to costs as assessed by the Court. She goes on to state that she cannot therefore be said to be liable for the 2<sup>nd</sup> Defendant/Applicant's legal fees.



32. She also deposes that the Court in its ruling on costs states that the Defendants were to bear costs of the suit. She goes on to state that this can only be interpreted to mean that the Defendants were to jointly and severally be liable to cater for her (Plaintiff/Respondent) costs.
33. She further deposes that the Taxing Officer gave sufficient reasons why he found that the value of the suit property was Kshs. 31,385,085/= as opposed to Kshs. 18,643,575/=.
34. It is her deposition that the portion of her parcel of land that the 1<sup>st</sup> Defendant/Respondent was intending to compulsorily acquire measures 0.0972 Ha.
35. It is also her deposition that if the 2<sup>nd</sup> Defendant/Applicant was to use a portion of her property; the remaining portion would have been rendered unviable.
36. It is further her deposition that the Taxing Officer exercised his discretion judiciously and on the right principles in taxing the said bill of costs. She goes on to state that the said bill of costs was drawn to scale and it was therefore not true that it was taxed on a higher scale.
37. She ends her deposition by stating that the application under consideration is frivolous, designed to deny her costs and it ought to be dismissed.

#### **Issues for Determination.**

38. The 2<sup>nd</sup> Defendant/Applicant filed its submissions on 14<sup>th</sup> May, 2024 while the Plaintiff/Respondent filed her submissions on 23<sup>rd</sup> November, 2023.
39. The 2<sup>nd</sup> Defendant/Applicant submits on the following issues;
  - a. Who should bear the costs of the Plaintiff's suit.
  - b. Whether this Court is entitled (sic) to interfere with the taxation of the Deputy Registrar.
40. On the first issue, the 2<sup>nd</sup> Defendant/Applicant reiterates the averments in its affidavit in support of the application. The 2<sup>nd</sup> Defendant/Applicant also reiterates that on 30<sup>th</sup> May, 2022, the suit herein was withdrawn and the Plaintiff/Respondent awarded costs.
41. The 2<sup>nd</sup> Defendant/Applicant further reiterates that the parties did not address the Court on who was to bear the costs.
42. The 2<sup>nd</sup> Defendant/Applicant submits that given that the Court did not make a determination on who was to bear costs, it was premature for the Plaintiff/Respondent to file her bill of costs.
43. The 2<sup>nd</sup> Defendant/Applicant relies on Sections 107 to 128 of the Land Act and submits that the Plaintiff/Respondent's cause of action was with respect to the 1<sup>st</sup> Defendant/Respondent and that it (2<sup>nd</sup> Defendant/Applicant) ought not have been sued.
44. The 2<sup>nd</sup> Defendant/Applicant relies on the judicial decision of Five Star Agencies Limited & another v National Land Commission & 2 others [2024] KECA 439 (KLR) in support of its submissions.
45. The 2<sup>nd</sup> Defendant/Applicant submits that it was wrongly sued in the present matter and therefore the Plaintiff/Respondent ought to bear its costs. The 2<sup>nd</sup> Defendant/Applicant relies on Section 27 of the Civil Procedure Act in support of its submissions.
46. The 2<sup>nd</sup> Defendant/Applicant also submits that the Plaintiff/Respondent cannot seek to have costs be borne by the 1<sup>st</sup> Defendant/Respondent and yet it (1<sup>st</sup> Defendant/Respondent) did not play any role in the Plaintiff/Respondent's decision to erroneously sue the 2<sup>nd</sup> Defendant/Applicant.



