



**Sang v Governor Kericho County & 2 others (Petition E001 of 2023)
[2026] KEELRC 261 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 261 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
PETITION E001 OF 2023
AN MWAURE, J
JANUARY 23, 2026**

BETWEEN

COLLINS KIPNGETICH SANG PETITIONER

AND

THE GOVERNOR KERICHO COUNTY 1ST RESPONDENT

THE COUNTY ASSEMBLY KERICHO 2ND RESPONDENT

THE KERICHO COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

RULING

Introduction

1. Before this Honourable Court are two applications for determination both dated 4th and 7th July 2025 filed by the 1st and 3rd Respondents respectively.
2. In both applications are seeking similar orders which are as follows:
 1. Spent
 2. An order do issue, to stay any further proceedings and/or any consequential orders and/or execution of the bill as taxed on 25th June 2025 pending hearing and determination of the Reference herein.
 3. This court be pleased to vacate, and set aside the taxation made on 25th June 2025 by the Deputy Registrar.
 4. The court be pleased to re-tax bill of dated 22nd April 2025 by Reference, as it may deem fit, upon hearing both parties.



5. In the alternative this court be pleased to refer the bill for fresh taxation before the Deputy Registrar/taxing master with suitable directions.
 6. Any other or further orders do issue in the interest of justice.
 7. Costs be in the cause.
3. Both applications are supported by the affidavit of one Caroline Chelangat, 3rd Respondent's County Legal Counsel on the grounds and Robinson Kiplangat, the 1st Respondent advocate both stating that the party to party bill of costs dated 22nd April 2025 was taxed at Kshs.8,769,170/= which is excessive high and needs to be re-taxed.

Petitioner/Respondent's replying affidavit

4. The Petitioner/Respondent opposed the application vide replying affidavit sworn by Vincent Yegon, the Petitioner's advocate dated 22nd October 2025.
5. The Petitioner/Respondent avers that the Applicants' pleadings are fatally defective and should be struck out for violating Order 9 Rule 9 of the Civil Procedure Rules, 2010, since their advocates were not properly on record at the post-judgment stage without consent or leave of court. The Petitioner emphasized that compliance with Order 9 Rule 9 is mandatory and failure deprives incoming counsel of locus standi, rendering all filings null and void.
6. The Petitioner/Respondent avers that the 1st and 3rd Respondents noted that the Petitioner's Bill of Costs was duly taxed ex-parte on 25th June 2025 after proper service on M/S H & K Advocates, who remained on record and failed to attend despite notice. Service on counsel binds the client, and no fraud or collusion has been alleged. The taxing officer's ruling was reasoned and comprehensive, making separate reasons unnecessary.
7. The Petitioner/Respondent avers that Applicants' attempt to challenge taxation by reference is defective as they failed to issue a Notice of Objection within 14 days under Paragraph 11 of the Advocates (Remuneration) Order. Consequently, the taxation is final and conclusive, the taxing officer is functus officio, and the court lacks jurisdiction to entertain the reference.
8. The Petitioner/Respondent contends that the Applicants' reference is fatally defective for failing to comply with the mandatory procedure under Paragraph 11 of the Advocates (Remuneration) Order, which requires timely objection and proper application to set aside ex parte taxation.
9. The Petitioner/Respondent avers that Applicants' own affidavit admits they deliberately chose not to issue a notice to the registrar, thereby invalidating their application. No attempt was made to reopen the taxation before the taxing officer or through the court's inherent jurisdiction, and filing a reference without first seeking to set aside the ex-parte proceedings offends both the letter and spirit of the law.
10. Since no objection was filed within the prescribed time, the Petitioner/Respondent avers that the taxing officer became functus officio and the decision final. The Respondents, duly served, wilfully failed to attend and cannot now claim denial of a hearing. Their assertion that setting aside would offer "no definite advantage" reflects a misunderstanding of procedure and exposes their challenge as an afterthought lacking good faith. Accordingly, the Petitioner urges that the reference be dismissed with costs as incompetent, misleading, and devoid of merit.
11. The Petitioner/Respondent maintains that the taxation proceedings were lawful, regular, and properly conducted, as service was duly effected on M/s H & K Advocates who remained on record until after the taxation date, making claims of non-service false and unsupported. The taxing officer exercised her



discretion judiciously under the Advocates (Remuneration) Order, applying correct principles and issuing a reasoned ruling that fairly assessed instruction fees and disallowed excessive claims.

12. The Petitioner/Respondent avers that the Applicants failed to file a Notice of Objection within the statutory timeframe, rendering the taxation final and conclusive, with both the taxing officer and the Court being functus officio. Their reference, filed out of time and without leave, is incompetent and amounts to mere dissatisfaction rather than proof of error of principle or manifest excess.
13. The Petitioner/Respondent argues that the Applicants' conduct reflects procedural indiscipline and a deliberate attempt to frustrate execution, and therefore urges the Court to dismiss their applications with costs and affirm the taxing officer's ruling of 25th June 2025 as final and binding.

