

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KILGORIS
E LC (L) MISC E016 OF 2025

<u>TOMITO TANKOI.....</u>	<u>1ST</u>
<u>APPLICANT</u>	
<u>MULUNTA SENTU.....</u>	<u>2ND</u>
<u>APPLICANT</u>	
<u>OLE KIRIONKI NTUU.....</u>	<u>3RD</u>
<u>APPLICANT</u>	
<u>JOHN MOMPOSHI TALALA.....</u>	<u>4TH</u>
<u>APPLICANT</u>	
<u>SAMSON OLOKEYAI TIEPOON.....</u>	<u>5TH</u>
<u>APPLICANT</u>	
<u>KURUU OLE SOIT.....</u>	<u>6TH</u>
<u>APPLICANT</u>	
<u>KONTI TASUR.....</u>	<u>7TH</u>
<u>APPLICANT</u>	
<u>OLORINKA KIMAYIO.....</u>	<u>8TH</u>
<u>APPLICANT</u>	
<u>MANYATTA.....</u>	<u>9TH</u>
<u>APPLICANT</u>	
<u>OLE AMPANI LEKAKENY.....</u>	<u>10TH</u>
<u>APPLICANT</u>	

VERSUS

<u>THE CHIEF LAND REGISTRAR.....</u>	<u>1ST</u>
<u>RESPONDENT</u>	
<u>THE DIRECTOR OF LAND ADJUDICATION.....</u>	<u>2ND</u>
<u>RESPONDENT</u>	
<u>THE DISTRICT LAND REGISTRAR, TRANSMARA.....</u>	<u>3RD</u>
<u>RESPONDENT</u>	
<u>THE ATTORNEY GENERAL.....</u>	<u>4TH</u>
<u>RESPONDENT</u>	

RULING

1. Upon consideration of the reference dated 19th August 2025 seeking to set aside the decision of the taxing master delivered on 12th of June 2025 in respect of Kilgoris ELC Petition No. 7/2021 (Formerly Narok ELC Petition No. 3/2021) in respect of items No. 17, 54, 60, 67, 74, 90, 155, 246 and 205 in the Bill or costs dated 24th January 2025 which reference is premised on grounds *inter alia* that the

taxing master erred in principle in assessing the instruction fees which were manifestly and unreasonably high, excessive, unjustifiable so as to constitute an error of principle and not exercising discretion judiciously.

2. That there were no supporting documents in respect of Khs.10,000/= awarded for service of memo of Appearance Notice of Motion, Applications and hearing Notices constituting items 7, 54, 60, 744, 90 and 155 and 15,000 on items 246, 247 while the case did not proceed for a whole day constituted an error of principle.
3. That the getting up fees were manifestly excessive in the circumstances and the award of Khs.1,121,408/= was excessive.
4. Upon reading the Replying Affidavit of Moses Korinko sworn on his behalf and behalf of his fellow interested party Olesopia Masibai, and noting that the Bill of costs and the resulting reference did not involve the Respondents in the Petition, who deposes *inter alia* that,
 - (i) The petition herein involved Shartuka Group Ranch and 1B subdivisions and
 - (ii) That the Applicants chose to file grounds of opposition instead of opposing the Bill of costs and never filed submissions, and
 - (iii) That the learned taxing master acted judiciously and applied the correct principles in the taxation.
5. Having taken into consideration the Applicants written submissions in which they submit *inter alia* that the instructions fees were taxed at manifestly and unreasonably high, excessive unjustifiable, thus in essence reiterating the grounds in support of the application, reliance was placed in the decisions in the case of Nyagito and Co. Advocates Vs. Dony O. Lessos Creameries Ltd (2014) eKLR which the court can interfere with the exercise of the discretion of the taxing master, as well as Prenchman Ralchand Ltd Vs. Qarry services of East Africa Ltd 1972 E.A
6. The Applicant submits that the error in principle was occasioned by the fact that in assessing the instruction fees, the taxing master took into consideration

(i) “The general conduct of the proceeding.

(ii) The complexity of the matter and

(iii) The time the matter has taken in court”.