47. The 2<sup>nd</sup> Defendant/Applicant further submits that there is therefore no basis for this Court to consider any of the items of the bill of costs that it is challenging.
48. It is the 2<sup>nd</sup> Defendant/Applicant's submissions that the Plaintiff/Respondent should bear its costs while the Plaintiff/Respondent's costs should be borne by the 1<sup>st</sup> Defendant/Respondent.
49. Despite the 2<sup>nd</sup> Defendant/Applicant submitting that there is no basis for this Court to consider the items of the bill of costs it is challenging, it nonetheless proceeded to submit on the said items under the second issue identified for determination.
50. The 2<sup>nd</sup> Defendant/Applicant relies on *Mwiti & another v Viljoen & another* (Civil Case E002 of 2022) [2023] KEHC 24906 (KLR) (8 November 2023) and submits that the Taxing Officer made an error of principle in the ruling delivered on 12<sup>th</sup> April, 2023 and the disputed items should therefore be set aside.
51. The 2<sup>nd</sup> Defendant/Applicant submits that the Taxing Officer awarded the Plaintiff/Respondent instruction fees of Kshs. 600,000/= and getting up fees of kshs. 200,000/=.
52. The 2<sup>nd</sup> Defendant/Applicant also submits that the Taxing Officer relied on the valuation report filed by the Plaintiff/Respondent which stated that the value of the suit property was Kshs. 31,385,085/= instead of the value stated in the Plaint which was Kshs. 18,643,575/=.
53. The 2<sup>nd</sup> Defendant/Applicant further submits that the sum of Kshs. 18,643,575/= stated in the Plaint was the 1<sup>st</sup> Defendant/Respondent's valuation of the portion of the suit parcel that was to be compulsorily acquired.
54. The 2<sup>nd</sup> Defendant/Applicant relies on Paragraph 1(a) of Schedule 6 of the Advocates Remuneration Order and submits that the Taxing Officer ought to have relied on the value as provided for in the Plaint.
55. It is the 2<sup>nd</sup> Defendant/Applicant's submissions that if the Taxing Officer intended to rely on the valuation report, he ought to have exercised his powers under Paragraph 13A of the Advocates Remuneration Order and given the parties the opportunity to test the veracity of the said valuation report.
56. The 2<sup>nd</sup> Defendant/Applicant relies on Articles 47 and 50 of *the Constitution* of Kenya, the judicial decision of *Mwiti & another v Viljoen & another* (supra) in support of its submissions.
57. The 2<sup>nd</sup> Defendant/Applicant submits that the Court should set aside the Taxing Officer's decision on item No's 3, 4 and 5 as they were with respect to succession proceedings and not the present proceedings.
58. The 2<sup>nd</sup> Defendant/Applicant also submits that the succession Court ought to have awarded costs in the said matter and in any event, no such orders for costs were granted.
59. The 2<sup>nd</sup> Defendant/Applicant further submits that the Taxing Officer ought to have applied the ratio of 75% on the instruction fees in order to establish the correct amount of instruction fees as provided for under Paragraph 1(a) of Schedule 6 of the Advocates Remuneration Order.
60. It is the 2<sup>nd</sup> Defendant/Applicant's submissions that it raised the said issue before the Taxing Officer but it was not addressed.
61. The 2<sup>nd</sup> Defendant/Applicant relies on the judicial decision of *Danson Mutuku Muema vs Julius Muthoka Muema & Others* Machakos High Court Civil Appeal No, 6 of 1991 as was cited in *Republic v Minister for Agriculture & 2 Others Ex parte Samuel Muchiri W'njuguna & 6 Others* [2006] eKLR in support of its submissions.



62. The 2<sup>nd</sup> Defendant/Applicant relies on Paragraph 74A of the Advocates Remuneration Order and submits that the Court should set aside the award on disbursements as they were awarded without proof of expenditure.
63. The 2<sup>nd</sup> Defendant/Applicant concludes its submissions by urging the Court to allow its application as prayed.
64. The Plaintiff/Respondent submits on the following issues;
  - a. Which party between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants ought to bear the Plaintiff/Respondent's costs.
  - b. Whether the Learned Taxing Master applied the right principles in taxing the Plaintiff/Respondent's bill of costs dated 25<sup>th</sup> April, 2023.
65. On the first issue, the Plaintiff/Respondent reiterates her averments in the Replying Affidavit and submits that the Defendants are jointly liable to cater for her costs.
66. On the second issue, the Plaintiff/Respondent submits that the figure of kshs. 18,643,575/= was not justified as there was no valuation report stating the said amount.
67. The Plaintiff/Respondent also submits that she filed a valuation report that was attached to her list of documents and urges the Court to dismiss the 2<sup>nd</sup> Defendant/Applicant's application as the Taxing Officer cannot be faulted for relying on a valuation report whose contents were not controverted.
68. The Plaintiff/Respondent relies on the judicial decision of Masore Nyangau & Co. Advocates vs Kensalt Ltd ELC Nakuru Misc Application No. 196 of 2015 as was cited in Tom Ojienda & Associates Advocates v County Government of Narok (Miscellaneous Application E608 of 2019) [2021] KEHC 452 (KLR) (Commercial and Tax) (16 June 2021) (Ruling) in support of her submissions.
69. The Plaintiff/Respondent submits that the Taxing Officer taxed the instruction fees at kshs. 600,000/= upon taking into consideration the fact that the matter had not proceeded for hearing.
70. The Plaintiff/Respondent also submits that the Taxing Officer therefore complied with the provision of Paragraph 7(d) of Schedule 6 of the Advocates Remuneration Order.
71. The Plaintiff/Respondent further submits that even though the 2<sup>nd</sup> Respondent sought for reasons, it failed to disclose whether the said reasons were availed.
72. The Plaintiff/Respondent concludes her submissions by urging the Court to dismiss the 2<sup>nd</sup> Defendant/Applicant's application.

