

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ELC MISC. APPLICATION NO. E013 OF 2024**

**CHEBOSON BETT ADVOCATES .....**  
**RESPONDENT**

**VERSUS**

**DANIEL KOSGEY CHESIRE .....**  
**APPLICANT**

**RULING:**

1. The Applicant herein filed a Notice of Motion dated 26<sup>th</sup> November, 2024, against the Respondent seeking the following orders: -
  1. Spent.
  2. That the Honourable Court be pleased to grant leave to the firm of MARK MWENDWA & COMPANY ADVOCATES to come on record for the applicants post judgment.
  3. Spent.
  4. That the Honourable Court be pleased to stay the execution and/or further execution of the ruling and/or judgment delivered on 19.07.2024 and the certificate of costs issued thereto pending the hearing of this application and further pending the determination of this matter.
  5. That the Honourable Court be further pleased to set aside, review, quash and/or discharge the ruling and/or judgment delivered on 19.07.2024 and the certificate of costs issued thereto.

6. That if prayer 5 hereinabove is granted, the annexed replying affidavit attached herewith be deemed as duly filed upon the payment of the requisite court fees and to comprise the applicant's defence to the matter before court.
7. That costs of this application be provided for.
2. The application is premised on the 15 grounds on the face thereof, supported by the affidavit of the Applicant evenly dated and a Further Affidavit dated 24.10.2025.
3. The applicant averred that the respondent is well known to him having represented him in **Eldoret ELC case No. 89 of 2014 between Daniel Kosgey Chesire vs Wesley Ngetich & Another**, wherein he sought the Respondent's legal services to prosecute his interests in the matter.
4. He deponed that being financially disabled at the time, they entered into an Advocate/Client agreement with the respondent's firm of advocates, that since the case was a land dispute, he would give the respondent 2 points from the suit land in dispute in the event that they were successful in the said suit.
5. That the respondent took over the matter and handled it to its logical conclusion. However, judgment was issued in favor of the defendant and therefore, there was no land to transfer to the respondent as agreed in the Advocate-Client agreement.
6. It is his claim that he endeavored to pay the respondent the legal fees for his representation in the case and would

occasionally pay little sums of money totaling to a sum of Kshs. 200,000/= even though he was never given any receipt to that effect. He thus maintained that he paid the respondent the legal fees for his representation in ELC Case No. 89 of 2014.

7. It is further his claim that he was not served with the Bill of Costs filed in the matter or the Summons to enter appearance so as to enable him enter appearance. It is his assertion that he only learnt of the pending suit when an auctioneer stopped by his premises on 25.11.2024 in a bid to attach his properties. That he later learnt that a ruling had been issued in the matter on 19.07.2024.
8. That he also learnt that the suit had been listed for Notice to Show Cause on 27.11.2024 through the online e-filing system but maintained that he had not been served with any Notice to Show Cause.
9. He averred that he was condemned unheard against the rules of natural justice that demands that parties should be allowed to participate in matters affecting their lives.
10. He therefore contends that he is desirous of defending the matter and have the same determined on merits hence the present application seeking to set aside the ruling.
11. He relied on the right to fair hearing as provided in the constitution and averred that it is in the interest of justice that the application be allowed and maintained that no prejudice would be suffered by the respondent.

12. It was however his contention that he stands to suffer substantial loss unless the orders sought are granted and that the application had been filed in good faith and without delay. He thus urged the court to allow the application as prayed.
13. The application was opposed. The Respondent filed a Replying Affidavit dated 5<sup>th</sup> December, 2024 and sworn by Robert K. Misoi, an Advocate of the High Court of Kenya, practicing in the name and style of Cheboson Bett & Company Advocates, having been retained by the applicant to act for him in ELC Case No. 89 of 2014.
14. He dismissed the application as being inept, incompetent, frivolous, ill-conceived and without merit and the same ought to be dismissed with costs. He also stated that the application had been filed in bad faith with the sole intention of denying him the rightful enjoyment of the fruit of the court's ruling.
15. It was his claim that from the orders sought in the application, prayers 1 -7; the applicant is not seeking to be heard nor seeking the ruling delivered by the court on 19.07.2024 and the Certificate of Costs issued on 13.08.2024 and all other consequential orders emanating therefrom to be set aside and the application dated 04.04.2024 to be heard afresh. He maintained that parties are bound by their pleadings and that any evidence led by any of the parties which does not support or is at variance with the averments in their pleadings must be disregarded.

