



**Brookshill Limited & another v County Government of Kwale & 3 others; Mwadzugwe & 2 others (Interested Parties) (Petition 25 of 2021) [2026] KEELC 127 (KLR) (19 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 127 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
PETITION 25 OF 2021  
LL NAIKUNI, J  
JANUARY 19, 2026**

**BETWEEN**

**BROOKSHILL LIMITED ..... 1<sup>ST</sup> PETITIONER**

**ASHBROOK LIMITED ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF KWALE ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**SULEIMAN ALI MWADZUGWE ..... INTERESTED PARTY**

**SALIM HUSSEIN OMAR ..... INTERESTED PARTY**

**HATIBU MJAKA MTENGO ..... INTERESTED PARTY**

**RULING**

**I. Introduction**

1. The Honourable Court was called upon to make a determination unto the Chamber Summon application dated 8<sup>th</sup> June, 2025. It was instituted by Brookshill Limited & Ashbrook Limited, the 1<sup>st</sup> & 2<sup>nd</sup> Petitioners. The application was brought pursuant to the provisions of Rule 11 of the Advocates Remuneration Order.
2. Upon service, the the application was opposed by a Replying Affidavit together with a Notice of Preliminary Objection filed by the County Government of Kwale, the 1<sup>st</sup> Respondent. From the



records, it is instructive to note that the rest of the Respondents never participated in this application whatsoever.

## II. The Chamber Summons application dated 8<sup>th</sup> June 2025 by the 1<sup>st</sup> & 2<sup>nd</sup> Petitioners

3. The Petitioners herein sought for the following orders:-
  - a. The taxation of the 1<sup>st</sup> Respondents and Interested Parties Bill of Costs dated 5<sup>th</sup> February 2024 and 4<sup>th</sup> October 2023 respectively and the Certificate of Taxation dated 25<sup>th</sup> September 2024 be set aside and the Bill of Costs be taxed afresh.
  - b. In the alternative, the bill of costs be taxed in the sum of Kshs 315,868.67 for the 1<sup>st</sup> Respondents bill of costs dated 5<sup>th</sup> February 2024 and Kshs 251,583.33/- for the Interested Parties Bill of Costs dated 4<sup>th</sup> October 2023.
4. The application was premised upon grounds as set on its face and the supporting affidavit of ALFRED ANDIWO an Advocate of the High Court of Kenya and a Partner at the Law firm of Messrs. Hamilton Harrison & Mathews Advocates for the Petitioners/Applicants and who averred as follows that:-
  - a. The Taxing Master issued a Certificate of Costs dated 25<sup>th</sup> September 2024 taxing the 1<sup>st</sup> Respondents and Interested Parties Bill of Costs dated 5<sup>th</sup> February 2024 and 4<sup>th</sup> October 2024 respectively in the sum of Kenya Shillings Two Million One Four Nine Thousand Four Thirty Seven Hundred (Kshs. 2,149,437/-) in favour of the 1<sup>st</sup> Respondent and a sum of Kenya Shillings One Million One Eighteen Thousand Two Fifty Hundred (Kshs 1,118,250/-) in favour of the Interested Parties. The reasons for the said rulings were issued on 23<sup>rd</sup> May, 2025 but were received by the parties on 2<sup>nd</sup> June 2025.
  - b. The Taxing Master erred in the decision to award instructions fees of a sum of Kenya Shillings One Million Five Hundred Thousand (Kshs. 1,500,000/-) and Kenya Shillings Seven Hundred and Fifty Thousand (Kshs. 750,000/-) in favour of the 1<sup>st</sup> Respondent and the Interested Parties respectively instead of a sum of Kenya Shillings Two Hundred Thousand (Kshs. 200,000/-) and Kenya Shillings One Hundred Thousand (Kshs. 100,000/-) respectively. As provided for under Schedule 6[1][j][i] of the Advocates Remuneration Order.
  - c. The Taxing Master erred in the decision to award getting up fees in the sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/-) and Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000/-) in favour of the 1<sup>st</sup> Respondent and the Interested Parties.
  - d. Further that the taxing master erred in taxing items numbers 6, 13, 29 and 104 in the 1<sup>st</sup> Respondent's Bill of Costs at the rate of Kenya Shillings One Thousand One Hundred (Kshs. 1,100/-) instead of the rate of Kenya Shillings One Eighty (Kshs. 180/=) per folio.
  - e. The Taxing Officer erred in taxing items numbers 4, 5, 11, 18, 20, 34, 44, 46,47,48,56,60,62,64,67,73,77,78,81,83,86,87,89,95,97,99,102,109,111,112,113,115,117,118 and 119 in the 1<sup>st</sup> Respondents Bill of Costs in the sum of Kenya Shillings Thirty Five Thousand (Kshs. 35,000/=) while these items were not chargeable in a Party and Party Bill of Costs.
  - f. The Taxing Officer erred in taxing items number 8,15, 23,31, 37, 41, 53, 70, 92, 101,106 and 122 in the sum of Kenya Shillings Ten Thousand One Hundred and Fifty (Kshs. 10,150/=)