### **Analysis and Determination.**

73. I have considered the 2<sup>nd</sup> Defendant/Applicant's application, the response thereto and the rival submissions. It is my view that the following issues arise for determination;
  - a. Whether the Defendants should bear the Plaintiff/Respondent's costs.
  - b. Whether the Plaintiff/Respondent should bear the 2<sup>nd</sup> Defendant/Applicant's costs.
  - c. Whether the Taxing Officer's decision delivered on 12<sup>th</sup> April, 2023 should be set aside.
  - d. Who should bear costs of the application.



## A. Whether the Defendants should bear the Plaintiff/Respondent's costs.

74. The 2<sup>nd</sup> Defendant/Applicant is seeking that the Court makes a determination on who between the 1<sup>st</sup> Defendant/Respondent and itself should bear the Plaintiff/Respondent's costs of the suit.
75. The 2<sup>nd</sup> Defendant/Applicant contends that on 30<sup>th</sup> May, 2022 the present suit was withdrawn and the Plaintiff/Respondent awarded costs.
76. The 2<sup>nd</sup> Defendant/Applicant submits that it was not liable to pay costs because it was sued without any justification as the Plaintiff/Respondent's cause of action lay with the 1<sup>st</sup> Defendant/Respondent.
77. The Plaintiff/Respondent in response contends that since the Court did not state who between the Defendants should bear the costs, this should be interpreted to mean that both Defendants were to bear costs.
78. Section 27(1) of the *Civil Procedure Act* provides as follows;
- “(1)Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the Court or Judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:
- Provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order.” (Emphasis mine)
79. The Supreme Court in *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR) held as follows;
- “18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.”
80. In the above cited judicial decision, the Supreme Court held that if a party files a suit and the suit fails, then the party instituting the suit bears the costs of the suit. In the event the suit succeeds, then the Defendant bears the costs. The Supreme Court also held that costs are awarded at the discretion of the Court and the Court is guided by the ends of justice.
81. It is not disputed that the present suit was withdrawn with Costs to the Plaintiff/Respondent. What is disputed is who, as between the 1<sup>st</sup> Defendant/Respondent and the 2<sup>nd</sup> Defendant/Applicant, should bear the costs.
82. The 2<sup>nd</sup> Defendant/Applicant submits that the Plaintiff/Respondent's cause of action lay with the 1<sup>st</sup> Defendant/Respondent and it therefore ought not to have been sued.



83. Further, the 2<sup>nd</sup> Defendant/Applicant states that it communicated the fact that it no longer required the suit parcel to the 1<sup>st</sup> Defendant/Respondent but not to the Plaintiff/Respondent save for the statements contained in its statement of defence.
84. It is important to note that at the time the suit was being withdrawn, the 2<sup>nd</sup> Defendant/Applicant was a party to the suit. The 2<sup>nd</sup> Defendant/Applicant did not file any application seeking to be struck out from the suit and neither did the Court make a determination on whether or not the 2<sup>nd</sup> Defendant/Applicant was a necessary party to the proceedings.
85. On 1<sup>st</sup> November, 2022, the Court issued directions that the party and party Bill of Costs dated 12<sup>th</sup> September, 2022 be transmitted to the Deputy Registrar for assessment and taxation. The Court directed that the Plaintiff/Respondent follows up with the 1<sup>st</sup> Defendant/Respondent on the issue of compliance with the directions issued on 30<sup>th</sup> May, 2022, the 2<sup>nd</sup> Defendant/Applicant was released from the proceedings in so far as the issue of compliance with the orders of 30<sup>th</sup> May, 2022 was concerned and the matter was rescheduled to 14<sup>th</sup> December, 2022 for compliance with the orders of 30<sup>th</sup> May, 2022.
86. Nothing would have been easier than the Learned Judge stating that the 2<sup>nd</sup> Defendant/Applicant be released from the proceedings entirely. In the absence of such express statements, I am not persuaded, therefore, that costs of the suit were meant to be borne by the 1<sup>st</sup> Defendant/Respondent alone.
87. I find that the 2<sup>nd</sup> Defendant/Applicant has not laid a basis for this Court to exclude it from bearing the costs of the suit. The costs of this suit shall be borne by both the 1<sup>st</sup> Defendant/Respondent and the 2<sup>nd</sup> Defendant/Applicant.