16. He deponed that the impugned ruling was delivered on 19.07.2024 and the Certificate of Costs issued on 13.08.2024 whereas the instant application was filed on 26.11.2024. He therefore stated that the applicant had not given any valid explanation for the delay in filing his application.
17. He further averred that he was a stranger to the contents of paragraphs 3, 5, 7, 8, 9, 10, 11 and 12 of the Supporting Affidavit and dismissed the same as being false, misleading and malicious.
18. In response to paragraphs 13,14 and 15 of the supporting affidavit, it was the Respondent's contention that the applicant was properly served on 29.04.2024 with both the application dated 04.04.2024 and the Notice of Taxation dated 26.04.2024 and that the process server is ready and willing to attend court for cross-examination as and when required.
19. He also deponed that the applicant was properly served on 22.11.2024 with the Notice to Show Cause dated 12.09.2024 and the process server is ready and willing to attend court for purposes of cross-examination.
20. That in further response to the contents of paragraph 21 of the supporting affidavit, he stated that the applicant has not attached any Replying Affidavit as alleged.
21. In response to the contents of paragraphs 22,23,24,25 and 26 of the supporting affidavit, the Respondent maintained that the applicant was properly served with the pleadings

and the process server was ready and willing to attend court. He therefore averred that that the applicant was given an opportunity to defend the suit but opted not to do so.

22. He further claimed that no valid basis had been laid out by the applicant to warrant the court to exercise its discretion in his favor. He added that the applicant had not also demonstrated the substantial loss that he would suffer if the orders sought are not granted.
23. In conclusion, he stated that the application was baseless and devoid of merit and thus urged the court to dismiss the same with costs.
24. The applicant filed a Further Affidavit dated 24.10.2025 in response to the averments made in the Replying Affidavit.
25. In response to paragraphs 4,5 and 6 of the replying affidavit, he maintained the present application sought to have the ruling delivered on 19.07.2024 and the certificate of costs issued thereto to be set aside and for the taxation proceedings to start de novo so that he can be granted an opportunity to be heard. He reiterated that he was never served with the bill of costs and only learnt of the proceedings after taxation.
26. In response to paragraph 12 of the replying affidavit, he stated that the respondent was not entitled to any costs in the matter since their agreement for remuneration of the legal fees was dependent on the success in Eldoret ELC Case No. 89 of 2014 Daniel Kosgey Chesire vs Wesley Ngetich &

Settlement Fund Trustee and which agreement has not been controverted by the respondent. That the said agreement never materialized since he lost the case and there was therefore no land to be given to the respondent.

27. In addition, it was his claim that the respondent has taken him to court to extort him over the representation despite the several

payments he has been making to the respondent amounting to Kshs. 200,000/= and which ought to have been considered by the court prior to taxation of the respondent's costs.

28. The Applicant reiterated that he was never served with the bill of costs, the notice of taxation or the summons to enter appearance as required under Order 5 Rule 1 of the Civil Procedure Rules, 2010. Further, that no proof has been annexed by the alleged process server to show that he was licensed to effect service at the time.

29. Moreover, it was his contention that the phone number 0721769025 contacted by the said process server before effecting service is not his phone number and that his last recognized and used phone number is 0734355965. He thus asserted that the bill of costs was served on someone else and not himself.

30. In response to paragraph 24 of the replying affidavit, it was his contention that he has a prima facie defence against the respondent as evidenced from the replying affidavit, which

raises issues worthy of consideration by the court. He thus urged the court to allow the application and grant the orders sought.

31. The Application was canvassed by way of written submissions. The Applicant filed his submissions dated 24.10.2025 while the Respondent filed their submissions dated 28.10.2025 which I have read and considered.

