



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ELCLC MISC NO. E010 OF 2025

MUSA K. KIBUSIA.....PLAINTIFF

VERSUS

RICHARD KIPLAWAT CHEMJOR1ST DEFENDANT

ADAM KIPKURUI KIPLAWAT.....2ND DEFENDANT

RULING

1. What calls for my determination is the Applicant's reference dated 7th October 2025 challenging the assessment of costs by the Deputy Registrar Kabarnet Environment and Land Court in **ELC Case No. 035 of 2020**.
2. By a ruling dated 30TH June 2025, the Deputy Registrar taxed the Respondents' party and party costs at **Ksh 317,285**. The Applicant is aggrieved and filed this reference dated **7th October 2025** seeking inter alia, an order that this court be pleased to re-tax the Respondent's entire Bill of Costs.

3. The remedy seeking a stay of execution of the ruling delivered in **30th June 2025** was declined by the Deputy Registrar vide her ruling in the Respondents' Bill of Costs was taxed as above.
4. The reference is founded on Rule II of the Advocate's Remuneration dated as well **as Order 21 Rule 9D** of the Civil Procedure Rules.
5. It is the Applicant's case that he objects to the Deputy Registrar's ruling dated 30th June 2025 in which the Respondents' Bill of Costs was taxed at **Ksh 317,285**. That the Deputy Registrar made an error in relying on schedule 6A of the Advocates Remuneration order 2014 in taxing items 1 - 9 when this matter was in fact heard and determined in the Subordinate Court. Further, that the Deputy Registrar in exercising the discretion failed to consider relevant facts and the submissions on record and also that legal fees should not be excessive. This court therefore has the discretion to interfere with the decision of the Deputy Registrar sitting as Taxing Master.
6. The 1st Respondent filed a Replying Affidavit dated 10th November 2025 in objection to the reference. He has deposed, inter alia, that the entire Bill was taxed to scale and the Deputy Registrar exercised her discretion in taxing items No. 1 - 9 in accordance with schedule 64 of the Advocates Remuneration Order given the fact that this suit was filed and defence filed in the High Court before

being transferred to this Court. That items No. 10 - 38 were taxed at a lower scale. That the Deputy Registrar exercised her discretion and applied the laid down principles. However, if this court allows the Bill to be taxed, then the Respondents should be allowed to file an amended Bill of Costs.

7. When the reference came up for directions on 21st January 2026 in the presence of **MR CHEBII** Counsel for the Applicant and **MR KIPKULEI** Counsel for the Respondents, this Court directed that it be canvassed by way of Written Submissions. However, only **MR CHEBII** instructed by the firm of **LIMO R.K. & COMPANY ADVOCATES** filed his submissions on behalf of the Applicant. **MR KIPKULEI** instructed by the firm of **KIPKULEI KIPROP & COMPANY ADVOCATES** for the Respondents informed the court that he would not be filing any Submissions.
8. I have considered the reference, the Replying Affidavit and the Submissions by Counsel for the Applicant.
9. It is well settled that this court will not interfere with the discretion of the Deputy Registrar sitting as the Taxing Master unless it is obvious that such discretion was not exercised judiciously as for example where the Taxing Master disregarded factors which ought to have been considered or considered matters which were extraneous or acted on wrong principles or the fees awarded is manifestly excessive or deficient among others. There is

no mathematical formula to be used by the Deputy Registrar sitting as the Taxing Officer in the exercise of such discretion unless of course where the same is set out in schedule 6 and 7 at the Advocates Remuneration Order. In the circumstances of this case, the suit was first filed at the Eldoret Environment and Land Court being case No. 43 of 2020 before being transferred to Kabarnet Senior Principal Magistrate's Court as **ELC Case No. E035 of 2020**. One of the issues raised by the Applicant is that the Deputy Registrar/Taxing Master made an error by relying on schedule 6A of the Advocates Remuneration Order in taxing items 1 - 9 when in fact this suit was heard and determined by the Subordinate Court. As already stated above, this suit was filed in the ELC at Eldoret before being transferred to the Subordinate Court at Kabarnet. The Deputy Registrar addressed this issue as follows in paragraph 12 at her ruling:

12 "On the Bill of Costs filed by the Defendant, the same is taxed in line with provisions of schedule 6 and 7 of the Advocates Remuneration Order as the matter was previously filed at the ELC Court in Eldoret before being transferred to the Magistrates Court for final determination. Items 1 to 9 are taxed under schedule 6 while items 10 to 38 are taxed under schedule 7."

10. I see no reason to interfere with that exercise of discretion by allowing party and party costs according to the work done in the respective costs.
11. With regard to the item on instruction fees, the said item is crafted on the Bill of Costs dated 28th January 2025 as follows:

1. "Receiving instructions to defend the suit on behalf of the defendants in High Court Eldoret.

Valuation of subject matter 15.5 acres x 500,000 per acre = Ksh 7,750,000

120,000/= add 2% x Ksh 6,750.000 = Ksh 135,000

Total Ksh 250,000/=."

12. In her ruling dated 30th June 2025, the Deputy Registrar/Taxing Master held in paragraph 13 that **"Item 1 is taxed as drawn"**

In filing this reference the Applicant, has complained in paragraph 4(c) (d) thus:

(c) "That in taxing the said Bill, the taxing Officer made an error on relying on schedule 6A of the Advocates Remuneration Order 2014 in Taxing items 1 - 9 when in fact this matter was heard and determined by the Subordinate Court."

