



REPUBLIC OF KENYA



**Matanyi v Khagai (Civil Miscellaneous Application E407 of 2025)
[2026] KEHC 1435 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL MISCELLANEOUS APPLICATION E407 OF 2025
RN NYAKUNDI, J
FEBRUARY 13, 2026**

BETWEEN

JAVAN MATANYI APPLICANT

AND

ALEX KHAGAI RESPONDENT

RULING

1. Before Court is Chamber Summons dated 11th day of December 2025 seeking the following orders:
 - a. Spent
 - b. That the honorable court be pleased to order that the execution of the Decree and certificate of costs/prohibitory order extracted herein by the Decree-Holder amounting to Ksh 2,219,500 be stayed pending the hearing and determination of this reference.
 - c. That the honourable court be pleased to have the matter remitted for fresh taxation before a different taxing officer.
 - d. That the honourable court be pleased set aside the sale by public auction of the property known as Pioneer/Ngeria Block [EATEC]11301 slated for 6th February, 2025 as the same is based on an erroneous decree and certificate of costs/prohibitory order/notification of sale.
 - e. That the Honourable be pleased to make such further Orders as necessary for the ends of justice.
2. Which application is made on the following main grounds:
 - a. The Applicant objects to the decision of the Taxing Officer where costs and interest of Ksh 2,219,500 were awarded to the Respondent.



- b. The original award was Ksh 402,000 the same has ballooned and it is beyond peradventure the awarded costs as per the prohibitory order is punitive, based on the wrong scale, is disproportionate and erroneous.
 - c. The Taxing Officer erred in not applying the principles set out in the decision of Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] E.A 162. In particular, the Taxing Officer did not consider that:
 - i. That costs in litigation should not be allowed to rise to such level as to confine access to courts to the wealthy; and
 - ii. That so far as practicable there should be consistency in the awards made.
 - iii. The costs awarded are manifestly excessive as to demonstrate a failure to adhere to the well settled principles on the taxation of costs.
 - iv. The Taxing Officer erred and failed to perform his duty to the public to see that costs do not rise to unreasonable level. The interest was calculated erroneously.
3. The application is supported by the affidavit sworn by the applicant who deposed as follows:
- a. That I am the Applicant herein, in this matter hence competent to make this affidavit.
 - b. That I have perused the Chamber Summons herein and I understand the contents therein. I swear this affidavit in support, and I supplement the averments thereof.
 - c. That Court seating in Eldoret Civil Suit No.791 of 2006 Alex Khagai Vs Javan Matanyi awarded the Respondent Kshs 402,000 plus costs and interest. Attached herewith is a copy of the judgment appearing on page 1-2 of the bundle marked JM.
 - d. That the Respondent has now obtained from the taxing master certificate of costs, a prohibitory order, notification of sale of moveable property and auctioneers notices indicating the total costs payable being Ksh 2,219,500. Attached herewith are copies of the prohibitory order and sale by immovable property on pages 3-5 of the bundle marked JM.
 - e. That I am informed by my advocates on record which information I verily believe to be true that that the taxing master erroneously calculated the interest accrued on the award and therefore arrived at a punitive decision.
 - f. Interest cannot accrue ad infinitum.
4. In reply to the application is a notice of preliminary objection grounded on the following grounds:
- a. That the applicant's reference is, fatally defective, bad in law and incompetent for having been filed outside the mandatory fourteen (14) day period prescribed under Paragraph 11(1)(2) and (4) of the Advocates Remuneration Order, which provides that a party objecting to a taxing officer's decision must give notice and file a Reference within fourteen (14) days.
 - b. That arising from a certificate of costs dated 10th November 2010, no leave was sought or obtained to extend time before filing the Reference, contrary to paragraph 11(4) of the Advocates Remuneration Order.
 - c. That this instance reference is consequently a nullity ab initio and dead on arrival. Reasons wherefore the Respondent prays that the preliminary objection be allowed and applicant's instant application be dismissed with costs.



