

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 410 OF 2019**

**ROBERT MWANIA KIATTU.....1<sup>ST</sup>**

**PLAINTIFF/RESPONDENT**

**LENAH MUTONGOI KIATTU.....2<sup>ND</sup>**

**PLAINTIFF/RESPONDENT**

**-VS-**

**PETER NJENGA MUHIKA.....1<sup>ST</sup>**

**DEFENDANT/APPLICANT**

**AGNES MUGURE KIGATHI.....2<sup>ND</sup>**

**DEFENDANT/APPLICANT**

**THE LAND REGISTRAR.....3<sup>RD</sup>**  
**DEFENDANT**

**RULING**

1. Before this court is the chamber summons dated 12<sup>th</sup> May, 2025 filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants, and it is expressed to be brought under **Rule 11(2)** of the **Advocates Remuneration Order** seeking the following orders:-

***1. That the ruling of the taxing master (Hon. Mr. Vincent Kiplagat) delivered on 29<sup>th</sup> April, 2025 in respect to the items no. 1(a), 1(b) and 2 of the 1<sup>st</sup> and 2<sup>nd</sup> defendants party/ party bill of costs dated 23<sup>rd</sup> October, 2023 be reviewed and/or set aside.***

***2. That this honourable court be pleased to give such further directions and/or orders as it may deem fit.***

**3. That the costs of this application be awarded to the applicants.**

2. The application is premised on the following grounds:-

- 1. The taxing master wholly ignored the directions issued by the honourable Mr. Justice Oguttu Mboya in his ruling delivered on 9th October, 2024 and/or failed to apply the directions issued by the learned judge while taxing item no. 1(a), 1(b) and 2 of the bill of costs dated 23rd October, 2023.**
- 2. The taxing officer failed to recognize and appreciate that he could only tax items no. 1(a) (b) and 2 of the bill of costs strictly in accordance with the directions issued by the honourable Mr. Justice Oguttu Mboya in his ruling delivered on 9th October, 2024 and not on the basis of his discretion as purported in his ruling.**
- 3. The taxing master erred in principle by deciding that the value of the subject matter was undetermined for the purpose of calculating instructions fees under item 1(a) and (b) of the bill of costs.**
- 4. The taxing master erred in principle by awarding a paltry sum of Kshs.250,000/- only as instruction fees under item no. 1(a) and (b)**

*respectively of the bill of costs without providing any justifiable reasons for the said award.*

- 5. The taxing master erred in law and principle by disregarding the valuation reports produced in evidence by the plaintiffs as well as the 1st and 2nd defendants demonstrating that the current market value of the suit property was Kshs.35,000,000/- and Kshs.40,000,000/- respectively.*
- 6. The taxing master erred in law and principle by failing to appreciate that a counterclaim is a separate and independent suit and instructions fees should be assessed and awarded separately as provided by schedule VIA paragraph I(n) of the Advocates Remuneration Order 2014. The amount awarded as instruction fees under item 1(b) was wholly misconceived and not in line with the directions issued by the honourable Mr. Justice Oguttu Mboya in his ruling.*
- 7. The taxing master erred in law and principle by awarding the paltry sum of Kshs.83,333.33/- only under item no. 2 being costs for getting up and preparing for trial.*
- 8. The taxing master failed to apply discretion in a judicial manner, applied the wrong principles of taxation in respect to items no. 1(a), (b) and 2 of the bill of costs and thereby ended up awarding*

***the total sum of Kshs.831,851.67/- which amount is manifestly low and erroneous.***

3. The chamber summons was supported by the affidavit of the 1<sup>st</sup> defendant/applicant sworn on even date. The 1<sup>st</sup> defendant/applicant deposed that being dissatisfied with the ruling delivered on 8<sup>th</sup> April, 2024 by Hon. Marienga, they filed a reference before this court which was heard and determined vide the ruling delivered on 9<sup>th</sup> October, 2024. It was deposed that the ruling was clear on taxation of the items on the bill of costs which was placed before Hon. Kiplagat for re-taxation of items no. 1(a) (b) and 2 of the bill of costs.
4. The 1<sup>st</sup> defendant/applicant deposed that Hon. Kiplagat decided that the value of the subject matter was undetermined and he used his discretion and taxed items 1(a) at Kshs.250,000/-, item 1(b) at Kshs.250,000/- and getting up fees for the main suit at Kshs.83,333.33/- each. He deposed that the taxed amount by Hon. Kiplagat was manifestly low and erroneous and thus the orders sought in this application.
5. The instant application was opposed vide the replying affidavit of the 1<sup>st</sup> plaintiff/respondent sworn on 30<sup>th</sup> September, 2025. The 1<sup>st</sup> plaintiff/respondent deposed that the 1<sup>st</sup> and 2<sup>nd</sup>

defendants/applicants have not demonstrated any sufficient grounds to this court to warrant the interference with the taxing officer's decision. Further, that the taxing officer correctly applied the principles of taxation under **Schedule 6** of the **Advocates Remuneration Order**.

