



REPUBLIC OF KENYA



**Were (Suing as the Personal Representative of the Estate of Dixon
Okumu - Deceased) v Muhudi (Environment and Land Case
E002 of 2022) [2025] KEELC 7984 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7984 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E002 OF 2022
S MBUNGI, J
NOVEMBER 19, 2025**

BETWEEN

**WALTER WERE PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF DIXON
OKUMU - DECEASED**

AND

RASHID MUKWANA MUHUDI DEFENDANT

RULING

1. The applicant, through an application dated 1/10/2025, is seeking to have this court stay the execution of the certificate of costs pending hearing of this application and a reference to this court from the taxing master on the bill of costs dated 16/4/2025 and given on 24/9/2025. The grounds are that the costs were taxed on 24/9/2025 and a notice was issued under Rule 11(1) of the Advocates Remuneration Rules. The applicant avers that there is a danger of execution of the certificate of costs by the respondent.
2. The applicant's main complaint to the taxed bill is that the suit was merely struck out before the first hearing, and therefore the costs that have been taxed on item no 1 have no bearing on the Advocates' Remuneration Order. According to the applicant, the taxing master's discretion to award the instructions fees of Kshs. 239, 495/= was contrary to the law.
3. The applicant deposes that, instead of the taxing master reducing the costs, she increased them, yet the suit was struck out before hearing, thus the items contested were improperly taxed, given that the suit was for trespass on Trans Nzioa/Kipsoen/1645 by the respondent.
4. The applicant has annexed copies of the bill of cost and the ruling on taxation as WW-1 and 2. He contends that the amount has no basis as the pleadings, judgment, or settlement cannot determine the



- value of the subject matter. The applicant has also annexed a copy of his letter requesting reasons for the taxation, with the reply from the taxing master as WW-3.
5. The applicant avers that no prejudice shall be occasioned to the respondent who has issued a notice on his intention to execute the decree as per a copy annexed as WW-4.
 6. The respondent has opposed the application vide a replying and further affidavit sworn on 8/10/2025. He deposes that the application is misconceived, lacks merit, and is contrary to Rule 11 of the Advocates Remuneration Order. The respondent deposes that the value of the suit land was ascertained to be Kshs. 27,760,000/=, as seen in the applicant's affidavit in Misc. No. E006 of 2023, for the transfer of the suit from the lower court. The same is attached as RM-1.
 7. The applicant in written submissions dated 8/10/2025 submits that the instructions fee should be Kshs. 75,000/=.
 8. The respondent, on the other hand, in submissions dated 8/10/2025, urges that the court lacks jurisdiction to determine the application as a trial court; otherwise, Rule 11 of the Advocates Remuneration Order requires the filing of a reference, and therefore, the application is incompetent.
 9. The respondent submits that the taxing master, properly exercised her discretion, considered the facts in issue in the valuation report to arrive at or determine the value of the suit land. Reliance is placed on Ong'udi -vs- Gor Construction & Hardware Ltd & another [2023] KEELC 21240 (KLR) and Kipkorir, Titoo & Kiara Advocates -vs- Deposit Protection Fund Board [2005] KECA 325 (KLR), on the proposition that the taxing master did not err in her decision.
 10. Paragraph 11 of the Advocates (Remuneration) Order provides the process of referring taxation matters before a judge as follows:-

“ 11.

- (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 subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal...”

11. In Kenya Airports Authority -vs- Otieno Ragot and Company Advocates (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) (Judgment), the court held that on assessment of advocate-client costs, a taxing officer should consider the matter and where he/she is satisfied that it was a true representation of the work done by the advocate, it could be applied in the assessment of instruction fees under Schedule 6B. Similarly, the taxing officer could exercise her/his discretion and depart from the ascertained instruction fees and give reasons for such departure.



12. The manner and the procedure of objecting to taxed costs are provided under the Advocates Remuneration Order and Section 51 (2) of the *Advocates Act*. It is only after the court has been moved in the appropriate manner, that it can interfere with the decision of the taxing master. See Nchebere -vs- M'Akwalu & 3 others (Environment and Land Appeal 96 of 2019) [2022] KEELC 15131 (KLR) (30 November 2022) (Ruling). The applicant has not filed a reference before this court. See Kipkorir Tito & Kiara Advocates -vs- Deposit Protection Fund Board (2005) eKLR and Lubulletlah & Associates -vs- NK Brothers Ltd (2014) eKLR.
13. A reference has to be filed by way of a chamber summons in a miscellaneous application and served within 14 days of the taxing master's decision as per the cited law above. What is before the court is not a reference. Unless the court's jurisdiction is properly invoked, this court cannot issue the orders sought. The application is struck out with no order as to costs. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 19TH DAY OF NOVEMBER 2025.

In the presence of:

Court Assistant – Dennis

Imainata for the applicant/plaintiff present

Mr. Mukabane for the defendant/respondent present

HON. C.K. NZILI

JUDGE, ELC KITALE.