**B. Whether the Plaintiff/Respondent should bear the 2nd Defendant/Applicant’s costs.**

88. The 2<sup>nd</sup> Defendant/Applicant contends that it was not a necessary party to the suit and therefore the Plaintiff/Respondent should bear its costs.
89. In response, the Plaintiff/Respondent submits that costs follow the event and since she is entitled to costs, she cannot be held liable to pay the 2<sup>nd</sup> Defendant/Applicant costs.
90. In the judicial decision of *Muhammad & another v Kenya Copyright Board & 2 others; Kenya Association of Music Producers & 2 others (Interested Parties)* [2025] KEHC 4229 (KLR) the Court held as follows;
  - “ 16. Section 27(1) of the *Civil Procedure Act* provides that the award of costs is in the discretion of the Court, with the general principle being that “costs follow the event” unless the Court, for good reason, orders otherwise. This discretion must, however, be exercised judiciously.
  17. In *Rai & 3 others v. Rai & 4 others* [2014] KESC 31 (KLR), the Supreme Court emphasized that while costs normally follow the event, Courts have the discretion to depart from this principle for compelling reasons, including the conduct of the parties and the stage at which the withdrawal occurs.
  18. Costs are in the discretion of the Court, yet, follows the event. See the *Halsbury’s Laws of England*; 4<sup>th</sup> Edition (Re-issue), [2010], Vol.10. para 16 that:



“The Court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the Court, a party has no right to costs unless and until the Court awards them to him, and the Court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” (Emphasis added).

19. In Judicial Hints on Civil Procedure, 2<sup>nd</sup> Edition, (Nairobi) Law Africa) 2011, page 94 Justice (Retired) Kuloba observes that:-

“Costs are {awarded at} the unfettered discretion of the Court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the Court has good reason to order otherwise...”

20. “Good reasons” that justifies departure from the general rule that ‘costs follow the event’ will vary from case to case. The Court in Rai & 3 others v. Rai & 4 others supra observed that:

“There was no prescribed definition of any set of good reasons that can justify a Court’s departure, in awarding costs, from the general rule, costs-follow-the-event. In the classic common law style, the Courts have proceeded on a case-by-case basis, to identify good reasons for such a departure. An examination of evolving practices on that question show that, as an example, matters in the domain of public-interest litigation tend to be exempted from the award of costs.” (Emphasis mine)

91. In the above cited judicial decision, the Court held that costs follow the event unless the Court for good reasons orders otherwise. The Court also held that the good reasons that justify the departure from the general rule, vary from case to case.
92. The Plaintiff/Respondent was awarded costs and the 2<sup>nd</sup> Defendant/Applicant is now seeks to be awarded costs.
93. I note that the 2<sup>nd</sup> Defendant/Applicant’s argument is primarily premised on the contention that it was not a necessary party to the present proceedings. However, no determination was made by this Court on whether or not the 2<sup>nd</sup> Defendant/Applicant was a necessary party to this suit.
94. As mentioned before, nothing would have been easier than for the learned Judge to state expressly why it would depart from the general rule that costs follow the event ( the event here being the settlement of the suit in favour of the Plaintiff) and therefore make a finding that the 2<sup>nd</sup> Defendant/Applicant’s costs shall be borne by the Plaintiff/Respondent.
95. The 2<sup>nd</sup> Defendant/Applicant has failed to persuade this court that it is entitled to costs and even importantly, that those costs should be borne by the Plaintiff/Respondent.
96. There were numerous options available to the 2<sup>nd</sup> Defendant/Applicant in respect of whatever claim it might have had against the 1<sup>st</sup> Defendant/Respondent including and not limited to issuing a notice against a co-defendant and seek to be indemnified. It failed to pursue those options during the life of the suit. As it were, there is no determination or settlement of any claim against the 1<sup>st</sup> Defendant/



Respondent or Plaintiff/Respondent in favour of the 2<sup>nd</sup> Defendant/Applicant so as to entitle it (the 2<sup>nd</sup> Defendant/Applicant) to costs.