instead of using the correct attendance rates provided in Schedule 6 Paragraph 7[b] of the Advocates Remuneration Order

- g. The Taxing Officer erred in taxing Item Number 96 in the 1<sup>st</sup> Respondent's Bill of Costs at a sum of Kenya Shillings One Thousand Nine Hundred (Kshs. 1,900/-) for attending court on 21<sup>st</sup> July 2022 for mention to confirm filing of submissions as the court was not sitting on that day.
- h. The Taxing Officer erred in taxing items numbers 72, 80, 94, 98 101 and 103 in the 1<sup>st</sup> Respondent's Bill of Costs at a sum of Kenya Shillings Two Thousand Three Hundred (Kshs. 2,300/-) each for a total of Kenya Shillings Sixteen Thousand Three Hundred (Kshs. 16,300/=) instead of using the correct attendance rates provided in schedule 6 paragraph 7[d] of the Advocates Remuneration Order. The Taxing Officer rather erred in taxing items numbers 10 and 33 at a sum of Kenya Shillings Fourteen Thousand (Kshs. 14,000/-) instead of Kenya Shillings Four Thousand Six Hundred (Kshs. 4,600/-) for one hour as Scheduled at Schedule 6 Paragraph 7 [d] of the Advocates Remuneration Order.
- i. The Petitioners stood to suffer substantial and irreparable loss unless stay of execution of the Certificate of Costs dated 25<sup>th</sup> September 2024 and issued on 9<sup>th</sup> October 2024 was granted and the Certificate of Taxation set aside.

### III. The 1<sup>st</sup> Respondents Response

- 5. While opposing the Petitioners' Chamber Summons application dated 8<sup>th</sup> June 2025, the 1<sup>st</sup> Respondent filed a Replying Affidavit dated 26<sup>th</sup> June 2025 sworn by FARIDA K JADI an Advocate of the High Court of Kenya having the conduct of the matter on behalf of the 1<sup>st</sup> Respondent. Additionally, the 1<sup>st</sup> respondent filed a Notice of Preliminary objection dated 26<sup>th</sup> June 2025.
- 6. She averred as follows that:-
  - a. Pursuant to the Judgement of this court delivered on 3<sup>rd</sup> May 2023 the Petitioners Petition was dismissed with costs and the 1<sup>st</sup> Respondent never prepared and file a Party and Party Bill of Costs for taxation.
  - b. The Taxing master in the ruling delivered on 25<sup>th</sup> September 2024 awarded the 1<sup>st</sup> Respondent a sum of Kenya Shillings Two Million, One Hundred and Forty - Nine Thousand, Four Hundred and Thirty - Seven [Kshs. 2,149,437/-].
  - c. Efforts to have the sum settled by the Petitioners had proved futile. Instead the Petitioners filed an application dated 24<sup>th</sup> October 2024 seeking a stay of the Certificate of Costs pending hearing and determination of an intended reference. That one of the reasons of the application was that the Taxing Master had failed to furnish reasons for the taxation.
  - d. The application for stay of the Certificate of Taxation was allowed by the court and the Taxing Master ordered to furnish reasons for the ruling.
  - e. The Taxing Master thereafter rendered the reasons for taxation on 27<sup>th</sup> May 2025 but the Applicants have failed to comply with the provisions of Rule 11 of the Advocates Remuneration Order 2014 which required an objector shall within 14 days upon receipt of the reasons file an application to the High Court setting out grounds for the objection.



