



GN Thiong'o Advocates v Mailua Estates Limited (Environment and Land Miscellaneous Application E025 of 2022) [2026] KEELC 241 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELC 241 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E025 OF 2022
MD MWANGI, J
JANUARY 28, 2026

BETWEEN

GN THIONG'O ADVOCATES ADVOCATE

AND

MAILUA ESTATES LIMITED CLIENT

RULING

Introduction

1. Before this Court for determination is the Chamber Summons application dated 5th June 2025. The application is brought under Rules 11(2) and 61 of the Advocates Remuneration Order, Order 52 Rule (2) (3) (1) of the Civil Procedure Rules, 2010, and Sections 1A, 1B and 3A of the Civil Procedure Code, 2010.
2. In the said application, the Client/Applicant seeks the following substantive orders:
 1. That the Ruling of the Hon. J. Kamau dated 12th July 2023 on the Advocate-Client Bill of Costs dated 29th June 2022 be set aside in its entirety.
 2. That this Honourable Court be pleased to strike out in its entirety the Advocate's Bill of Costs dated 29th June 2022.
 3. That in the alternative, this Honourable Court be pleased to remit the Bill of Costs dated 29th June 2022 to be Taxed by a different Taxing Officer.
 4. THAT the costs of this Reference be borne by the Advocate/Applicant.
3. The application is supported by the affidavit of Stephen Waigwa Murage, the Managing Director of the Client, sworn on 5th June 2025. The dispute centers on legal fees arising from representation of



- the Client by the Advocate in Kajiado ELC Suit No. 504 of 2017 (formerly Machakos ELC No. 12 of 2014).
4. The factual matrix of the Reference is rooted in a professional engagement where the Respondent hired the Advocate to challenge a Magistrate's Court order that adopted a Lands Dispute Tribunal's ruling. The Client contends that the ruling effectively deprived it of 200 acres of land. The Client however, alleges that the Advocate took an "improper step" by filing a fresh suit rather than applying to set aside the orders or file an appeal. This procedural choice allegedly allowed the opponents to file a counter-claim for adverse possession, the loss of the suit, and the subsequent transfer of the 200 acres to the third parties.
 5. The Applicant's primary grievances against the Taxing Officer's Ruling of 12th July 2023 are that:
 - i. The Taxing Officer allegedly misdirected herself by indicating there was a challenge to the issuance of instructions, whereas the actual challenge was to the propriety of the legal actions taken by the Advocate. The Respondent argues the Taxing Officer failed to apply Rule 61 of the Advocates Remuneration Order, which protects clients from costs accruing due to an Advocate's improper actions or inactions.
 - ii. The Client asserts that the Taxing Officer erroneously concluded that the matter involved 300 acres of land and significant complexity, leading to instruction fees and getting-up fees that were "manifestly high".
 6. The Client maintains that this Court has the jurisdiction to interfere with the taxation as the Taxing Officer erred in principle, potentially leading to the unjust enrichment of the Advocate at the client's expense.
 7. The application is vehemently opposed by the Advocate through a Replying Affidavit sworn by Geoffrey Thiong'o on 25th August 2025. The Advocate characterizes the application as one of the many attempts by the Client to raise extraneous issues and attack his personal conduct as a means of avoiding the payment of costs properly awarded through a lawful taxation process.
 8. It is the Advocate's position that Section 11 requires a party challenging a taxation to file a reference to the Taxing Officer challenging specific items, whereas the Client has sought to strike out the entire bill of costs on grounds not provided for by the Rules. Furthermore, the Advocate asserts that Rule 61 is completely non-operational in this instance, noting that the Bill of Costs is strictly based on the proceedings in Kajiado ELC No. 504 of 2017.
 9. The Advocate further argues that this Court is not the proper forum to determine personal complaints regarding an Advocate's conduct of proceedings or to settle scores for a client unwilling to pay fees. He maintains that the Client has failed to comply with the Court's previous orders and has instead sought "extraneous orders," including the recusal of the Taxing Officer, without laying any factual or legal foundation.
 10. In conclusion, the Advocate urges the Court to bring these proceedings to a halt, asserting that the Respondent is misusing the judicial process and filing numerous applications merely to buy time. He submits that since a proper reference was not filed within the stipulated time, the taxed costs must remain in place.

Directions

11. The court directed that the application be canvassed by way of written submissions. Parties complied and the court has had the opportunity to read and consider the submissions in writing this ruling.



Issues for determination

12. Having carefully considered the application by the Client, the response thereto by the Advocate and the submissions filed, the competence of the reference is a critical issue for determination even before going into its merits.

Analysis and Determination

13. The chamber summons under consideration is what is commonly referred to as a reference challenging the decision of the Taxing Master on taxation of an Advocate – Client Bill of Costs under the provisions of rule 11 of the Advocates Remuneration Order (ARO). Rule 11 provides the statutory mechanism for ventilation of grievances from such decisions through references to a judge in chambers.
14. Rule 11 of the ARO further spells out with precision the procedure and timelines for filing a reference against the decision of the Taxing Master commencing with an objection within fourteen (14) days after the impugned decision. Failure to adhere to the procedure and the timelines set therein would render any reference incompetent as has been variously upheld by the decisions of the superior court of this country.
15. In the case of *Twiga Motors Limited –vs – Hon. Dalmas Otieno Anyango (2015) eKLR*, the court held that;

The time limits in rule 11 of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said timelines would mean that the application would be rendered incompetent in the first instance”.
16. The Court of Appeal in the case of *Machira & Co. Advocates –vs- Author K. Magugu (2012) eKLR*, affirmed the above position stating that;

“Sub-rule 1 requires the party objecting, “to give notice in writing within 14 days of the items of taxation to which he objects”. ...as we have pointed out, the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeal or review was expedition. If vague notices are given, taxing officers might be forced to give the reasons for their taxation of each item including even those not objected to. That would off course, defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation, the Respondent’s notice of 1st August 2001 was fatally defective. It follows that the Respondent’s reference based on it was incompetent and we agree with counsel for the appellant that it should have been struck out. Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master’s decision was received is immaterial.”
17. I have carefully perused the record in this matter. I find no notice of objection by the Client specifying the items of taxation to which it objects to in terms of rule 11(1) of the ARO. The only action that the Client took after the impugned taxation was to file the application seeking the extension of time within which to file a reference before lodging an objection under sub rule 1.
18. Guided by the above cited binding decision by the Court of Appeal, I find and hold that the Chamber Summons application dated 5th June 2025 is incompetent as it was not preceded by a notice of objection specifying the items of taxation to which the Client/Applicant objects to in terms of rule 11(1) of the ARO. I proceed to strike it out with costs to the Advocate.



It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 28TH DAY OF JANUARY 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

M/S. Beatrice Kariuki for the client/applicant

No appearance for the advocate/respondent

Court assistant- Mpoye