97. I find no basis for awarding the 2<sup>nd</sup> Defendant/Applicant costs to be borne by the 1<sup>st</sup> Defendant/Respondent or Plaintiff/Respondent.

### **C. Whether the Taxing Officer's decision delivered on 12<sup>th</sup> April, 2023 should be set aside.**

98. The principles for setting aside the decisions of Taxing Officers were established by the Court of Appeal in the case of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR. It was found as follows;

“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.”

99. In Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] Civil Appeal 206 of 2006, the Court of Appeal gave instances where discretion cannot be deemed to have been exercised properly as follows;

“...Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside.” (Emphasis mine)

100. The 2<sup>nd</sup> Defendant/Applicant is seeking that the Court sets aside the Taxing Officer's decision on all the items in the bill of costs except for item No's 7, 8, 10, 11, 14 – 19 and 25 of the bill of costs dated 12<sup>th</sup> September, 2022.

101. In response, the Plaintiff/Respondent contends that the Taxing Officer exercised his discretion judiciously in the taxation of the bill of costs dated 12<sup>th</sup> September, 2022.

102. The procedure for filing a reference is provided for by Paragraph 11 of the Advocates Remuneration Order 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 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 subparagraph (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 expired.”
103. The Plaintiff/Respondent contends that even though the 2<sup>nd</sup> Defendant/Applicant sought reasons for the Taxing Officer's decision, it did not place before the Court the reasons given by the Taxing Officer.
104. The Taxing Officer delivered his ruling on 12<sup>th</sup> April, 2023. A perusal of the Court record shows that the 2<sup>nd</sup> Defendant/Applicant wrote the letter dated 13<sup>th</sup> April, 2023 requesting reasons. The letter was received in Court on 20<sup>th</sup> April, 2023. This Court notes that no reasons were availed by the Taxing Officer.
105. The Court of Appeal in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] KECA 325 (KLR) held as follows;
- “It is true that the taxing officer did not record the reasons for the decision on the items objected to after receipt of the respondent's notice. It seems that the taxing officer decided to rely on the reasons in the ruling on taxation dated 23rd February, 2004. That ruling at least indicated the formula that the taxing officer applied to assess the instructions fees. Although there was no strict compliance with Rule 11 (2) of the Order, we are nevertheless, satisfied that there was substantial compliance. The adequacy or otherwise of the reasons in the ruling is another matter. Indeed, we are of the view, that if a taxing officer totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference.” (Emphasis mine)
106. It is this Court's view that the 2<sup>nd</sup> Defendant/Applicant cannot be faulted for failing to avail reasons from the Taxing Officer when no such further reasons were given.
107. The 2<sup>nd</sup> Defendant/Applicant contends that the Taxing Officer erred in relying on the valuation report which stated that the value of the suit parcel was kshs. 31,385,085/= instead of the value of Kshs. 18,643,575/= that was stated in the Plaint in taxing item No. 1 on instructions fees.
108. The 2<sup>nd</sup> Defendant/Applicant submits that the Taxing Officer should not have relied on the said valuation report as it was not proved in evidence.
109. The 2<sup>nd</sup> Defendant/Applicant also submits that the Taxing Officer ought to have exercised his power under Paragraph 13A of the Advocates Remuneration Order and give the parties an opportunity to test the veracity of the valuation report.
110. The Plaintiff/Respondent on the other hand submits that the Taxing Officer did not err in relying on the valuation report dated 28<sup>th</sup> August, 2018 which stated that the value of the suit parcel was Kshs. 31,385,085/=.
111. The Plaintiff/Respondent also submits that the 2<sup>nd</sup> Defendant/Applicant's contention that the value of the suit parcel was kshs. 18,643,575/= was not supported by any valuation report.
112. The Plaintiff/Respondent further submits that the Taxing Officer did not therefore err in relying on the said valuation report.



