



REPUBLIC OF KENYA



Nguli DCC Kalama (Machakos) & 3 others v Mzame & another (Environment and Land Appeal E039 of 2024) [2026] KEELC 412 (KLR) (Environment and Land) (3 February 2026) (Ruling)

Neutral citation: [2026] KEELC 412 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E039 OF 2024
EK WABWOTO, J
FEBRUARY 3, 2026
(FORMERLY MOMBASA ELC APPEAL NO. E039 OF 2023)**

BETWEEN

**REV NGULI DCC KALAMA (MACHAKOS) 1ST APPELLANT
PASTOR KAMBI MWANZIJE LALO 2ND APPELLANT
AFRICA INLAND CHURCH (MAUNGU) 3RD APPELLANT
SELINA MUSEMBI (CHAIRLADY) 4TH APPELLANT**

AND

**DANIEL MWANDOE MZAME 1ST RESPONDENT
MKANYIKA ANTHONY MBOYE 2ND RESPONDENT**

RULING

1. This ruling is in respect to the Appellant's application dated 26th January 2026 which in essence seeks to set aside the orders issued on 3rd December 2024 and all the consequential orders be thereto,
2. The application was supported by an affidavit of Pastor Kambi Mwanziye Lalo on 26th January 2026.
3. It was deposed that the 2nd and 3rd Appellants have been served with a warrant of arrest in execution of a decree which is undated and also lacks the seal of the Honourable Court in which they are required to pay the sum of Kshs. 498,370.041/= Shillings in satisfaction of the Respondent's advocates cost.
4. The deponent averred that the the Taxing Officer made a ruling, taxing the Respondents party and party bill of costs at a sum of Kshs. 437,166/ upon which he is aggrieved by the ruling of the Taxing Officer of 3rd December 2024 as the sum of 498,37.04/= was never subjected to taxation and their



- advocates on record was never served with any taxation notice in regard to the Bill of Costs dated 9th November 2024 which was not drawn to scale.
5. It was further averred that they have never been served with any certificate of costs and any taxation notice hence being aggrieved by the Honourable Court's ruling of 3rd December 2024 and wishes that the same be set aside and or varied, so that a proper taxation is done.
 6. The application was opposed by a Replying Affidavit sworn by Mwazighe Micar on 29th January 2026. It was deposed that the Appellants were duly served with the copy of the Bill of Costs and Taxation Notice on 16th November 2024 but chose not to participate, they were equally served with the copy of the Ruling on the Bill of Costs on 19th December 2024 but equally did not take any action.
 7. It was further deposed that the Appellants' advocate was also notified of the Certificate of Costs on 29th April 2025 but did not take any action and further on 21st August 2025 the Appellants were personally served with the Notice to Show Cause and mention notice but took no action and they only moved this court when warrants were issued. The court was urged to dismiss the application with costs.
 8. During the plenary hearing of the application, Learned Counsel Mr. Okanga made oral submissions on behalf of the Appellants while Learned Counsel Mr. Mwazighe submitted on behalf of the Respondents.
 9. Having considered the application, rival affidavits filed and oral submissions made, the main issue for determination is whether the application is merited to warrant the grant of the reliefs sought.
 10. The said application essentially seeks to challenge the orders issued on 3rd December 2024. A perusal of the said orders show that they were issued by Hon. T. N. Sinkiyian the Deputy Registrar in respect to the Respondents' Party and Party Bill of Costs dated 9th November 2024. The Hon. Deputy Registrar was satisfied that there was proper service and there being no response from the Appellants proceeded to assess costs of the Appeal in favour of the Respondents at Kshs. 437,166.70 which were to earn interest at court rates upon the lapse of 30 days if unpaid.
 11. It therefore follows that the said Orders which the Appellants seeks to set aside amount to the taxation proceedings and in considering the same, this court must be satisfied that the jurisdiction of this court has been properly invoked.
 12. The Appellants have hinged their application seeking to set aside the Orders of the Hon. Deputy Registrar on account of lack of service of Bill of Costs, Notice of Taxation together with the Certificate of Costs a position which the Respondents have vehemently denied by demonstrating that there was proper service on all aspects.
 13. Since the Appellants seek to set aside the Ruling on taxation of costs by the Deputy Registrar of this court, and also all the grounds set out or argued on the application relating to non-service, it is evident that the application is akin to a reference. It is not in doubt that a perusal of the said application together with all the grounds set out or argued in the application relate to and befits a Reference.
 14. Under Paragraph 11 of the Advocates (Remuneration) Order, any party who believes that the decision of the taxing master is wrong or there were missteps in respect to service and the other applicable procedures, may within 14 days of the said decision serve the taxing officer with a written notice of the items he or she intends to object to the said taxation. The reference is the main mechanism of challenging such a decision or seeking to stay and or set aside the said Orders. A party cannot move the court by invoking the provisions of the Civil Procedure Rules. See the case of Vincent Kibiwott Rono =Versus= Abraham Kiprotich Chebet & Another (2022) KEHC 1243 (KLR) and Gacau Kariuki &



Co. Advocates =Versus= Allan Mbugua Ng'anga Misc. Application No. 678 of 2011 wherein it was held that a party seeking to set aside the decision of the taxing master must file a reference.

15. In the case of Odera Obar & Co. Advocates =Versus= Aly Enterprises Limited & 3 Others (2015) KEHC 1903 (KLR), it was held that the requirement under paragraph 11 of the Advocates (Remuneration) Order are not superfluous as they support rights of parties in a taxation proceeding and must be complied with. The approach- or style, if so befits- adopted in this application is inappropriate as the test applicable in deciding a Reference under paragraph 11 of the Advocates (Remuneration) Order is different from the one applicable in an application for the setting aside conventional orders.
16. In view of the foregoing it is the finding of this court that this court has not been properly moved, the application dated 26th January 2026 is unmeritorious and the same is hereby dismissed. Each party to bear own costs of the application. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 3RD DAY OF FEBRUARY, 2026.

E. K. WABWOTO

JUDGE

In the presence of :-

Mr. Okanga for Appellants.

Mr. Mwazighe for Respondents.

Court Assistant: Mary Ngoira.