13. In assessing item No. 1, the Deputy Registrar/Taxing Master calculated the value of the subject matter as **“15.5 acres x 500,000 per acre = Ksh 500,000”**. She then taxed the instruction fees at **Ksh 225,000**. In his submissions on this issue, counsel for the Applicant has stated at page 6 thus:

“A cursory look at the pleadings and judgment of this court do not mention the value of the subject matter. It is to be further noted that there was no valuation report or any showing the value of the subject matter. As such, we urge the Honourable Taxing Officer to exercise his discretion of fee (sic) at Ksh 20,000.”

14. I have called for and perused the plaint, defence and counter-claim as well as the judgment delivered on 9th December 2024 by **HON CAROLINE ROSE TABUCHE ATEYA in KABARNET MAGISTRATE’S COURT and CASE NO. MC ELC 35 of 2020**. There is no mention of the value of the subject matter or indeed any reference to the same being **Ksh 500,000**.

15. The Applicant has taken issue with the instruction fee arguing that the valuation of the subject matter must first be determined. Such valuation is determined by either the pleadings, judgment and settlement between the parties. In the case of **PETER MUTHOKA & ANOTHER C.A. CIVIL**

APPEAL NO. 328 of 2017 [2019 eKLR) the Court of Appeal said:

“It is only where the value at the subject matter is neither discernible nor determinable from the pleadings, the Judgment or the settlement, as the case may be, that the Taxing Officer is permitted to use his discretion to assess instruction fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He doesn’t have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided; either the pleadings, the Judgment or the settlement. He has no leeway to disregard the statutorily commended starting point. And we think, with respect, that this starting point can only be over of the three. It is not open to the Taxing Officer to choose one or the other or to use them in combination. The provision being expressly disjunctive as opposed to conjunctive. It is also mandatory not permissive.”

16. In her Ruling, the Deputy Registrar/Taxing Master gave no reason as to why she taxed them No. 1 as drawn.

In the case of **KANU NATIONAL ELECTIONS BOARD & 2 OTHERS V. SARAH YAKUIS FARAH 2018 eKLR**, it was held that this court will not interfere with the exercise of the Taxing Masters discretion unless it appears that such was not exercised judicially, was exercised wrongly or improperly by, for example, disregarding factors which should have been considered or by considering matters which were improper or acting on wrong principles. Other than that case, there are also other cases such as:

- 1. ORUENJO KIBET & KHALID ADVOCATES MISC CASE NO. E008 of 2024.**
- 2. FREDRICK OTIENO OUTA V. JARED OTIENO NDOTO & 3 OTHERS S.C PETITION NO. 6 of 2014.**
- 3. PREMCHAND RAICHND LTD & ANOHTER V. QUARRY SERVICES OF EAST AFRICA LTD & ANOTHER 1972 E.A 162.**
- 4. FIRST AMERICAN BARUK OF KENYA V. SHAH & OHTERS 2002 E.A 64.**
- 5. JORETH LTD V. KIGANO & ASSOCIATES 2002 1 E.A 92.**

17. Those decisions and others set out the following principles as to when a Judge can interfere with the Taxing Master's discretion. They include:

- (a) An error of principle by the Taxing Master.**
- (b) The fee awarded is shown to be manifestly excessive or so high as to confine access to**

the courts to the wealthy or conversely, if the award is so low as to amount to an injustice.

(c) The Judge is satisfied that the successful litigant is entitled to a fair reimbursement for costs incurred.

(d) The costs awarded will not be regarded as a punishment for the defeated party but rather, as a recompense for the successful party for the expenses.

(e) There is no mathematical formula but each case will be considered on its own peculiar circumstances.

(f) Although the Taxing Master exercises unfelted discretion, in matters taxation, the same will be exercised judicially not whimsically.

(g) The Judge will not normally interfere with the decision of the Taxing Master merely because he believes he would have awarded a different figure had he been in the Taxing Master's shoes".

18. Taking all that into account and particularly bearing in mind that there was no proper basis upon which item No. 1 was taxed in the manner in which the Taxing Master/Deputy Registrar did, this court must interfere.

19. Secondly, the 1st Respondent by his Replying Affidavit in paragraphs 9 and 10 pleads that if the court allows the Bill to be taxed, he should be allowed to file an amended Bill of Costs as there was an over-sight in that the item on mesne profits was not included. From the Judgment, the trial court only awarded a permanent injunction in the counter-claim restraining the Plaintiff from trespassing, alienating, dealing with or interfering with the land parcel **No. BARINGO/SALAWA/2715**. The court did not award any mesne profits though pleaded. That remedy is not available since this is not an appeal against the Judgment.

20. The up-shot of all the above is that this court issues the following orders having considered this reference:

- 1. The Bill is remitted to the Deputy Registrar/Taxing Master for re-taxing.**
- 2. The prayer to amend and include an item on mesne profits is declined.**
- 3. Each party shall meet their own costs.**

BOAZ N. OLAO

JUDGE

17TH FEBRUARY 2026

Ruling dated, signed and delivered by way of electronic mail at KABARNET on this 17th day of

**February 2026 as was notified to the parties on 21st
January 2026**

**BOAZ N. OLAO
JUDGE**

17TH FEBRUARY 2026

ORIGINAL