7. Whereas Rule 1 (j) of the schedule 6 of the Advocates Remuneration Order provides for issues to be considered in exercise of discretion include the nature and importance of the Petition or application; the complexity of the matter and the difficulty or novelty of the question raised the amount or value of the subject matter, the time expended by the Advocate.
8. The Applicant submits that the reasons given for taxing the instructions fell outside the scope of the exercise of discretion; and the length of the matter took into court was not the sole reason for increasing the instruction fees.
9. Having further considered the interested parties submissions who submit *inter alia* that the reference was filed out of time in contravention of Rule 11(1&2) of the Advocates Remuneration Order as reasons were contained in the Ruling of 12th June 2025, and any objection ought to have been filed within 14 days, and the reference having been filed on 19th August 2025 was filed out of time with regard to issues number 2 and 3, the interested parties submits that the Bill of costs was taxed to costs as the taxing master taxed off instruction fees as well as getting up fees, and there was thus no error of principle nor improper exercise of discretion so as to result in an injustice.
10. The interested parties place reliance on the decision in the case of Kipkorir Tito and Kiara Advocates Vs. Deposit Protection Fund Board (2005) eKLR as well as the decision in the case of Republic Vs. Minister for Agriculture and 2 Others Exparte Samuel Muchiri Wa Njuguna and 6 Others.
11. The interested parties relying on the decision of Soreth Limited Vs. Kigano an Associates (2001) IEA 92, submits that where the value of subject matter could not be determined was in this suit subject of the Bill of costs whose certificate of costs is subject of this

reference, the taxing master has discretion to access instruction fees, and he exercised his discretion judiciously.

12. On the strength of the above the Interested party submits that the Reference be dismissed.

Issues for Determination

13. From the reference, the submissions and consideration of the law the court frames the following as issues for determination
- (i) Whether or not there is a competent reference before court.
 - (ii) Whether or not the reference is merited?
 - (iii) What reliefs ought to issue.
 - (iv) Who bears the costs of the reference?

Analysis and Determination?

14. Issue number 1 as framed was not raised in the replying affidavit of the interested parties filed in opposition to the reference but was raised in submissions noting that the same raises points of law and jurisdictional issues, the court framed the same as the first issue.
15. The question to be answered is whether the impugned ruling dated 12th June 2025 contained reasons therein or whether the reasons were supplied vide the letter uploaded in the CTS on 6th of August 2025? To answer this the court shall set out in verbatim some of the relevant contents of the ruling and the said letter.
16. Ruling dated 12th June 2025 provided as follows
- “1. For determination is the interested parties bill of costs dated 24.01.2025.**
 - 2. The petitioners opposed the bill of costs vide the grounds of opposition dated 3rd June 2025...**
 - 3. ...**

4. ...Since the value of the subject matter cannot be ascertained from the petition, this court must consider the following in assessing instruction fees:

(a) The nature and importance of the matter.

(b) The general conduct of the proceedings

(c) The complexity of the matter and

(d) The time the matter has taken in court.

5. The court is equally guided by Rule 1(j) under schedule 6 of the Advocates Remuneration order which provide that instruction fees in petition should not be less than Khs.100,000/=.

17. This petition was filed in Nakuru High court in the year 2013 and determined on 20th February 2023. The matter has taken long before its conclusion. This court has also considered the number of parties involved and the nature of the pleadings filed.

18. Having considered the foregoing this court hereby assess instruction fees at Khs.500,000/=."

19. The above relates to instruction fees as set out in the Ruling.

20. In the letter uploaded on 6th August 2025 in the CTS, the same provides *inter alia*

"Your letter dated 23rd June, 2025 refers.

This court received the said letter on 24th of July 2025.

Item No. 1

The reasoning on the instruction fees is contained in paragraph 4, 5, 6 and 7 of the ruling dated 12th June 2025.

Item No. 7, 54, 60, 74, 90 and 155

The court considered the fact that service was effected in Nairobi from Kilgoris."

21. It follows therefrom, that reasons for the taxation having been contained in the ruling dated 12th June 2025, any party aggrieved ought to have filed a reference within 14 days, in accordance with Rule 11 of the Advocates Remuneration order.

22. In arriving at the above finding, I am guided by the decision in the case of Ahmed Nassir Vs. National Bank of Kenya 2006 E.A where the court held as follows; -

“Although Rule 11(i) of the Advocates Remuneration order stipulates that any party who wishes to object to the decision of the Hon. Taxing Master the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons. Where the reasons for the taxation on the disputed items in the Bill are already contained in the considered Ruling, there is no need to seek for further reasons simply because of the unfortunate wording of subrule 2 of Rule 11 of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reason for the disputed taxation are already contained in formal and considered ruling”.

23. The ruling was delivered on 12.06.2025 and the last date to file was 26.06.2025. The Applicant did request for reasons but as the reasons had been given, the same was not necessary as was observed in the Ahmed Nassir decision.

24. It follows that there is competent reference before court for the court to consider on its merits, there being no application for extension of time; the court cannot equally extend time.

25. The and result is that there being no competent reference before the court, the application dated 19th of August 2025 is hereby struck out, with costs.

Dated at Kilgoris this 19th day of January, 2026

Hon. M.N. Mwanyale
Judge

In the presence of:

CA - Sylvia/Sandra/Clara

Mr. Langat for the Respondent

Mr. Bunde for the Applicant