113. The Taxing Officer in his ruling delivered on 12<sup>th</sup> April, 2023 held as follows;

“I have carefully considered the application above and submissions by both advocates. It is noteworthy that paragraph 1(a) and (b) of Schedule 6 applies only where the value of the subject matter can be determined from the pleadings/judgement or settlement between parties. The suit did not proceed to full trial. The valuation report by the Plaintiff presented in this case has a figure of kshs. 31,386,085. The Defendant indicated that the value of the said property was Kshs. 18,643,575 which figure is not supported by a valuation report to that effect. The Taxiing (sic) Master however has discretion to award a reasonable sum, however he ought and must exercise his discretion judicially...

It is therefore clear to me that the value of the said piece of land is Kshs. 31,385,085 and this is supported by the valuation report. There is no any other valuation report to oppose the one presented in Court by the Applicant herein. The alleged value of kshs. 18,643,575 is not supported by any valuation report and was an estimate by the Defendants which is not supported by any other evidence hence Kshs. 18,643,575 by the Respondents, to me is a figure that this Court will note (sic) be considered to be the value of the suit land but later (sic) the value of the land is hereby determined as per the valuation report to be Kshs. 31,386,085 (sic).

I take note also that this matter did not proceed to full hearing with a judgement. In using my discretion, I proceed to tax it as per schedule 6 of the Advocates (Remuneration) Amendment] Order 2014 (sic) as follows;

Item 1 – Instruction fees Kshs. 600,000 Item 2 Kshs. 200,000...”

114. There are several authorities that offer guidance on the circumstances under which a Judge determining a reference may interfere with the discretion of a Taxing Officer.

115. In Kipkorir, Titoo & Kiara Advocates Vs Deposit Protection Fund Board NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR the Court of Appeal stated thus;

“On a 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.” [Emphasis Mine]

116. In Premchand Raichand Ltd Vs Quarry Services of East Africa Ltd (1972) EA 162 the Court outlined the principles of taxation as follows:

- “(a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy.
- (b) That a successful litigant ought to be fairly reimbursed for the cost he has had to incur.
- (c) that the general level of remuneration of Advocates must be such as to attract recruits to the profession.
- (d) so far as practicable there should be consistency in the award made and
- (e) The Court will only interfere when the award of the Taxing Officer is so high or so low as to amount to an injustice to one party.”



117. The Court of Appeal in *Joreth Ltd Vs. Kigano & Associates* [2002] 1 E.A. 92 held as follows;
- “We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a Bill of costs ought to be determined from the pleadings, Judgment or settlement (if such be the case) but if the same is not so ascertainable the Taxing Officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances.”
118. In the above cited judicial decision, the Court held that the value of the subject matter of a suit ought to be determined from the pleadings, Judgement or settlement.
119. In the present matter, both the 2<sup>nd</sup> Defendant/Applicant and the Plaintiff/Respondent contend that the value of the subject matter can be ascertained from the pleadings.
120. The issue in contention is the value. The 2<sup>nd</sup> Defendant/Applicant contends that the value of the subject matter is Kshs. 18,643,575/= while the Plaintiff/Respondent contends that the value is Kshs. 31,385,085/=.
121. The Plaintiff/Respondent averred in the Plaint that the 1<sup>st</sup> Defendant/Respondent offered kshs. 18,643,575/= as compensation for compulsory acquisition of a portion of her land.
122. The Plaintiff/Respondent also averred that she caused a valuation of the said portion to be done which showed that its value was Kshs. 31,385,085/=.
123. In the prayers, the Plaintiff/Respondent sought that the Court sets aside the offer of kshs. 18,643,575/= and issue an order that she be awarded the sum of Kshs. 31,385,085/=.
124. It is important to note that this matter was withdrawn. Had it proceeded for hearing, the Court would have had to make a determination on whether the value of the said portion was Kshs. 18,643,575/= or Kshs. 31,385,085/=.
125. It is this Court’s view that as it stands, the value of the said portion of the suit parcel cannot be determined from the pleadings.
126. In *Joreth Ltd Vs. Kigano & Associates* (supra) cited above, the Court held that if the value of the subject matter of a suit cannot be discerned from the pleadings, then the Taxing Officer exercises his discretion in awarding instruction fees.
127. It is therefore my finding that the Taxing Officer made an error in principle in making a finding that the value of the subject matter could be ascertained from the pleadings.
128. The Taxing Officer also erred in relying on the valuation report dated 24<sup>th</sup> August, 2018 in support of his finding that the value of the suit parcel was Kshs. 31,385,085/=.
129. That being the case, Item No. 1 on instruction fees and by extension Item No. 2 on getting up fees are hereby set aside.
130. The 2<sup>nd</sup> Defendant/Applicant is also challenging the Taxing Officer’s decision on Item No’s 3, 4 and 5 of the bill of costs dated 12<sup>th</sup> September, 2022.
131. The 2<sup>nd</sup> Defendant/Applicant submits that the said items were in respect of succession proceedings which did not relate to the present suit.



