

**REPUBLIC OF KENYA**

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

**ELC MISCELLANEOUS CASE NO. E003 OF 2025**

**G.N KIMANI & CO.  
ADVOCATES.....ADVOCATE/RESPONDENT**

**VERSUS**

**SHEM MAINA KIMANI.....CLIENT/  
APPLICANT**

**RULING**

1. Before for determination is a Notice of Motion Application dated 26<sup>th</sup> November, 2025 brought under the provisions of Sections 1A, 1B, 3A of the Civil Procedure Act and Order 42 and 51 of Civil Procedure Rules, Rule 11 (4) of the Advocates Remuneration Order, Article 50 (1) of the Constitution of Kenya and all other enabling provisions of the law wherein the Client/Applicant has sought for the following orders:

**i. Spent**

**ii. Spent**

iii. That the court be pleased to vary, review and/or set aside the ex-pate Ruling delivered on 30<sup>th</sup> October, 2025.

iv. That upon the grant of prayer (iii), the Client/Applicant be granted leave to file their Objection to the Bill of Costs.

v. That the Honourable Court be pleased to make such further orders that may be appropriate in the interest of justice.

vi. That the costs of the application be provided for.

2. The said Application is premised on the ground on its face and the Supporting Affidavit of equal date sworn by Shem Maina Kimani, the Client/Applicant herein, who deponed the legal fees for his representation were to be charged from the Decretal amount and costs of the claim, as agreed with his Counsel. That, nonetheless, without any consent and/or

knowledge, his Advocate/Respondent negotiated an out-of-court settlement wherein part of the decretal sum was paid to him.

3. That upon said Advocate/Respondent, withholding what was paid to him and failing to adequately represent his interest with the requisite professionalism and standards, he had then filed an application to cease acting.
4. That the Applicant filed a Complaint to the Advocates' Complaints Commission, where the said Advocate/Respondent acknowledged receipt of a sum of Kshs. 210,000/= as an out of court settlement, which monies he had used to cater for his legal fees, disbursements, court attendances, communication, process of service, filing fees and bank transfer charges, among others.
5. That since his grievance had not been addressed, the applicant sought legal representation from another law firm, vide an application which was allowed in Naivasha MCC/657/2019.
6. -That unknown to him, the Advocate/Respondent instituted taxation proceedings against him wherein an ex parte Ruling was entered on 30<sup>th</sup> October, 2025. That he had only become aware of the taxation when it was at the submission stage, as he had never been served.
7. Nonetheless, he appeared before the Honourable Magistrate on 14<sup>th</sup> August 2025 and attempted to explain that there existed an agreement between him and the Advocate/Respondent which ousted the jurisdiction of the court under the provisions of Section 45 of the Advocates Act, wherein he was not given a fair chance to be heard despite filing Submissions dated 12<sup>th</sup> August 2025 thereby occasioning him serious injustice.
8. That instead, the Deputy Registry taxed the Bill of Costs, leading to an ex parte Ruling being entered against him on 30<sup>th</sup> October 2025, stating that despite service, he (Applicant) had not entered an appearance nor instructed an advocate to do likewise or oppose the Bill of Costs. The alleged service was misleading, and the failure to effect proper service

deprived him of the opportunity to be heard and to defend himself adequately.