- f. The instant application filed was well outside the stipulated 14 days as the same was filed on 13<sup>th</sup> June 2025 the deadline having lapsed on 6<sup>th</sup> June 2025. No leave to file the application out of time was sought and filed.
- g. Instead of filing a reference the Applicants had filed the instant application and which was thus misplaced as an abuse of the court process further it contravened the provisions of Paragraph 11 of the Advocates Remuneration Order 2014.
- h. The Applicants had not demonstrated any sufficient reason to warrant fresh taxation or setting aside of the Taxing Masters decision.
- i. This court never had the jurisdiction to tax the Bill of Costs as this was a preserve of the Taxing Master. A Judge could only interfere with a Bill of Costs upon a properly filed reference.
- j. The deponent prayed that the application by the Petitioners to be dismissed with costs and that the applicants be ordered to settled the taxed costs as per the Certificate of Costs dated 7<sup>th</sup> October 2024.

#### **IV. Notice of Preliminary Objection**

- 7. The Notice of Preliminary objection raised the following three ( 3 ) grounds that:-
  - a. The application was incurably defective, a nullity, an abuse of the court process and contravened mandatory provisions of Paragraphs 11[2] and [4] of the Advocates Remuneration Order 2014.
  - b. This Honourable Court lacked jurisdiction to entertain the application since the power to tax costs was exclusively vested in the Taxing Master as per the Advocates [Remuneration] Order. A Judge could can only interfere with such taxation through a properly filed and competent reference
  - c. The application be dismissed with costs.

#### **V. Submissions**

- 8. On 30<sup>th</sup> July 2025, in the presence of Mr. Andiwo, the Learned Counsel for the Petitioners, Ms Jadi the Learned Counsel for the 1<sup>st</sup> Respondent, but with no appearance for the rest of the Respondents and the interested parties, this court issued orders to have the Chamber Summons application and the Preliminary Objection herein be simultaneously canvassed by way of written submissions.
- 9. Pursuant to that, al parties obliged. Below is a summary of the said submissions as received by court whatsoever.

#### **A. The Written Submissions by the 1<sup>st</sup> & 2<sup>nd</sup> Petitioners**

- 10. The Law firm of Messrs. Hamilton Harrison & Mathews Advocate filed their written submissions on behalf of the Petitioners herein. Mr. Andiwo Advocate presented the submissions. They were highlighted under three (3) issues for determination:-
  - a. Whether the Petitioners application dated 8<sup>th</sup> June 2025 offends paragraph 11 of the Advocates Remuneration Order
  - b. Whether the court has jurisdiction to entertain instant application which seeks to have the court tax the 1<sup>st</sup> Respondents bill of costs afresh or in the alternate, tax the 1<sup>st</sup> Respondents bill



of costs at a sum of Kenya Shillings Three Fifteen Thousand Eight Sixty Eight Hundred Sixty Seven cents (Kshs. 315,868.67/-)