5. In support of the application are written submissions canvassing the issues in the application by the learned Counsel Mr. Mungu on behalf of the applicant. It was learned counsel's contention that there are weighty matters in the application which cannot be wished away by dint of a preliminary objection based on the provisions of paragraph 11 of the Advocates Remuneration Order. This aspect of the law revolves around the question of the timeline of fourteen-day period prescribed by paragraph 11(1), (2) & (4) of the Order. In essence learned counsel is questioning whether the issue of leave to file a reference can be taken to be cornerstone which would deny the applicant right to access courts. Learned counsel further submitted that the time bar objection should not be applied to derail the court's jurisdiction to determine the issues on the merits. According to learned counsel for the Applicants if this bar on timeframe is left to stand, it will be promoting unjust enrichment and curable irregularities in the decree. In the quest to persuade the court to dismiss the preliminary objection, learned counsel placed reliance in the following authorities:

Premchand Raichand Ltd v Quarry Services of East Africa Ltd [1972] EA 162, Joreth Ltd v Kigano & Associates [2002] 1 EA 92, First American Bank of Kenya Ltd v Shah & Others [2002] 1 EA 64, Nduati & Company Advocates v Mugo [2025] KEHC 14142(KLR) and Idrata Developers Limited v Najmuden Dhanji Jiwa [2021] KEHC 4097 (KLR) & Ugochukwu & Another v Kombo & 4 others [2023] KEHC 21948 (KLR)

6. In this procedural protocol learned counsel for the applicant submitted further on the substratum of the decree arising out of the Eldoret Chief Magistrate's Court Civil Suit No. 791/2006 which subsequently led to a decision delivered on 18th June 2008 awarding the Respondent a quantum of Ksh 402,000/= as both general and special damages with costs and interest at court rates. In his contention learned counsel invited the court to evaluate and scrutinize the following chronology of events as reflected in the record:

2.2.1 By December 2024, decretal sum claimed was Kshs 1,236,460 and the Applicant was thereafter arrested and committed to civil jail.

2.2.2. By April 2025, prohibitory order was obtained which led to the attachment of the Applicant's immovable property being Pioneer/Ngeria Block (EATEC) 11301 this time the Judgment Creditor was claiming Kshs 2,219,500.

2.2.3. Seventy Seven Auctioneers thereafter advertised a public auction for 6th February 2026 in Eldoret.

2.2.4, On 27th April 2025, the Applicant's former advocates protested the tabulation (rapid escalation within months, erroneous interest computation, possible sharp practice) – no rectification followed.

7. In so far as the jurisdiction on the reference is concerned learned counsel relied on the following authorities:

Joreth Ltd v Kigano & Associates [2002] 1 EA 92, First American Bank of Kenya Ltd v Shar & Others [2002] 1 EA, Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] EA 162, Nuru Chepleting [2021] KEELC & Njoroge T/A Agnes W Njoroge & Company Advocates v Mwicigi [2025] KEELC 5963 (KLR), Lubullelah & Associates Advocates v P&L Investments Ltd & Another [2013] eKLR, Edon Constultants v Davson & Ward [2025] KECA, Makwata Construction and Engineering Company Ltd v Limuru (2024) and Peter O. Ngoge t/a O.P Ngoge & Associates & Associates v Orina & 14 Others (2025).



8. On the part of the respondent, learned counsel canvassed the issues and urged the court to allow the preliminary objection based on the provisions of the law and decided cases as herein reflected in this ruling:

Mukhisa Biscuit Manufacturing Co. Ltd vs West Distributors (1969) EA 696, Oraro vs Mbaja [2005] 1 KLR 141 and Twiga Motors Limited v Dalmas Otieno Onyango [2015] KEHC 8106 [KLR].