6. The 1<sup>st</sup> plaintiff/respondent deposed that the amounts raised in the bill of costs are unjustifiably high considering that the suit was a simple land dispute, and which did not raise a novel point of law. In conclusion, he urged the court that it is in the interest of justice that the court maintains the taxed amounts as per the ruling delivered on 29<sup>th</sup> April, 2025.
7. The application was canvassed through written submissions. The 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants filed their written submissions dated 21<sup>st</sup> October, 2025, while the plaintiffs/respondents filed their written submissions dated 17<sup>th</sup> November, 2025.
8. I have considered the application, the replying affidavit and the written submissions filed by both parties. The issue for determination is *whether the taxing officer fell into error in determining the bill of costs dated 23<sup>rd</sup> October, 2023 pursuant to the ruling delivered on 9<sup>th</sup> October, 2024.*

9. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case of **Premchand Raichand Ltd Another -vs- Quarry services of East Africa Ltd and Another No. 3 (1972) EA 162**. The principles laid out are:-

- i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.*
- ii. The taxing master was expected to tax each bill on its merits;*
- iii. The value of the subject matter had to be taken into account;*
- iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;*
- v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy.*
- vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached*

***because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference.”***

**10.** In advancing their claim, the 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants argued that the taxing officer misinterpreted the court’s ruling by exercising discretion and taxing the bill of costs thus awarding a sum that was manifestly low. While I have considered these claims, I have had the chance to carefully examine the ruling delivered by the taxing officer on 29<sup>th</sup> April, 2025. In arriving at his decision, the taxing officer limited his decision to the items contained in the ruling delivered by the court on 9<sup>th</sup> October, 2024 to the extent that it only pronounced itself on items 1(a), 1(b) and 2 of the bill of costs. The taxing officer also observed that the value of the subject matter was undetermined and thus left him with no option but to exercise discretion.

**11.** In their submissions, the 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants argued that the taxing officer should have adopted the sum of Kshs.35,000,000/- as the value of the subject matter for the purposes of calculating instructions fees under items 1(a). Equally

so, the taxing officer should have adopted the sum of Kshs.40,000,000/- as the value of the subject matter in taxing item 1 (b). They submitted that both parties led evidence by producing valuation reports denoting the subject value of the suit property.

**12.** Indeed, paragraphs 18 to 21 of the judgment delivered on 31<sup>st</sup> October, 2022 indicates that the valuation report was produced by the plaintiff/respondent and there was no objection raised as to the value of the suit property. This is also the case with the 1<sup>st</sup> and 2<sup>nd</sup> defendants/applicants testimony. Paragraph 48 indicates that they produced the documents marked as D1 to D30 as exhibits. It is therefore clear that the value of the subject matter was disclosed vide the valuation reports and, in my view, the taxing officer fell into error by claiming that the value of the suit property was undetermined.

**13.** In the case of **Joreth Ltd vs Kigano & Associates [2002] 1 E.A. 92**, the court of appeal stated as follows:-

*“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just,*

*taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”*

**14.** Where the value of the subject matter has been disclosed as in the instant case, it is incumbent upon the taxing officer to tax the bill accordingly and not exercise his discretion as it was done. In that case, I find sufficient reason to interfere with the ruling delivered by the taxing officer on 29<sup>th</sup> April, 2025. Thus, the chamber summons dated 12<sup>th</sup> May, 2025 is allowed as follows:-

*i. The ruling of the taxing master (Hon. Mr. Vincent Kiplagat) delivered on 29<sup>th</sup> April, 2025 in respect to the items no. 1(a), 1(b) and 2 of the 1<sup>st</sup> and 2<sup>nd</sup> defendants party/party bill of costs dated 23<sup>rd</sup> October, 2023 is hereby set aside.*

*ii. This matter is referred back to another taxing officer other than Hon. Vincent Kiplagat and Hon. T. Marienga for taxation of items 1(a), 1(b) and 2 of the party and party bill of costs dated 23<sup>rd</sup> October, 2023.*

*iii. I make no orders as to costs.*

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
12/02/2026.**

***In the presence of:***

*Ms. Benson Arunga - Court assistant*

*Mr. Kange for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants*

*Mr. Dach for the Plaintiffs/Respondents*