

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC MISC. (REFERENCE) NO. E022 OF 2025

**COUNTY GOVERNMENT OF
TRANS NZOIA -----4TH
DEFENDANT/APPLICANT**

VERSUS

**ANTONY MUNENE-----6TH
DEFENDANT/RESPONDENT**

**IN THE MATTER OF REFERENCE ON PARTY AND
PARTY BILL OF COSTS ARISING FROM LAND &
ENVIRONMENT COURT AT KITALE ELC NO. 1 OF
2017**

**VINCENT MOSE OMARIBA
ABEL GICHANA OMARIBA
(Suing as the Legal Representatives of the Estate of
FLORENCE K.**

OPINI)-----

PLAINTIFFS

VERSUS

**NATIONAL LAND COMMISSION-----1ST
DEFENDANT**

**THE CHIEF LAND REGISTRAR-----2ND
DEFENDANT**

**THE LAND REGISTRAR-----
3RD DEFENDANT**

**COUNTY GOVERNMENT OF TRANS NZOIA-----4TH
DEFENDANT**

DAVID NDEGWA MWAI-----5TH
DEFENDANT
ANTHONY MUNENE-----6TH
DEFENDANT

RULING

1. Following a ruling by the taxing maser dated **28/8/2025**, declining jurisdiction to tax the party to party bill of costs arising out of **Kitale ELC No. 1 of 2017, Vincent Mose Omariba, Abel Gichana Omariba (Sing as legal representatives of the estate of Florence K. Opini) -vs- National Land Commission & Others**, the 4th defendant/applicant has filed a reference to this court pursuant to paragraph **11(2)** of the Advocates Remuneration **Order 2014** and the Advocates Act. it seeks the setting aside of the ruling and for the court to tax the bill of costs dated **24/6/2025**.
2. The grounds are set out on the face of the application and in a supporting affidavit of Karani Grey Advocate, sworn on **10/9/2025**. In paragraph **3** of the supporting affidavit, the deponent confirms that the applicant whom he was representing and had filed a defence and counterclaim dated **16/6/2018** against the plaintiff's suit, which was amicably settled by way of a

consent executed on **14/5/2024**. The defence and counterclaim, and a consent are attached as annexures marked **KOA-(1)** and **(2)**.

- 3.** The deponent states that costs for the suit were agreed to be awarded to the applicant, to be borne by the respondent, and the plaintiffs in the suit.
- 4.** The deponent deposes that parties have been unable to agree on the costs, hence the need for the taxing master to tax the party to pay the bill of costs dated **24/6/2025**, which, unfortunately, the taxing master has declined jurisdiction.
- 5.** The deponent deposes that attempts to engage the respondent to amicably agree on the costs have borne no fruit.
- 6.** Further, he deposes that the taxing master erred in declining jurisdiction as per the annexed ruling marked **KOA-(4)**, more so after this court, in a ruling dated **23/7/2025**, declined to set aside the consent judgment.
- 7.** The deponent deposes that the ruling was manifestly arrived at contrary to settled legal principles of law on taxation, more so when the respondent had not objected to the same. The deponent urges the court to

revise, vary, or set aside the tax master's decision and proceed to tax the bill as present.

- 8.** It is not in dispute that a consent dated **14/5/2024** was executed by the parties. The applicant, as per Clause No. **4**, was awarded costs after the suit was withdrawn against it by the plaintiffs. The respondent herein and the then plaintiff were to bear the applicant's costs equally. Clause No. **11** indicated that the applicant's costs shall be agreed upon amongst the parties.
- 9.** An award of costs is at the discretion of the court. In **Jasbir Singh Rai & Others -vs- Tarchalan Singh Rai & Others [2014] eKLR,** the court said that a party who calls forth the event by instituting a suit will bear costs if the suit fails.
- 10.** In **Westmont Holdings Ltd -vs- Central Bank of Kenya & Others Petition No. 16 (E023) of 2021,** the court observed that in civil proceedings, the Civil Procedure Act provides that costs of and incidental to all suits shall be under the discretion of the court.
- 11.** In this reference, it is not in dispute that it is the parties who willingly consented to compromise the suit and agreed on costs to be paid to the applicant by both the respondent herein and the plaintiffs equally.