1st Respondent's further affidavit

14. The 1st Respondent filed a further affidavit dated 15th December 2025. The 1st Respondent clarified that the firm of Katwa & Kemboy Advocates was properly placed on record by a consent executed with the outgoing advocates, H & K Advocates, on 7th November 2024, in full compliance with Order 9 Rule 9 of the Civil Procedure Rules.
15. The 1st Respondent rebutted the Petitioner's claim of irregular representation, arguing that the consent and written instructions from Governor Erick Mutai conclusively demonstrate lawful change of advocates.
16. The 1st Respondent avers that the Replying Affidavit of Mr. Vincent Yegon as defective, incompetent, and based on hearsay, citing settled case law requiring affidavits to be sworn by persons with personal knowledge.
17. The 1st Respondent further asserts that the ex-parte taxation of the Bill of Costs was irregular due to lack of proper service, denying him the right to be heard, and insists that the remedy lies in setting aside the taxation rather than pursuing a reference.
18. The 1st Respondent contends that the taxed amount of Kshs. 8,769,170.00 was manifestly excessive, disproportionate to the subject matter, and contrary to principles of fairness, proportionality, and public interest litigation under *the Constitution*.
19. The 1st Respondent urged the Court to strike out the defective affidavit, affirm the validity of his advocates on record, suspend execution, and order a fresh taxation to ensure justice, fairness, and adherence to due process.
20. At the time of writing this ruling, the parties had not filed their respective written submissions.

Analysis and determination

21. The court has considered applications, supporting affidavits, and further affidavit; and is satisfied with the issue for determination as to whether the court should grant stay of execution.
22. Order 9 Rule 9 of the Civil Procedure Rules provides as follows:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or



(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

23. The Petitioners averment are that the advocate who filed this application for stay of execution Messrs Katwa & Kemboy are not properly on record as they came on record after judgment was delivered. They say that the said advocates did not obtain a court order to come on record on behalf of the Respondents.
24. The judgment was delivered on 24th June 2024 in favour of the Petitioner against the Respondents. The 1st and 3rd Respondent were represented by H & K Advocates and later on 7th November 2024 there was a consent that was filed by Katwa & Kemboy Advocates. The said advocates filed a consent signed by the outgoing advocates H & K Advocates dated 7th November 2024. The firm of Katwa & Kemboy was therefore properly on record and should have been served with the bill of costs. As it is the bill proceeded exparte and costs were assessed at Kshs.8,769,170/00 vide ruling dated 25th June 2025. The award for damages was Kshs.2,000,000/=
25. On the issue for service, there is an affidavit of service dated 8th May 2025 which was sworn by Mr. Vincent Yegon, the Petitioner’s advocate, explaining how he effected service upon the firm of H & K Advocates the bill of costs dated 22nd April 2025 which is being challenged. Already Katwa & Kemboy had already come on record as per consent dated 7th November 2024. The court finds that the Petitioner served the wrong advocate on record instead of Katwa & Kemboy Advocates.
26. The court therefore finds party to party bill of costs was taxed exparte since the right advocate of the Respondent was not served with the same. The former advocate H & K Advocates had already exited the stage.

The court is persuaded that rules of natural justice mandate no party should be condemned unheard.

27. Even if Paragraph II of the Advocates (Remuneration) Order provide the procedure for filing a substantive reference to a bill of costs it does not prohibit the court to grant interim reliefs if is justified.

Paragraph Ii of Advocates Remuneration Order provide as follows: -

“Should any party object to the decision of the taxing officer he may within 14 days after the decision give notice in writing to the taxing officer of the items to taxation to which he objects.”

28. The court is satisfied the Respondent/Applicant is justified to apply for stay of execution of bill of costs in its entirety as it was taxed in their absence due to non-service of the same.
29. The court would find it just to set this taxation of Party to party bill of costs aside as is excessive considering damages were Kshs.2,000,000/= and the party to party bill of costs was awarded at Kshs,8,769,170/= by Deputy Registrar Hon. J. C. Bii. The case of Kamunyori & Kenya Limited (2015) Civil Appeal 206 Of 2006 The Court Of Appeal Quoting The Case Of Ragot & Company Advocates -vs - Kenya Airports Authority (2021) eKLR the court held:-

“.. failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer’s decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error



of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside”

30. In view of the foregoing and considering critically the application by the Respondent and the respective submissions and case laws, the court is convinced the Respondents have a prima facie case to convince the court to agree to set aside the bill of costs of Kshs.8,769,170/= as delivered by the Deputy Registrar. The Party to party bill of costs to be set aside and be heard before another Deputy Registrar and in strict compliance with the Advocates Remuneration Order.
31. The parties to take a mutual agreeable hearing date before another Deputy Registrar for re-taxation.
32. Costs will be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF
JANUARY 2026.**

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