9. The learned counsels seized of this matter have done a fantastic job in bringing forth the justiciable issues primarily based on the Taxing Master's decision. What is the bone of contention? The impugned decision is traceable to the Chief Magistrate's Court in CMCC 791/2006. Prima facie from the pleadings the judgment debt is stated to be Ksh 402,000/= which apparently has escalated to Ksh 2,219,500/= being now the subject matter of the so-called reference before this court. The arguments by the applicants are very juicy as regards compelling reasons why this court should exercise its discretion and have a look at the decision of the Taxing Master from the lens of reference. Incidentally, there might be questions about the escalation of the quantum to a mere Ksh 402,000/= to an escalated figure of Ksh 2,219,500/=. How best can this issue be dealt with at an appellate level? The answer is found within the provisions of paragraph 11 (1) (2) & (4) of the Advocates Remuneration Order.
10. Based on the recent decided cases in our legal system a reference in taxation from a Taxing Officer's decision on costs cannot be filed out of time without the leave of the court. If a reference is filed after the statutory time, typically set by the Legislature to be 14 days without a formal application for extension of time it is generally considered incompetent and dismissed as the court lacks jurisdiction to entertain it. What do I see as the import of the provisions of the Advocates Remuneration Order Paragraph 11(1) (2) & (4)?
- Mandatory Timelines: Tax statutes and rules (such as the Advocates Remuneration Order in Kenya) set strict, mandatory timelines for filing objections or references to taxation.
 - Requirement of Leave: A reference filed out of time without obtaining leave (permission) to extend time is invalid.
 - Discretionary Power to Extend: Courts have the discretion to extend time, but this power is not a right and must be exercised "judiciously" based on the reasons for the delay.
 - Requirement for Reasons: If the Taxing Officer did not give reasons within the decision, the 14-day period may run from when the reasons are supplied. If reasons were given, the time runs from the date of the ruling.
11. These principles are clearly embodied in the following authorities: *Imarika Sacco v Katana* (2025): The Court held that a reference filed on 23rd October 2022, after the 14-day deadline passed on 22nd October 2022, was out of time. The court explicitly stated it has "no jurisdiction to entertain a reference filed out of time without the leave of the Court" and dismissed the case. *Commissioner of Domestic Taxes v Lewa Conservancy* (2022): An application for extension of time to file a reference was dismissed due to an inordinate 75-day delay. The court affirmed that discretion to extend time under the Advocates Remuneration Order must be based on a satisfactory explanation. *M/S Lubuleliah & Associates Advocates v NK Brothers Limited* (2014): Cited in 2025 to support the ruling that a reference filed out of time without an extension of time to so file, cannot succeed. *Maina and Maina Advocates v Rashi* (2025): Confirmed that if a reference is filed late, it will only be deemed as filed if the court grants leave to extend time.



12. In these issues being canvassed by and large all sit at the core of the litigation landscape rooted in the decision of the Taxing Master as stated in the application and the preliminary objection by the Respondent. The court should have expected that its jurisdiction be properly invoked and the principles under which an appellate court can interfere with the exercise of a Taxing Officer's taxation award be at the center of the litigation between the Applicant and the Respondent. I have in mind the following guidelines which emanate from our jurisprudential decisions: Thus the Taxing Master:
- a. Misdirected himself/herself in law
 - b. Misapprehended the facts
 - c. Took into account matters/issues he/she should not have taken into account
 - d. Did not take into account matters/issues he/she should have taken into account
 - e. Reached a decision that was plainly wrong.
13. Since the jurisdiction conferred by Rule 11(1) (2) & (4) of the Advocates remuneration order is a special jurisdiction and made subject to the *Advocates Act* for the enforcement of fundamental rights on matters to do with the right legal representation under Article 50 (2) (G) of *the constitution*. The enabling statute provides for the procedural protocols on matters of taxation before a Taxing Master. The root of the jurisdiction exercised by the Taxing Master flows from the decree of the original suit, claim, originating summons or petition for that matter. One of the key fundamental litigation landscape is structured within the process of appeals referred as a reference. The aggrieved party against the decision of a Taxing Master has 14 days to seek reasons for the decision and file a reference to the High Court. In the instant case I am yet to find evidential material as to the compliance of the Appeal Process to challenge any wrong doing by the Taxing Master within the decision making process or post judgement or ruling which required the High Court to exercise jurisdiction.
14. The Judicial powers vested on matters to do with the reference are used in accordance with the foregoing provisions of the Advocates Remuneration Order and unfortunately even inherent jurisdiction of the Court cannot overreach those provisions to craft a remedy for the aggrieved party. It seems to me that upon the construction of the subsection it is only when an aggrieved party invokes the jurisdiction of the court appropriately are the issues to be determined by the Judicial Powers of the High Court. The application before this court is in the form of a miscellaneous application inviting the court to exercise original jurisdiction while essentially this is a reference in the name and style of an Appeal. It would be in my view be a grave lacuna in our system of Civil Law if a party was to act like a pressure group spirited to seek for a remedy in which there is outright violation of provisions of Rule (11(1) (2) & (4) ARO
15. From a comparative perspective " Jurisdiction is the live wire to any adjudication as he held in the case of National Union of Road Transport Workers & 5 Anor V Road Transport Employers Association of Nigeria (2012) LPELP 7840 (SC) where the apex Court reiterated the importance of jurisdiction in the following words. It is the wire of a case which should be determined at the earlier opportunity. If a court has no jurisdiction to determine a case the proceedings remain a nullity ab initio no matter how well conducted and decided, this is so since a defence in the competence is not only intrinsic to the entire process of adjudication.
16. It is an accepted canon of construction that where are two provisions one special and the other general covering the same subject matter, a case falling within the words of the special provision must be governed there by and not by the terms of the general provision. The reason behind this rule is that the legislature in making the special provision is considering the particular case and expressing its will in