132. The Plaintiff/Respondent did not submit on this issue.
133. The Taxing Officer taxed item No's 3, 4 and 5 as drawn.
134. Item No. 3 is dated 10<sup>th</sup> October, 2018. The Plaintiff/Respondent sought the sum of kshs. 1,100/= for drafting an application for Grant of Letters of Administration Ad Litem limited to instituting a suit for recovery of land.
135. Item No. 4 is dated 12<sup>th</sup> October 2018. The Plaintiff/Respondent sought a sum of kshs. 500/= for attending the registry to file the Limited Grant of Letters of Administration Ad Litem.
136. Item No. 5 is dated 2<sup>nd</sup> November, 2018. The Plaintiff/Respondent sought a sum of Kshs. 1,100/= for drawing up another petition for Letters of Administration Ad Litem.
137. In the judicial decision of Michael Ochieng Mbuya v Jacob Ojwang Ojwang [2013] KEHC 5655 (KLR) the Court held as follows;

“Items 1,2,2A and 2B relate to a succession cause – HCC No.722/09 – brought to enable the plaintiff to file this suit.

The question that arise is whether costs arising in a different case can be visited on a person who was not party to it. The Court thinks that the applicant makes a good point by asserting that he was not party to the succession cause.

Looking at it differently, the plaintiff filed the succession cause in order to get capacity to bring the suit. It is necessary to consider whether the defendant/applicant had contributed to plaintiff's lack of capacity. The answer obviously is that he had not. That being the case, why then should he be condemned to pay cost? And why couldn't costs be done in the succession cause itself?” [Emphasis Mine]

138. In the present matter, it is evident that item No's 3, 4 and 5 relate to succession proceedings that the Plaintiff/Respondent commenced in order to get capacity to institute the present proceedings.
139. It is important to note that the succession cause number was not disclosed and since the 2<sup>nd</sup> Defendant/Applicant and 1<sup>st</sup> Defendant/Respondent did not contribute to the Plaintiff/Respondent's lack of capacity, they cannot be condemned to pay costs incurred in the succession proceedings.
140. The Taxing Officer therefore erred in taxing the said items as prayed. Item No's 3, 4 and 5 are hereby taxed off.
141. The 2<sup>nd</sup> Defendant/Applicant is also challenging the items on disbursements on the bill of costs dated 12<sup>th</sup> September, 2022.
142. The 2<sup>nd</sup> Defendant/Applicant submits that the said items were awarded without any proof of expenditure. The 2<sup>nd</sup> Defendant/ Applicant also submits that no receipts were produced or shown by the Plaintiff/Respondent.
143. The Plaintiff/Respondent did not submit on this issue.
144. The Taxing Officer taxed item No's 30 to 40 that were under disbursements as drawn.



145. Paragraph 74 of the Advocates Remuneration Order provides as follows;

“Subject to paragraph 74A, receipts or vouchers for all disbursements charged in a bill of costs shall be produced on taxation if required by the taxing officer.”

146. A perusal of the 2<sup>nd</sup> Defendant/Applicant’s submissions filed on 5<sup>th</sup> December, 2022 with respect to the bill of costs dated 12<sup>th</sup> September, 2022 show that the 2<sup>nd</sup> Defendant/Applicant submitted that item No’s 28 to 32 should only be allowed upon production of receipts.

147. It is therefore evident that the only items that the 2<sup>nd</sup> Defendant/Applicant was challenging under disbursements were item No’s 28 to 32.

148. It is important to note that items No’s 28 and 29 were with respect to attendances in Court on 4<sup>th</sup> May, 2021 and 30<sup>th</sup> May, 2022 respectively and they are not listed under disbursements. Therefore, the disputed items under disbursements are item No’s 30 to 32.

149. In the judicial decision of Wasuna & Company Advocates v Kajulu Holdings Limited & 3 others [2022] KEHC 10994 (KLR) the Court held as follows;

“23. It was the Respondent/Applicant’s case that the Taxing Officer erred in law and fact in awarding the Respondent disbursements of Kshs.83, 420 despite the fact that the same had not been supported by any evidence. On the other hand, the Applicant argued that disbursements are awarded at the discretion of the taxing officer on proof by the drawer of the bill that they were reasonably incurred.