- c. Suggesting that the bill of costs be taxed at Kenya Shillings Three Fifteen Thousand Eight Sixty Eight Hundred Sixty Seven cents (Kshs. 315,868.67/-) was outrageous and unfair in view of the complexity of the matter, the amount of work done and the time taken in the matter.
11. On the first issue for determination, the Petitioners referred to the provisions of paragraph 11[2] of the Advocates Remuneration Order and stated that the use of the term may renders this provision permissive rather than mandatory. That in the event that the provisions were construed as mandatory then the same do not detract from the substance of the Petitioner's application which challenges the erroneous computation in the tax masters ruling. Counsel maintained that the costs awarded were not consummate with the work done.
12. The Petitioners placed reliance on the provisions of Article 159 of *the Constitution* of Kenya, 2010 on administration of justice without undue regard to the procedural technicalities. The Learned Counsel stated that the taxing master had delivered the reasons for the taxation via email to parties on 27<sup>th</sup> May 2025. That the deadline for filing the reference lapsed on 10<sup>th</sup> June 2025 and not 6<sup>th</sup> June 2025. The application was thus filed 3 days late. That the 3-day delay in filing the reference fell on the criterion of without undue delay and is protected under Article 159 of *the constitution*. Reference was made to several authorities including the case of: in comparison to the instant applic"Nicholas Kiptoo Salat - Versus - IEBC and 7 Other [2014] eKLR" being similar to that of filing an appeal out of time. That the Respondents were not bound to suffer any harm in the event that the application was allowed.
13. The Petitioners maintained that unless they were granted an opportunity to have their reference heard on merit then they would be denied substantive justice as was held in the case of":- "Achola & 2 Others - Versus - Otieno Misc Civil Application No E006 of 2024 eKLR".
14. On the jurisdiction to interfere with the Taxing Master's decision. It was submitted that the authority for the Taxing Master to tax party and party costs was not unfettered. Reference was made to several decisions including:- "KANU National Elections Board & 2 Others - Versus - Salah Yakub Farah [2018] eKLR". The Learned Counsel stated that this court has jurisdiction to hear and determine the Petitioners application to tax the 1<sup>st</sup> Respondents bill of costs afresh or in the alternate tax the same at a sum of Kenya Shillings Three Fifteen Thousand Eight Sixty Eight Hundred Sixty Seven cents (Kshs. 315,868.67/-) to avoid miscarriage of justice.
15. On whether the tax amounts were manifestly excessive. It was submitted that the assessment in question was incompatible with the provisions of the 6<sup>th</sup> Schedule of the Advocates Remuneration Order. With respect to instructions fees it was submitted that the Taxing Master failed to determine the actual value of the subject matter from the pleadings or Judgement. That the Petition at hand did not raise novel constitutional questions but sought prerogative orders and hence the amounts awarded were in excess.
16. On getting up fees. The Learned Counsel contended that the same ought to be one third of the proper instructions fees as per the court in the case of:- "Bruce Odeny & Co Advocates - Versus - Pride Kings Services Limited [Civil Miscellaneous Application E101 of 2023] [2025] KEHC 9791 [KLR]". That if the latter is to reduce then the former is to also reduce proportionately.
17. On other items. The Learned Counsel asserted that from perusal of the taxing masters ruling, various items had been allowed at an excessive rate contrary to schedule 6. That for that reason the taxation had errors in granting amounts in excess hence the need to have the certificate of costs set aside.



18. At paragraph 39, the Learned Counsel gave an item to item adjustment analysis which the court had considered. In conclusion, the Honourable Court was urged to substitute the bill and in the alternative to have the same remitted for taxation before a different Taxing Officer.

#### **B. The Written Submissions for the 1<sup>st</sup> Respondent.**

19. The Law firm of Messrs. Madzayo, Mrima & Jadi Advocates filed submissions on behalf of the 1<sup>st</sup> Respondent. M/s. Jadi Advocate commenced by stating that the submissions were dated 19<sup>th</sup> August, 2025. On the preliminary objection, the Learned Counsel submitted that the Honourable Court lacks the jurisdiction to entertain the application herein as the power to tax costs was exclusively vested in the Taxing Master under the Advocates Remuneration Order that a Judge could only interfere with the same through a properly filed reference as stipulated under paragraph 11 of the Advocates Remuneration Order 2014.
20. Further that paragraphs 11[2] and 11[4] of the Advocates Remuneration Order 2014 require an objector to file a reference within 14 days of receiving the Taxing Master's reasons for re - taxation.
21. That the Petitioners/Applicants herein had filed the Chamber Summons application out of time despite being served with the reasons and it had been without the leave of court hence making the application incurably defective and a nullity.
22. With regard to the chamber summons application, the Learned Counsel submitted that it was defective for failure to file a reference in compliance with Paragraph 11 of the Advocates Remuneration Order. Further that the application was in a misplaced forum meaning it had been filed in the main Petition as opposed to being filed separately as a reference. Thirdly that no sufficient cause had been highlighted as to warrant setting aside of the Taxing Masters decision.
23. Lastly, it was submitted that the Petitioners had failed to give a justification of the figures they had proposed rendering their request baseless. That the proposed amount never reflected the considerations set out in the case of:- "Joreth Limited - Versus - Kigano Associates Civil Appeal No 66 of 1999[2002] 1 EA 92" where it was held that the value for taxation should be considered from pleadings Judgement or settlement. That the application was a deliberate attempt to prevent the 1<sup>st</sup> Respondent from enjoying the fruits of their Judgement and hence the need to have it dismissed. The 1<sup>st</sup> Respondent further submitted for costs.

