



**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

ELC CASE NO E138 OF 2021

**WEBALE B & ASSOCIATES
ADVOCATES.....APPLICANT**

VERSUS

JOHN ABUYA ISANDA.....1ST

RESPONDENT

MARY NJOKI FUNDI.....2ND

RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 28TH November 2024 brought under Order 10 Rule 11, Order 22 Rule 22(1), Order 45 Rule 1, 3(2), 5 and Order 51 Rules 1 of the Civil Procedure Rules, Article 50(1) of the Constitution, and Sections 3A, 1A, 1B and 63(e) of the Civil Procedure Act, in which the Applicant seeks the following orders:-

i. Spent.

ii. THAT this Honourable Court be pleased to set aside or vary its judgment/Ruling together with any consequential decree or order delivered in this matter on 20th November 2024.

iii. Spent.

iv. THAT this Honourable Court be pleased to review and or vacate its judgment/ruling delivered on 20th November 2024.

v. THAT the Respondent be granted leave to defend and or file a response to the advocate-client bill of costs dated 31st July 2024. Defendants/Applicants to file a defence out of time so that the suit can be determined on merit.

vi. Spent.

vii. THAT the costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Joshua Abuya Isanda sworn on even date.

THE APPLICANT'S CASE

3. It is the Applicants position that they were never served with the bill of costs in this matter. The deponent asserts that they were informed by someone from the Respondent's firm that the bill had been taxed and that judgment had been entered against them.
4. He maintained that the bill of costs is excessive and exaggerated, and that it ought to be struck. He further argued that the advocate represented them for a period of 8 years and that they had paid his legal fees. He maintained that for the period of 8 years, the advocate never raised a fee note demanding legal fees, and that they assumed he was comfortable with what they paid him.
5. He further asserted that the bill of costs is based on an erroneous value for the suit property, which is not supported by a valuation report. He argued that the value of the suit

property is Kshs 3,000,000/= and that any taxation should be based on that value.

6. The deponent is apprehensive that the Respondent will execute if the orders sought are not granted.

THE RESPONDENT'S CASE

7. The Respondent filed a replying affidavit dated 25th February 2025 in opposition to the application.
8. He deposed that the Applicants were served with the application as shown by the affidavit of service dated 26th August 2024, which they have not challenged. He maintained that the applicants were aware of the bill of costs, as on 3rd September 2024, his firm was served with a Notice of Appointment of Advocates by the firm of Morara Onsongo & Company Advocates, which was later emailed to inquire about the status of the taxation. That, despite being aware of the taxation, the firm of Morara Onsongo & Co Advocates failed to appear. He denied the allegations that the suit property was worth 3,000,000/= or that they had paid any fees. The application was canvassed by way of written submissions.

THE RESPONDENTS/APPLICANTS SUBMISSIONS

9. The Applicants filed their submissions dated 26 November 2025. To support his submissions, Counsel reiterated the contents of the supporting affidavit and relied on the cases of **Moronge & Co Advocates v Kenya Airports Authority (2014) eKLR** and **D Njogu & Co Advocate v National Bank of Kenya Ltd (2009) eKLR**.

THE ADVOCATE/RESPONDENT'S SUBMISSIONS

10. The Advocate/Respondent filed his submissions dated 11th September 2025.
11. On his behalf, Counsel submitted that the application is incompetent because it challenges the decision of the taxing master and has not been initiated through a reference. It was submitted that the affidavit of service attached to the replying affidavit confirms that the Applicants were served and were therefore aware of the proceedings before the taxing officer.

ANALYSIS AND DETERMINATION

12. Having considered the application, the respective affidavits, and the rival submissions, the issue for determination is whether the application is properly before this court.
13. The Applicants seek to set aside the ruling of the taxing officer delivered on 20th November 2024 on the grounds that they were not served and that the amount taxed is manifestly excessive.
14. The procedure for challenging a Taxing Officer's decision is set out in Rule 11 of the Advocates (Remuneration) Order. A Judge's jurisdiction to interfere with taxation is appellate, not original. In **Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board (2005) 1 KLR 528**, the Court of Appeal held that:

“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- an example of an error of principle is where the costs allowed are so manifestly

excessive as to justify an inference that the taxing officer acted on erroneous principles.”

15. It is not in dispute that the Applicants did not invoke Rule 11 of the Advocates (Remuneration) Order but instead moved the court through an ordinary application, inviting the court to set aside the Taxing Officer’s decision directly. The Applicants grievances that the award was excessive can only be interrogated within the confines of a reference.
16. Based on the foregoing, I find that the application dated 28th November 2024 is incompetent and is hereby dismissed with costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS THIS 11TH DAY OF DECEMBER, 2025.

.....
**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Webale for the Advocate

Getuma holding brief for Morara for the Applicants.

ORIGINAL