- regard to that case, Hence the special provision forms and exception importing the negative, in other words the special case provided for in its excepted and taken out of the general provision and its ambit the general provision does not apply. (See also Mrs F. Bamgboye V Administrator General 14 WACA 616 at Page 619)
17. On this issue as much as I am being invited to invoke the tools of *the constitution* and statute law with regard to disparities of the quantum of 402,000 as read together with the escalated figure of 2.219.500 (Two Million two hundred and nineteen thousand five hundred), The applicants reliefs follow under the provisions of Rule 11(1) (2) & (4) the ARO. These provisions highlights the procedure for the enforcement of the rights arising out of dissatisfaction of the decision by the Taxing Master. It is a basic principle of law that jurisdiction of a court is very fundamental to the adjudication of the matter before it. It actually forms the foundation of the dispute resolution by an independent court or tribunal created under Article 50(1) of *the constitution*. It is trite law that if a court lacks jurisdiction, it lacks the necessary competence to entertain any claim warranting issuance of a writ capable of vindicating the fundamental rights of a litigant.
 18. In this respect, I draw further inspiration from the common law and continental jurisdiction in the case of Ohakim V Agbaso (2010) Vol. 189 LRCN Page 73 where the Supreme Court of Nigeria held as follows:- “It is settled that jurisdiction is the life blood of any adjudication without which no proceedings, however, brilliantly conducted by the Court or Tribunal can be valid. It is really a threshold matter or sometimes referred to as a periphery matter to be dealt with once raised or challenged in any proceeding. Without jurisdiction, the whole trial or proceedings of the court is a nullity however well conducted, that is why jurisdiction is very vital and fundamental to administration for justice in any judicial system.
 19. The courts in our legal system profoundly on matters of jurisdictions of courts as embodied in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others (2012) eKLR “A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”
 20. What do I see are the core principles which impact negatively against the Applicant for this court to be reluctant to issue the remedies which according to the Applicant he can rise up to the mountain and sing a melody song that Justice has been done to me by the Courts of Kenya. Definition: Jurisdiction is the authority a court has to decide matters litigated before it, or to take cognizance of matters presented in a formal way. It is the lifeline of all trials; a trial without jurisdiction is a nullity. Source of Power: Jurisdiction is conferred by law (*the Constitution* or statute), not by the consent of parties or by the pleading/draftsmanship of lawyers. Fundamental Nature: Because jurisdiction is foundational, it can be raised at any stage of a case—even on appeal—or suo motu (on the court's own motion). Limitation:



Where *the Constitution* explicitly provides for a court's jurisdiction, that court cannot expand its jurisdiction through judicial craft or innovation. Substance Over Form: The jurisdictional competence of a court is determined by the substance of the claim and the relief sought, not just the wording of the pleadings.

21. All these principles run foul the substance of the matter as pleaded in the application, the affidavit in support, the written submissions on point of law, that no remedy will accrue from this court for want of jurisdiction. If there was an alternative forum of conveniens, I could have may be transferred the case docket to another court. Unfortunately for this one the Preliminary Objection on jurisdiction caries the day to have it struck out as a justiciable issue before this court. The Applicant shall meet the costs of this application.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 13TH DAY OF FEBRUARY, 2026

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R. NYAKUNDI

JUDGE