#### **VI. The further Written Submissions by the 1<sup>st</sup> Respondents**

24. The 1<sup>st</sup> Respondent in addition to the submissions earlier filed on 19<sup>th</sup> August 2025, filed further submissions dated 4<sup>th</sup> September 2025. It was submitted that the Petitioners had introduced a new prayer that was not pleaded in the Chamber Summons application by seeking that in the alternative the bills be remitted for taxation afresh before a different taxing officer. The Learned Counsel for the 1<sup>st</sup> Respondent submitted that courts were guided by pleadings filed before them and could not grant reliefs not sought as was articulated in the case:- "IEBC & Another - Versus - Stephen Mutinda Mule & 3 Others [2014] eKLR".
25. It was further submitted that the meaning of the word "may" must be determined by context, purpose and legislative intent of the provisions. That the provisions of the word may as per the provisions of paragraphs 11[2] of the Advocates Remuneration Order empowers the objector with the right to apply to the Judge but never rendered the entire provision optional or devoid of binding elements particularly the 14-day timeline. Also that the 14-day period was not advisory as it established a clear deadline that must be adhered to for the application to proceed without further judicial interventions.



26. On the use of the provisions of Article 159[2][d] it was submitted that it was not a universal remedy for disregarding mandatory statutory provisions. That where a party failed to file documents or take action within a stipulated period of time they could not rely on the provision of Article 159[2][d] as was held in the case of:- “Gathuka Ngugi Advocates - Versus - Backlite Limited [2025] KEHC 4415 KLR” a taxation matter. further that the 3-day delay in filing was a fatal defect, also that the applicants herein had not given the reason for the delay.
27. According to the Learned Counsel for the 1<sup>st</sup> Respondent, interference with the decision of the Taxing Master could only happen where there was an error of principle of that the award was manifestly excessive or low. That such error had not been demonstrated by the Petitioners.
28. The 1<sup>st</sup> Respondent maintained that the award by the taxing master was compatible with schedule 6 of the Advocates Remuneration Order. The court was urged to dismiss the chamber summons.

## VII. Analysis and determination

29. I have carefully read and considered the pleadings herein by the 1<sup>st</sup> & 2<sup>nd</sup> Petitioners/Applicants of the Chamber Summons application, the replies, the Preliminary Objection as raised in opposition, the myriad of cases cited herein by parties, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
30. In order to arrive at an informed, just, equitable and reasonable decision, the Honourable Court has framed the following four ( 4 ) issues for its determination: -
  - a. Whether the Notice of Preliminary objection herein is legally sound
  - b. If so, what are the effects of the preliminary objection
  - c. Whether the Chamber Summons application meritoriously stood a chance before this court
  - d. Who bears the costs of the application herein
31. Before delving further into discussions, in order to place the issues above into context, the Honourable Court will provide a brief background leading to the filing of this application before court. I wish to point out that as has been stated by the parties herein, the Petitioners approached this court initially through an application dated 24<sup>th</sup> October 2024 seeking a stay of execution of the Certificate of Costs dated 25<sup>th</sup> September 2025 by the taxing master. The Petitioners alleged that the Taxing Master had not indicated any reasons for the ruling as required by the provisions of rule 11 of the Advocates Remuneration Order.
32. Consequently, this court granted the orders of stay as sought and ordered that the Taxing Master within 14 days’ avails reasons for the taxation as stipulated in law. The Taxing Master indeed complied with the said orders. Thus, the Petitioners filed the instant Chamber Summons application.
33. I will now proceed with the discussions on issues arising from the chamber summons.