**Analysis and Determination:**

32. I have carefully considered the application and the grounds therein, the Supporting and Further Affidavits, the Replying Affidavit as well as the rival submissions in totality. Consequently, it is my considered opinion that the issues arising for determination are as follows: -

- i. Whether this court has the requisite jurisdiction to entertain the application as filed in the first instance;*
- ii. Whether the applicant has made out a case for review, setting aside and/or discharging the ruling delivered on 19.07.2024 and the Certificate of costs issued thereto.*
- iii. Whether an Order for Stay of Execution can issue against the ruling delivered on 19.07.2024.*
- iv. Who shall bear the costs of this application.*

- i. Whether this court has the requisite jurisdiction to entertain the application as filed in the first instance;**

33. The applicant herein has filed the present application seeking orders of review and/or setting aside of the ruling delivered on 19.07.2024 as well as an order for stay of execution of the said ruling and the certificate of costs issued thereto. The application was premised on the provisions of Article 25(c), 50, 159(2) (d) of the Constitution, Section 1, 1B and 3A of the Civil Procedure Act, Order 9 Rule 9 and Order 12 Rule 7 of the Civil Procedure Rules, 2010.
34. I do however wish to point out that the applicant did not cite the relevant and express legal provisions on the issue of review and stay of execution as sought. Be that as it may, I will apply the provisions of Article 159 (2) (d) on the administration of justice without undue regard to procedural technicalities.
35. Before delving into the merits of the orders sought by the applicant, this court must first establish whether the present application has been filed in the appropriate forum and whether this court is vested with the requisite jurisdiction to entertain the application in the first instance.
36. Section 80 of the Civil Procedure Act on review provides as follows: -

***“Any person who considers himself aggrieved—  
(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which***

***passed the decree or made the order, and the court may make such order thereon as it thinks fit.”***

37. This position is reiterated under Order 45 Rule 1 of the Civil Procedure Rules, 2010 and which provides as follows:-

***“ Any person considering himself aggrieved— (a)by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or(b)by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.***

38. It is common ground that the ruling in question dated 19.07.2024 and which the present application seeks to have reviewed and stayed is the decision of a Taxing Officer exercising his powers as provided in the Advocates Act in determining the Advocate - Client Bill of Costs dated 04.04.2024.

39. In essence therefore, from a reading of section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, it is evident that a party seeking an order for review of any decree and/or order issued by a Court should make the application for review to the same court that made the decision in the first instance.
40. Further, Rule 11 of the Advocates (Remuneration) Order provides a detailed process of objection to taxation of costs and states as follows: -

***“11. Objection to decision on taxation and appeal to Court of Appeal.***

***(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."**

41. The Court of Appeal in the case of **Machira & Co. Advocates vs Arthur K. Magugu & another [2012] eKLR** at paragraph 10, while dealing with a similar issue on the application for review of a taxation ruling held as follows:

**"With regard to advocates' bills of costs, we agree with the decision of Ringera J (as he then was) in Machira vs Magugu held that the Advocates Remuneration Order is a complete code which does not provide for appeals from taxing master's decisions. Rule 11 thereof provides for ventilation of grievances from such decision through references to a judge in chambers. The effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not be loosely used. Appeals require the typing of proceedings, compiling records of appeal and hearing of the same in open court. Reviews, however, would require provisions akin to those in 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 decisions on advocates' bills of costs through references under Rule 11 to a judge in Chambers.***

42. Thus, taking the foregoing in totality, it is my considered opinion that this Court cannot exercise its discretionary powers provided under Order 45 of the Civil Procedure Rules, 2010 or Order 12 Rule 7 as cited by the applicant, to review a Ruling made by the Deputy Registrar pursuant to the provisions of Rule 10 of the Advocates (Remuneration) Order.
43. Consequently, this court is not vested with the requisite jurisdiction to entertain the application as filed in the first instance unless the same was a Reference or an appeal emanating from a Ruling of a Review Application heard and determined by the Deputy Registrar at the first instance.
44. It is therefore my considered opinion that the present application ought to have been filed before the Deputy Registrar, who assessed the Advocate- Client Bill of Costs dated 04.04.2024 and delivered the ruling dated 19.07.2024, for hearing and determination in the first instance.
45. In view of the above finding, I find no reason to discuss the remaining issues (ii) to (iv) as the same would amount to an academic exercise. Further, this court is duty bound to down its tools upon finding that it is not vested with the requisite jurisdiction.

**Conclusion:**

46. Accordingly, in view of the foregoing, I find that the Application dated 26<sup>th</sup> November, 2024 is **not merited** and is hereby struck out with costs to the Respondent.
47. It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET this 20<sup>TH</sup> day of NOVEMBER, 2025.**

**HON. C. YANO  
ELC, JUDGE**

Ruling delivered in the presence of: -

Mr. Ogutu for Applicant.

No appearance for Mr. Misoi for Respondent.

Court Assistant - Laban