



REPUBLIC OF KENYA



KENYA LAW
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Omollo & 2 others v Ayieko Kangethe & Co. Advocates (Environment and Land Appeal E015 of 2025) [2026] KEELC 291 (KLR) (28 January 2026) (Judgment)

Neutral citation: [2026] KEELC 291 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E015 OF 2025
NA MATHEKA, J
JANUARY 28, 2026

BETWEEN

OSCAR OMOLLO 1ST APPELLANT
BEATRICE MAGU 2ND APPELLANT
JUDITH SAINA 3RD APPELLANT

AND

AYIEKO KANGETHE & CO. ADVOCATES RESPONDENT

JUDGMENT

1. Oscar Omollo, Beatrice Magu and Judith Saina the Appellants herein being dissatisfied with the Ruling on Taxation and Certificate of Costs issued by Hon. Derrick K. Kuto at Mavoko Magistrate's Court on 30th January, 2025 in Mavoko MCCC MISC. No. E071 of 2024 Citation: Ayieko Kangethe Advocates vs Oscar Omollo, Beatrice Magu and Judith Saina appeals to this Court at Machakos against the whole of said Ruling on the following grounds:
 1. The learned Magistrate erred in law by bequeathing himself jurisdiction he does not have.
 2. The learned Magistrate erred in law by issuing warrants of attachment against a Certificate of Costs which is in itself not executable.
3. The learned Magistrate erred in law by awarding costs on items not provided under Schedule 7 of the Advocates Remuneration Order.
4. The learned Magistrate erred in law by allowing the Advocate-Client Bill of Costs in its entirety without it having been taxed.
2. The Appellants pray for the following orders
 1. That the appeal be allowed.



2. That the Ruling, Orders, Certificate of Costs and all consequential orders arising from the Ruling on Taxation and Certificate of Costs issued by Hon. Derrick K. Kuto at Mavoko Magistrate’s Court on 30th January, 2025 in Mavoko MCCC MISC No. E071 of 2024 Citation: Ayieko Kangethe Advocates vs Oscar Omollo, Beatrice Magu and Judith Saina be set aside.
3. That the warrants of attachment issued against the Certificate of Costs issued by Hon. Derrick K. Kuto at Mavoko Magistrate’s Court on 30th January, 2025 in Mavoko MCCC MISC. No. E071 of 2024 Citation: Ayieko Kangethe Advocates vs Oscar Omollo Beatrice Magu and Judith Saina be declared unprocedural, unlawful and illegal.
4. That the costs of this appeal be awarded to the Appellants.
3. This is the first appeal, the primary role of the court is to re-evaluate, re-assess and re-analyze the evidence on record and decide as to whether the conclusion reached by the learned magistrate was sound, and give reasons either way. This duty was emphasized by the Court of Appeal in Mbogo and another vs Shah (1968) EA 93 where it was held that;

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matter on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. It is for the company to satisfy this court that the judge was wrong and this, in my view it has failed to do.”
4. The preliminary ground of appeal in this case is that the learned Magistrate erred in law by bequeathing himself jurisdiction he does not have. The jurisdiction of the court to hear and determine this suit flows from the Constitution and the law. The jurisdiction of court is not conferred upon it by parties nor can the court confer upon itself jurisdiction. The Supreme Court in Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 others (2012) eKLR held that;

“A court’s jurisdiction flows from either the constitution of legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”
5. This court has considered the appeal and the submissions therein. Paragraph 10 of the Advocates Act provides that:

“The Taxing Officer for the taxation of bills under this Order shall be the Registrar or a District or Deputy Registrar of the High Court or, in the absence of a Registrar, such other qualified officer as the Chief Justice may, in writing appoint; except that in respect of bills under Schedule 4 to the order, the taxing officer shall be the registrar of trade marks or any Deputy or Assistant Registrar of Trade Marks.”
6. The Advocate’s bill of costs dated 17th September 2024 was taxed by Hon. Derrick K. Kuto Senior Principal Magistrate on the 30th January 2025 where the court awarded Kshs 374,832.50 to the



Respondent as Advocates costs. He signed the certificate of costs under that name and title on 30th January 2025. I see no evidence that Hon. Derrick K. Kuto Senior Principal Magistrate of Mavoko Law Courts was a Registrar, District or Deputy Registrar within the meaning of paragraph 10 of the Advocates Remuneration Order. His taxation of the Advocate's Bill of Costs against the client was therefore without jurisdiction and irregular as it is not supported by the law.

7. There is nothing in Part III of the Advocates (Remuneration) Order which provides a mechanism for a Magistrate's Court to tax an Advocate - Client Bill of Costs. I find that the Advocate's Remuneration Order does not provide for the taxation of costs in the lower court in matters between Advocate and Client. It is party and party costs can be assessed by the same court that heard and determined the dispute.

8. In the case of *Munzala & another vs Emily Kadenyi t/a Emily & Associates Advocates (2023) KEELC 21519 (KLR)* the court held that;

“Strictly speaking, no bills of costs are expected to be filed in the Subordinate Courts. Whenever parties need to have party and party costs determined in the Subordinate Court, they simply write to the court a letter itemizing what they deem to be their costs. The court then assesses such costs as opposed to taxing a bill.”

9. The foregoing position is fortified by the provisions of Order 21 Rule 9A of the Civil Procedure Rules. Order 21 Rule 9A of the Civil Procedure Rules provides;

A party claiming costs at a Magistrates Court shall file a written request, statement of costs and supporting documents with the Court and serve it on the other parties with a breakdown of the costs sought.

10. A perusal of the advocate – client bill of costs that was filed by the Respondent reveals that indeed there were no supporting documents filed by them. The determination is that a Magistrate's Court has no jurisdiction to tax a Bill of Costs emanating from a dispute between an Advocate and their Client. The Advocate is at liberty to file his bill of costs before a court with jurisdiction subject to the limitation period. I find that this appeal is merited and is allowed and I grant the following orders;

1. That the Ruling, Orders, Certificate of Costs and all consequential orders arising from the Ruling on Taxation and Certificate of Costs issued by Hon. Derrick K. Kuto at Mavoko Magistrate's Court on 30th January, 2025 in Mavoko MCCC MISC No. E071 of 2024 Citation: *Ayieko Kangethe Advocates vs Oscar Omollo, Beatrice Magu and Judith Saina* be set aside.
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3. No orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF JANUARY 2026.

N.A. MATHEKA

JUDGE

