

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLMISC NO. E070 OF 2023

KEMBOY **LAW** **ADVOCATES**
.....**ADVOCATE/APPLICANT**
-VERSUS-

NAROK **COUNTY**
GOVERNMENT.....CLIENT/RESPONDENT

-ARISING FROM-

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION NO. 29 OF 2019

MARA NORTH HOLDINGS LIMITED.....1ST
APPLICANT

MARA NABOOSHO CONSERVANCY.....2ND
APPLICANT

GREATER MARA MANAGEMENT LIMITED.....3RD
APPLICANT

-VERSUS-

MARA NORTH CONSERVANCY LAND
OWNERS ASSOCIATION & 12 OTHERS.....
RESPONDENTS

RULING

1. Before this court for determination is the chamber summons dated 20th December, 2024 filed by the advocate/applicant, and it is expressed to be brought under the provisions of **Rule 11(2)** of

the **Advocates (Remuneration) Order** seeking the following orders:-

- 1) That the honourable court be pleased to review, set aside and/or vacate the ruling and order of the taxing officer, Hon. Judith Omollo (DR) delivered on 18th December, 2024 in which she taxed the advocate/applicant's advocate-client bill of costs dated 31st May, 2023 at Kenya Shillings Eighty-Six Thousand Three Hundred and Fifty-Seven and Forty Cents (Kshs.86,357.40).**
- 2) That this honourable court be pleased to issue appropriate directions for the taxation/assessment of the advocate/applicant's advocate-client bill of costs dated 31st May, 2023 to proceed before any other taxing officer other than Hon. Judith Omollo (DR).**
- 3) That the costs of this reference be awarded to the advocate applicant.**

2. The application is premised on the grounds appearing on its face, and it is further supported by affidavit of Julius K. Kemboy advocate sworn on even date. The learned counsel deposed that the advocate/applicant is aggrieved by the decision of the taxing officer delivered on 18th December 2024 taxing the bill of costs

dated 31st May 2023 at a total sum of Kshs.86,357.40/- which in its opinion was excessively low.

3. The learned counsel deposed that the taxing officer misapplied the principles of taxation with respect to the nature of the suit and also failed to apply the formula provided under **Schedule 3** of the **Court of Appeal Rules, 2022** and **Schedule 6B** of the **Advocates (Remuneration) Order, 2014**. He urged the court to issue orders setting aside the taxing officer's ruling.
4. The client/respondent did not file any response to the instant application.
5. The reference was disposed of by way of written submissions. The advocate/applicant filed its written submissions dated 28th November 2025. In its submissions, the advocate/applicant submitted that **Paragraphs 69** and **70** of the **Advocates (Remuneration) Order** do not require a party filing a bill of costs to accompany the bill with supporting documents. In the circumstances, the advocate/applicant opined that the taxing officer was grossly out of order for relying solely on the documents filed without calling for the parent file at the Court of Appeal.

6. I have considered the application and the written submissions filed. The sole issue for determination is whether the advocate/applicant has demonstrated a proper case for setting aside the decision of the learned taxing officer delivered on 18th December, 2024.
7. With regards to a reference emanating from the decision of a taxing officer, it is generally accepted, on the strength of various decisions on taxation of costs, that the court will not interfere with the discretion of a taxing officer unless it is shown that there was an error in principle in assessing the costs.
8. In the case of **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board (2005) eKLR**, the Court of Appeal aptly held as follows:-

“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. In Arthur v Nyeri Electricity Undertaking [1961] EA 497, the predecessor of this Court said at page 492 paragraph I:

“where there has been an error in principle the court will interfere; but questions solely of

quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases.”

9. The advocate/applicant readily conceded that the impugned decision arose from the taxation of the bill of costs dated 31st May, 2023 relating to the conduct of the client/respondent’s instructions in **Nairobi Court of Appeal Civil Application No. 29 of 2019.**

10. From the foregoing acknowledgment, it is plainly obvious that the proper taxing officer is the registrar of the Court of Appeal who holds custody of the above record of the Court of Appeal and not the deputy registrar of this court. Rule 111 of the Court of Appeal Rules (2010) (*Repealed*) which applied to the proceedings above outlines as follows:-

‘(1) The Registrar shall be a taxing officer with power to tax the costs arising out any application or appeal to the court as between party and party.’

(2) Such costs shall be taxed in accordance with the rules and scale set out in the Third Schedule.

(3) The remuneration of an advocate by his clients in respect of application or appeal shall

be governed by the rules and scales to proceedings in the High Court.'

11. It is the case of **Kenya Medical Supplies Agency v Revital Health Care (EPZ) Limited & 2 others** [2023] KECA 291 (KLR), the Court of Appeal held as follows:-

“Taxation of costs before the Court of Appeal is provided for in rules 116 and 117 of the Court of Appeal Rules, 2022 (formerly rules 111 and 112 of the 2010 Rules). Rule 117(1) provides that a person who is dissatisfied with a decision of the registrar in his or her capacity as taxing officer may require any matter of law or principle to be referred to a judge for the judge’s decision and the judge shall determine the matter as the justice of the case may require. Specific mention of what constitute matters of law is in rule 117(2) which makes provision for decisions extending time or refusing to extend time for lodging of the bill of costs or the exercise of the Registrar’s powers under paragraph 12 of the third schedule to the rules.”

12. Similarly, in **Thika Coffee Mills Limited v Mikiki Farmers Co-operatives Society Limited & another** [2020] KECA 1 (KLR), the Court of Appeal observed as follows:-

“Having perused the 2nd respondent’s Bill of Costs dated 4th April 2017, I find that all the items contained in the Bill relate to the

application to this Court for stay of execution of the judgment and decree of the superior court pending appeal pursuant to Rule 5(2) (b). Accordingly, I find that the 2nd respondent's Bill of Costs is properly before this Court."

13. The above authorities demonstrate that the taxing officer of this court undoubtedly had no authority to assess the bill of costs. The record of the Court of Appeal is reposed with the registrar of the appellate court. In the case of **Peter Muthoka & Another v Ochieng & 3 Others [2019] eKLR:-**

"It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in mis-justice, to borrow the holding in MBOGO -vs- SHAH (Supra), then the decision though discretionary, may properly be interfered with. See also ATTORNEY GENERAL OF KENYA -vs- PROF. ANYANG' NYONG'O & 10 OTHERS, EACJ App. No. 1 OF 2009."

14. In as far as the taxing officer of this court had no jurisdiction to tax the advocate/applicant's advocate-client bill of costs by virtue

of **Rule 116 of the Court of Appeal Rules, 2022 (formerly Rules 111 of the 2010 Rules)** as read with the **Third Schedule** of the **Rules**, the learned taxing officer inevitably fell into an error of principle. As a result, the taxed amount was not only unjust but also lacked a legal basis.

15. Accordingly, the orders which commend themselves in the circumstances of the case are as follows:-

- i. The ruling and order of the taxing officer, Hon Judith Omollo (DR) delivered on 18th December, 2024 taxing the advocate/applicant's advocate-client bill of costs dated 31st May, 2023 at Kenya Shillings Eighty-Six Thousand Three Hundred and Fifty-Seven and Forty Cents (Kshs.86,357.40/-) is hereby set aside.*
- ii. Each party shall bear its own costs of the reference.*

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 3RD DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
03/02/2026.**

In the presence of:

Ms. Benson Arunga - Court assistant

*Mr. Angelo Makwei holding brief for Mr. Kere for the
Advocate/Applicant*

ORIGINAL