The order was subsequently made a decree of the court, which to date has not been reviewed or set aside. The consent decree had left it to the parties to agree on the costs payable to the applicant herein. The parties who were to agree obviously would be the applicant, the respondent, and the plaintiffs. Following no consensus on the costs, the applicant moved to the taxing officer for its party to party bill of costs to be taxed.

- 12.** The power of this court to entertain a reference against the ruling of a taxing master is governed by paragraph **11** of the Advocates Remuneration Order. All interested parties to the ruling or matter have to be served with the chamber summons. In **Ahmednasir Abdikadir & Co. Advocates -vs- National Bank of Kenya Ltd [2006] 1 EA 6**, the court said that the objector must file a reference within **14** days from the date of receipt of the reasons.
- 13.** In **Evans Thiga Gaturu Advocates -vs- Kenya Commercial Bank Ltd [2012] eKLR**, the court said that the sufficiency or otherwise of the reasons is not necessarily a bar to the filing of the reference. The taxing master has to be guided by several factors in

taxing the bill, as held in **Joreth Ltd -vs- Kigano & Another [2002] EA 92.**

14. The powers of the taxing master in taxation were discussed in **Kenya Airports Authority -vs- Otieno Ragot & Co. Advocates Petition No. E011 of 2023.** The court said that in interpreting **Schedule V1** of the Advocates Remuneration Order, both the text and context must be read as a whole. The court said that the Advocates Remuneration Order regulates and prevents exploitation of parties to a suit to ensure that what is paid to an advocate and a successful party is a reasonable fee. The court said that **Schedule V1 A** provides for party-to-party costs to ensure a successful party receives a fair reimbursement or recompense for the costs or expenses they have incurred on account of a suit, as held in **Outa -vs- Odoyo & 3 Others, SC Petition No 6 of 2014; [2023] KESC 75 (KLR).**

15. **Rule 16** of the Advocates Remuneration Order sets out the discretion of the taxing master. **Section 2** of the Advocates Act defines costs to include fees, charges, disbursements, expenses, and remuneration. In **Republic -vs- Ministry of Agriculture & Others Exparte Muchiri W. Njuguna & Others [2006]**

eKLR, the court observed that taxation of costs is a judicial function, which is to be conducted regularly based on rational criteria, in a fair manner to provide only for reasonable compensation for work done, by avoiding the possibility of unjust enrichment to any party.

- 16.** In this reference, the taxing master is blamed for declining jurisdiction. It appears that the taxing master, when delivering the ruling, had not been made aware of a ruling by this court on **23/7/2025** declining to review, set aside, or review the consent judgment dated **14/5/2024**, which the respondent herein had brought to this court. Had the taxing master been made aware of this court ruling, she would not have concluded as she did in pages **2** and **3** of the ruling that she had no jurisdiction.
- 17.** Since it is apparent that parties have been unable to agree on the amount of the costs payable to the applicant, the consent decree, as it is, still stands and is valid. In the absence of an agreement by the parties, the court is left with no option but to effect the intention of the parties.
- 18.** For the ends of justice to be met, the prudent order is to order the reinstatement of the party-to-party bill of

costs for a hearing on the merits. It shall be served upon the plaintiffs in the primary suit and the respondent herein, in line with the consent dated **14/5/2024**.

19. The taxing master, in my view, in declining jurisdiction was misled by the submissions of the respondent who already knew the outcome of this court's ruling declining to set aside, review, or vary the said consent.

20. Costs of this reference to the applicant.

21. Orders accordingly.

Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 26th day of November 2025.

In the presence of:

Court Assistant - Dennis

Karani for the Applicant present

Atudo for the Respondent present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**