



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngungi v Maweu (Environment and Land Miscellaneous Application  
E012 of 2024) [2026] KEELC 455 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 455 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E012 OF 2024**  
**EO OBAGA, J**  
**JANUARY 29, 2026**

**BETWEEN**

**ALPHONCE NGUNGI ..... APPLICANT**

**AND**

**COSMAS MAUNDU MAWEU ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 9<sup>th</sup> April, 2025 in which the Applicant seeks the following orders:
  1. That this honourable court be pleased to review, set aside and or rescind the amount of costs assessed vide the certificate of costs dated 10<sup>th</sup> July, 2024 in Makueni MC ELC E024 of 2023 Alphonse Ngugi Wambua vs Cosmas Mawau Maundu.
  2. That this honourable court be pleased to award the Respondent costs as accords with the advocate (Remuneration) amendment Order 2014.
  3. That consequently, to prayer (1) and (2) being granted, this honourable court be pleased to substitute the certificate of costs issued pursuant to the decision of the honourable magistrate with a new certificate of costs reflecting the correct costs payable to the Respondent.
  4. That the costs of the reference be borne by the Respondent.
2. The Applicant had filed a suit against the Respondent in the Chief Magistrates Court in which he sought the following reliefs:
  - i. Declaration that the Plaintiff is the owner of the land parcel No. Ukia/Kilala/935
  - ii. An order of permanent injunction restraining the Defendant, his servants, agents and or anyone claiming under him or through him from encroaching into subject land, continue



causing destruction therein, barring the Plaintiff's access into subject land or in any way interfering with land parcel No. Ukia/Kilala/935.

- iii. An order of eviction against the Defendant to be executed by the OCS Makueni Police Station.
  - iv. General and punitive damages for trespass and loss of user.
  - v. Costs of suit and interest in (iv) at courts rate.
3. The Applicant's suit was set down for hearing but the Applicant withdrew it with costs before it could be heard. Before the suit was withdrawn the Applicant had filed two applications which were all dismissed with costs.
  4. The Respondent then filed a party and party bill of costs which was forwarded to the Applicant's advocate under cover of letter dated 7<sup>th</sup> June, 2024 for settlement. The Applicant's advocate did not receive any notice of taxation until he was served with certificate of costs.
  5. The Applicant contends that the costs as taxed were excessive and that the taxing officer did not consider the fact that the suit was withdrawn before it could be heard and that there were no reasons given as to how the bill of costs was taxed.
  6. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 28<sup>th</sup> July, 2025. The Respondent states that the Applicant filed a suit against him and subsequently filed two applications which were all dismissed with costs. The Applicant then filed a notice of withdrawal of the suit which suit was withdrawn with costs to him. A bill of costs totaling to Kshs.270,700/= was filed. The bill of costs was assessed under schedule 7 of advocates (Remuneration) Amendment Order 2014 at Kshs.219,800/=.
  7. The Respondent states that the Applicant did not oppose the bill and that the Applicant has in fact paid Kshs.50,000/= towards settlement of the bill of costs. He states that the taxed amount was fair in that the value of the suit property was valued over Kshs.5,000,000/= and that the application by the Applicant is only meant to deny him the fruits of his costs.
  8. In a further affidavit sworn on 28<sup>th</sup> August, 2025, the Applicant states that he was not served with a notice of taxation where he would have had the opportunity to oppose the bill of costs. He further states that the taxing officer did not give any ruling on taxation or reasons for the taxation and further that he did not take into account the short duration the case was in court before it was withdrawn. He states that the taxing officer's taxation was manifestly high as to call for interference by this court.
  9. The Applicant filed his submissions dated 28<sup>th</sup> August, 2025. The Respondent filed his submissions dated 8<sup>th</sup> August, 2025. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has demonstrated that there is need for the court to interfere with the discretion of the taxing officer.
  10. The law regarding taxation of the bill of costs is that the taxing officer has discretion to tax a bill before him. This discretion can only be interfered with by this court if it is shown that the taxing officer committed an error of principle. An error of principle can be committed if the taxing officer awards a sum which is manifestly high or too low as to require interference with his discretion. An error of principle can also occur where the taxing officer has not taxed the bill in accordance with the law.



11. In the case of Republic –vs- Competition Authority Ex-parte Ukwala Supermarkets Ltd & Another (d2017) eKLR, Justice Odunga (as he then was) stated as follows:

“The circumstances under which a judge of the High Court interferes with the taxing officer’s exercise of discretion are now well known. These principles are:

1. That 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 principles.
  2. It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the order itself, some of the relevant factors to be taken into account including the nature and the important of interest of the parties, the general conduct of the proceedings and any direction by the trial judge.
  3. If the court considers that the decision of the taxing officer discloses error of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset a taxation because in its opinion, the amount awarded was high.
  4. It is within the discretion of the taxing officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary.
  5. The taxing officer must set out the basic fee before venturing to consider whether to increase or reduce it.
  6. The full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees.
  7. The mere fact that the Defendant does research before filing a defence and then puts a defence informed of such research is not necessary indicative of the complexity of the matter as it may well be indicative of the advocate’s unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary”.
12. In the instant case, there is nothing to show how the taxing officer arrived at the sum of Kshs.219,800/= . The bill which was presented for taxation was Kshs.270,700/= . It is not indicated what was awarded under instruction fees which the Respondent had presented a bill of Kshs.150,000/= under instruction fees. The Applicant also presented a bill of Kshs.50,000/= for each of the two applications. It is not indicated how much was awarded.
13. A look at the advocates Remuneration Order 2014 shows that instruction fees to file or oppose an application is Kshs.3,000/= . It is practically impossible for this court to determine whether what the taxing officer awarded under instruction fee was reasonable or not. The acreage of the land was not disclosed. The Respondent merely stated that the value of the land was over Kshs.5,000,000/= . The taxing officer did not state how he arrived at the instruction fees.
14. Even if the trial magistrate did not indicate how he assessed the bill before him, a cursory look at the bill of costs and what he awarded shows that only Kshs.50,900/= was taxed of the bill. What remained is manifestly excessive as to require the intervention of this court. I therefore allow the Applicant’s application, set aside the certificate of costs dated 17<sup>th</sup> July, 2024 in its entirety and remit back the bill of costs dated 14<sup>th</sup> May, 2024 for fresh taxation in accordance with schedule 7 of the Advocates Remuneration Order 2014. The Applicant shall have costs of this reference.



It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 29<sup>TH</sup> DAY OF  
JANUARY, 2026.**

.....

**HON. E. O. OBAGA**

**JUDGE**

In The Presence Of:

Mr. Muthiani for Respondent.

Ms. Kyalo for Applicant.

Court assistant – Steve Musyoki