### ISSUE NO a). Whether the Notice of Preliminary objection herein is legally sound based on Law and Precedents

34. In choosing to first address the preliminary objection, the court is alive to the fact that the same can in the first instance resolve the issues raised in the application as it is trite that an objection if properly raised can dismiss a suit without further proceedings. The legal threshold for a preliminary objection



is well settled. Gikonyo J in the case of:- “Catherine Kawira – Versus - Muriungi Kirigia [2016] eKLR” put it succinctly thus:-

“(5) I do not want to reinvent the wheel on the legal threshold for Preliminary Objection. It is now well-settled principle that a preliminary objection should be a point of law that is straight-forward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application. On this I am content to cite the case of Mukisa Biscuit Manufacturing Company Limited – Versus - West End Distributors Limited (1969) EA 696 where it was stated as follows: “So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

35. The preliminary objection in this matter is founded on the notion that the Petitioners herein have failed to follow up the correct procedures outlined in the Advocates Remuneration Order 2014 on what follows after a party has been given reasons for taxation by the Taxing Master and is dissatisfied with it. According to the 1<sup>st</sup> Respondent, the Petitioners ought to have filed a reference before the court but have instead opted to file the instant Chamber Summons application and thus rendering this court devoid of the requisite jurisdiction to make a determination on it.

36. Jurisdiction means the power of authority of the court to hear and determine disputes placed before it. This authority of a court to determine a matter is derived from *the constitution*, an Act of Parliament or both. The Supreme Court of Kenya’s decision of “Mary Wambui Munene – Versus - Peter Gichuki Kingara and 2 others, [2014] eKLR” averred that the question of a court’s jurisdiction is a pure point of law when it stated thus: -

“The question of jurisdiction is a pure question of law. This Court has on several occasions adopted the dictum of Nyarangi JA in the Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1 that it has to be determined from the start, and that where the Court finds it has no jurisdiction, it should down.”

37. The issue of jurisdiction is thus an issue of law. Thence, from the face value, the preliminary objection raised by the 1<sup>st</sup> Respondent is merited.

ISSUE No. b). If so, what are the effects of the preliminary objection

38. The circumstances under which a court can interfere with the discretion of the taxing master was aptly stated in the case of:- “Republic – Versus - Ministry of Agriculture & 20 Others Ex-Parte Muchiri W Njuguna [2006] eKLR, Ojwang J. (Retired)” stated as follows: -

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other...The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on



an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.”

39. Rule 11 of the Advocates Remuneration Order makes provision for the procedure an aggrieved party must adopt. It provides:
- (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.
40. The procedure contemplated above is:
- a. The aggrieved party issues a notice within 14 days on the items objected
  - b. The Taxing Officer shall forthwith give reasons for his decision
  - c. Upon receipt of the reason, the objector shall within 14 days’ file an application to the High Court setting out grounds for objection
  - d. If dissatisfied with the High Court, the objector shall with leave of court appeal to the Court of Appeal.
41. The question is whether the failure to file a reference and opting to instead file the instant chamber summons is fatal or curable. The 1<sup>st</sup> Respondent is adamant that the provisions of paragraph 11 of the Advocates Remuneration Order are mandatory and thus the failure to comply with the same by opting to file the instant chamber summons instead of a reference is fatal and makes the application before court incompetent and eligible for striking out.
42. In my view and from the reading of the contents of paragraph 11 of the Advocates Remuneration Order, the whole essence of the said procedure is to enable an aggrieved party to challenge the decision of a Taxing Master. However, it bears the clause that the process is mandatory. The Taxing Master did avail her reasons for the taxed bill, having not been satisfied with it, the Petitioners have opted to file the Chamber Summons application herein.
43. Critically speaking, I have re-read the provisions of Paragraph 11[2] of the Advocates Remuneration Order and the same is clear that if aggrieved by the reasons stated by the taxing master, a party will then file an application referred commonly to as a reference by way of chamber summons. The Petitioners proceeded to file the chamber summons application on its own without it being accompanied by or



initiated by way of a Reference as it is envisaged in Law. This is not a technicality but a mandatory requirement.

