



REPUBLIC OF KENYA



Cheruiyot & another v Kibet (Suing as the Representative of the Estate of David Kibii Koech) & another (Civil Miscellaneous E003 of 2025) [2026] KEHC 1286 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CIVIL MISCELLANEOUS E003 OF 2025
CM KARIUKI, J
FEBRUARY 5, 2026**

BETWEEN

NICHOLAS CHERUIYOT 1ST APPLICANT

KIPROTICH RONO 2ND APPLICANT

AND

WELDON KIBET (SUING AS THE REPRESENTATIVE OF THE ESTATE OF DAVID KIBII KOECH) 1ST RESPONDENT

AL FADIL MOTORS LTD 2ND RESPONDENT

RULING

1. By Chambers Summons dated 28/5/2025 and the Supporting Affidavit, the applicant seeks that the Ruling and taxation dated 28/5/2025 be stayed, and that the award on taxation be subjected to apportionment of 50%:50% contribution costs. The application is supported by the fact of the application.
2. The Judgment in Kilgoris CMCC No. E053 of 2023 Weldon Kibet Bii Suing as the legal Representative of the Estate of David Kibii Koech -vs- Nicholas Cheruyoit, Kiprotich Rone & Al Fadil Motors Ltd, the gist of this application was delivered on 29/08/2024 with liability apportioned in the ratio of 50%:50% in favour of the applicant herein.
3. Subsequently, the 1st Respondent prepared and served the applicants' counsel with their bill of costs, which they tried to negotiate but did not reach a settlement. As such, the 1st Respondent filed his bill of taxation, which was scheduled for 28/05/2025.
4. That the 1st Respondent's counsel took advantage of the Honorable Court, starting the court early at 8.15a.m. and had the bill taxed as drawn even when counsel was aware that the same was not drawn to scale and that the same had not been subjected to contributory negligence.



5. The applicants, who are now represented by the firm of Kairu McCourt, were in the process of making a request to be mapped, which had delayed the filing of their response to the 1st Respondent's bill of costs dated 24th September 2024.
6. There was no legal basis for not subjecting the assessed costs to 50% contributory negligence as per the judgment delivered on 29/08/2024 in Kilgoris CMCC E053 of 2023.
 - i. The award is too excessive in the circumstances.
 - ii. There is no legal basis for the award.
 - iii. The award is punitive, not compensatory.
7. That the taxing officer misdirected himself in taxing summons to base commander Emurua Dikir Police Station and commissioning of Affidavits of Service as the same is not provided for under Schedule 7 of the Advocates (Remuneration) (Amendment) (No. 2) Order, 2014. The same is reiterated in the Supporting Affidavit sworn on 28/5/2025 by Lydia Ongwacho.
8. The background of the matter is that the costs were taxed on the basis of an award of Kshs. 616,400/= in the lower court but not subjected to the liability apportionment, which was 50%:50%.
9. Determination:
10. The proper way to challenge the assessment of costs from a Magistrate's Court is by way of a Reference to the Judge (not an appeal). An assessment of costs by a taxing officer (usually the magistrate or deputy registrar) is challenged through a reference, not a conventional appeal.
11. Applicable law:
12. Paragraph 11 of the Advocates (Remuneration) Order. Section 51(2) of the [Advocates Act](#), Order 49 of the Civil Procedure Rules (as read with the ARO).
13. Step-by-step procedure: (a) Notice of Objection; File a Notice of Objection with the taxing officer. Must be filed within 14 days of the taxation ruling. The notice must specifically identify the items objected to; If the taxing officer gave reasons in the ruling, separate reasons need not be requested.
14.
 - (b) Reference to a Judge
15. File a Chamber Summons reference to a Judge of the High Court; It Must be filed within 14 days after receiving the reasons (or from the date of the ruling if reasons are contained therein); The reference challenges the principle and/or quantum applied in taxation.
16. Jurisdiction point (important): The High Court hears references on taxation from subordinate courts. This is because the challenge is to the exercise of discretion by a taxing officer, not the merits of the original suit.
17. Key Kenyan authorities: Machira & Co. Advocates v Arthur K. Magugu [2012] eKLR, Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR, Joreth Ltd v Kigano & Associates [2002] eKLR, and First American Bank of Kenya v Shah & Others [2002] eKLR.
18. Bottom line: Challenge assessment of costs from a Magistrate's Court by filing a Paragraph 11 reference to the High Court, not by appeal.



19. In the instant matter, the applicant failed to follow all the aforesaid procedural steps set out by law. I have not seen any attempt to comply, nor is the same justified. Why could the same procedural steps not be followed? The court application was thus fatally defective and struck out with costs to the respondent.

DATED AND DELIVERED AT KILGORIS VIA MICROSOFT TEAMS THIS 5TH FEBRUARY 2026.

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CHARLES KARIUKI

JUDGE