24. To this extent, the Court agrees with the Applicant that disbursements are awarded at the discretion of the Taxing Officer as provided under Paragraph 74 of the Advocates Remuneration Order which provides;

“Vouchers to be produced Subject to paragraph 74A, receipts or vouchers for all disbursements charged in a bill of costs shall be produced on taxation if required by the taxing officer.”

25. However, it is imperative to note that the Respondent/Applicant in its submissions to the Bill of Costs had contended that items 50, 51, 52 and 53 relating to disbursements to which no receipts have been furnished should be taxed off.

26. The Court observed that the Taxing Officer in his ruling dated 1<sup>st</sup> February 2019 did not take into consideration the Respondent’s objection to the taxing of the disbursements. Neither did the Taxing Officer explain how he arrived at the said figure for the disbursements. The Taxing Officer simply concluded that the “the unopposed items shall be taxed as drawn”.

27. It is the Court’s considered view that the Taxing Master should have required proof of items under disbursement in consideration of the objection that was raised by the Respondent concerning the items under disbursement...

29. In consideration of the above, this Court is satisfied that it was an error in principle for the Taxing Officer to award the said items for disbursements in the absence of any supporting receipts when an objection had been raised by the



Respondent; it was therefore incumbent that the receipts be produced before such an award be made.

30. The decision of the Taxing Officer delivered on 1<sup>st</sup> February 2019 is thus set aside only on the issue of disbursements.”[Emphasis Mine]
150. In the above cited judicial decision, the Respondent raised concerns with regards to some items that were listed under disbursements. The Taxing Officer did not take into consideration the said objection and the Court held that the Taxing Officer ought to have required proof of the items under disbursements that were objected to by the Respondent.
151. Similarly, in the present matter, the 2<sup>nd</sup> Defendant/Applicant objected to item No’s 30, 31 and 32. The Taxing officer did not take into consideration the 2<sup>nd</sup> Defendant/Applicant’s objection and he instead taxed the said items as drawn. It is therefore this Court’s view that it was imperative upon the Taxing Officer to require proof from the Plaintiff/Respondent on item No’s 30, 31 and 32 before taxing them.
152. The Taxing Officer’s decision on Item No’s 30, 31 and 32 is hereby set aside.
153. In the judicial decision of *Meir Mizrahi & another v Nairobi City Council & 2 others* [2014] eKLR the Court held as follows;

“The Ruling in *Premchand Raichand & Another v Quarry Services E.A Ltd & Others* (1972) E.A provided that a Court will not normally interfere with a taxing officer’s decision on taxation matters, the exception to the same are decisions based on error of principle and manifestly excessive fees awarded to justify an inference that it was based on an error. The Court is granted unfettered power to determine what orders it deems fit and suitable to be made in the circumstances of the determination of a taxing officer’s ruling as per Section 51(2) of the *Advocates Act*. In exercise of the aforementioned provisions of the law, and considering all circumstances and issues raised, the application by the Plaintiff dated 20<sup>th</sup> July, 2006 is allowed and the Bill of Costs dated 6<sup>th</sup> April 2006 remitted for taxation afresh before a different taxing officer.”

#### **D. Who should bear costs of the application.**

154. The general rule is that costs shall follow the event in accordance with the Provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

#### **Disposition.**

155. Taking the foregoing into consideration, the 2<sup>nd</sup> Respondent/Applicant’s Chamber Summons application dated 25<sup>th</sup> April, 2023 partially succeeds and I issue the following orders;
- a. The Taxing Officer’s decision on Item No’s 3, 4 and 5 of the bill of costs dated 12<sup>th</sup> September, 2022 are hereby set aside.
  - b. The bill of costs dated 12<sup>th</sup> September, 2022 is hereby remitted for fresh taxation of item No’s 1, 2, 30, 31 and 32 before a different Taxing Officer in line with the directions and guidelines set out in this ruling.
  - c. The 2<sup>nd</sup> Defendant/Applicant shall have costs of the application.
156. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Ragot for the 2<sup>nd</sup> Defendant/Applicant.

Mr. Koech for the Plaintiff/Respondent.

1<sup>st</sup> Defendant/Respondent – Absent

Court Assistant; Mr. Joseph Makori.