44. The Petitioners urged this court to apply the provision of Article 159 of *the Constitution* to salvage the matter. Article 159 enjoins the courts not to decide cases on technicalities of procedure but the substance. I am not sure whether the provisions of Article 159 can cure or aid in disregarding the laid down procedure in the filing of pleadings. I discern strongly that, there are certain defaults in litigation where the procedure is clear cannot be cured by the provisions of Article 159 of *the constitution*. I am guided so by the dictum in the Supreme Court in the case of “Moses Mwicigi & 14 others – Versus - IEBC 7 5 others [2016] eKLR” where on procedures stated as follows: -

“This court has on a number of occasions remarked upon the importance of procedure, in the conduct of litigation. In many cases, procedure is so closely intertwined with substance of the case that it benefits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the court would not hesitate to declare the attendant pleadings incompetent.”

### **ISSUE NO 3 - Whether the Chamber Summons application stood a chance before this court**

45. Under this Sub heading, the Honourable Court will be assessing whether the Chamber Summons bears any chances of survival in law or adds any value at all in the given circumstances whatsoever.
46. The Petitioners herein seek that execution of the Bill of Costs be stayed. Ideally, that it should be placed before a different Taxing Master. The Petitioners have highlighted several aspects of the taxed bill that they opine is in excess and ought to be scaled down. It include instruction fees and getting up fees amongst several other items. The Petitioners state that the Petition was a constitutional one on prerogative orders and as such was not complex.
47. The court has been asked to access the Bill of Costs afresh as stated in prayer two [2] of the Chamber Summons application. Legally speaking, this is clearly a preserve of the Taxing Master and not this court. It is trite law that the jurisdiction of this court to intervene in the decision of Taxing Officer, is limited. On this point, I seek refuge from the case:- “Kipkorir, Titoo & Kiara Advocates – Versus - Deposit Protection Fund Board [2005] eKLR” the Court of Appeal explained 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.’

48. Having found that there is no proper reference before this court, the court finds that the Chamber Summons application is devoid of any merit.

### **ISSUE No. d). Who bears the costs of the application herein**

49. It is trite that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of a legal action or proceeding in any litigation. The proviso of Section 27 of the *Civil Procedure Act*, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 [1] provides as follows: -

“1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to



all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

50. By the event, it means the result or outcome of the legal action. In this case, as this Honourable Court is of the opinion that the 1<sup>st</sup> Respondent has managed to establish a case against the Petitioners and that they are entitled to have the costs of the Chamber Summons application herein.

### **VIII. Conclusion and final orders**

51. Ultimately, having cause an indepth analysis of the framed issues herein, the Honourable Court based on the principles of Preponderance of Probabilities and the Balance of Convenience specifically hold and makes the following findings:-

- a. THAT the Chamber Summons application dated 8<sup>th</sup> June 2025 be and is hereby found to lack merit and thus it is hereby struck out.
- b. THAT costs of the application to be awarded to the 1<sup>st</sup> Respondent to be borne by 1<sup>st</sup> & 2<sup>nd</sup> Petitioners.

IT IS ORDERED ACCORDINGLY.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 19<sup>TH</sup> DAY OF JANUARY 2026**

.....  
**HON. MR. JUSTICE L.L NAIKUNI,**  
**ENVIRONMENT & LAND COURT AT**  
**KWALE.**

Ruling delivered in the presence of: -

- a) Mr. Daniel Disii, the Court Assistant.
- b). Mr. Andiwo Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Petitioners/Applicants.
- c). M/s. Muronyi Advocate for the 1<sup>st</sup> Respondent.
- d). No appearance for the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents.
- e). No appearance for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Interested Parties.