9. That secondly, whilst the impugned Ruling had been scheduled for the 18<sup>th</sup> September 2025, it was delivered on 30<sup>th</sup> October 2025 without Notice wherein he was subsequently served with a Demand Notice by the Advocate/Respondent dated 21<sup>st</sup> November 2025 to settle the amount.
10. That unless the ex parte ruling was set aside, his application would be rendered ineffective, resulting in irreparable loss. The Advocate's previous actions had demonstrated a breach of fiduciary duty and a lack of ethical compliance in legal representation. That he acted swiftly upon learning of the ex parte ruling, thereby reinforcing the timelines of the instant Application.
11. That he was apprehensive that the Advocate/Respondent may at any time possibly apply for warrants of attachment/sale and execute the same against him. There was a substantial objection to the Bill of Costs regarding the quantum of costs; hence, it was in the interests of justice that he is given his day in Court.
12. He thus deponed that it was in the interest of justice that an order of stay be granted and he be allowed to file his objection to the Bill of Costs so that the real issues in question could be heard and determined on the merits.
13. In response and in opposition to the Client/Applicants' Application, the Respondent, vide his Replying Affidavit, sworn on the 15<sup>th</sup> January 2026, deponed that the instant Application has been made in bad faith, was an abuse of the court process, misconceived in law and ought to be dismissed with costs. That the same was founded on falsehoods, misrepresentations and material non-disclosure because the record of proceedings before the Honourable Deputy Registrar clearly demonstrated that the Client/Applicant had fully participated in the taxation proceedings.

14. That the Applicant was never denied an opportunity to participate and that he had filed written submissions dated 12<sup>th</sup> August 2025 in response to the Bill of Costs dated 7<sup>th</sup> May 2025, which submissions did not challenge any item of taxation but raised irrelevant, historical and scandalous matters, thus leaving the Bill of Costs unopposed.
15. That despite proper service of the Bill of Costs, the Applicant failed to lodge any Notice of Objection to the items therein as required by law, dwelt on unrelated matters that were pending before the Advocates' Complaints Commission and wholly outside the scope of taxation.
16. That indeed on the 14<sup>th</sup> August 2025, the Applicant had appeared before the Honourable Deputy Registrar and was accorded ample opportunity to oppose the Bill of Costs, but he had failed to raise any objection to any item therein. That he had voluntarily withdrawn from representing the Applicant vide an unopposed Application dated 3<sup>rd</sup> August 2022. The date for delivery of the taxation Ruling was given in the Applicant's presence. The taxation proceedings had been conducted judiciously, transparently and inter partes.
17. The Respondent deponed that the Application for stay was premature, irregular and unprocedural, as no Certificate of Costs had been issued, nor had any application been made for adoption of the Certificate of Costs as a judgment of the Court. No execution or attachment could therefore issue lawfully. The Applicant had not demonstrated any prejudice or injustice suffered, and that delivery of a taxation ruling does not require the participation of parties.
18. He deponed that the Applicant's apprehension was speculative and unfounded, as no Certificate of Costs, Judgement, or Decree had been issued, and no appeal, reference, or review had been filed against the Ruling dated 30<sup>th</sup> October 2025. That on 14<sup>th</sup> August 2025, when the Applicant had appeared in court in person, he did not raise any issue regarding non-service of the Bill of Costs or the Affidavit of Service dated 2<sup>nd</sup> July 2025, hence the allegations of non-service were an afterthought.

19. That the Bill of Costs herein had duly been taxed, the award is lawful and that the instant Application is intended to frustrate and tarnish the taxation process.
20. The Application was disposed of by way of written submissions wherein the **Client/Applicants' Submissions** dated 16<sup>th</sup> January 2026 were to the effect that from the CTS record, it was clear that on 13<sup>th</sup> November 2025, he had filed a Notice of Objection dated 12<sup>th</sup> November 2025 asking for reasons from the Deputy Registrar under the provisions of Rule 11 of the Advocates (Remuneration Order) 2014, Schedule 6 which reasons were not given hence the filing of the instant Application requesting the court to review or set aside the taxation. He placed reliance on the **South African Court's decision in Visser Vs Gubb** (sic) to submit that the primary issue was whether he had established a valid case for setting aside the ruling of the taxing master. That, indeed, the taxing master had held that the Bill of Costs was unopposed, despite the Client/Applicant's submissions on record, and went ahead to allow all the items as drawn to scale, save for the VAT, which had been taxed at nil. The Taxing Officer had also failed to incorporate any reasons and the formula for taxation.
21. He placed reliance on a Canadian case of **Reese v Alberta** (sic) to submit that when a Taxing Master fails to consider a Client/Applicant's submission and incorrectly decides that the Bill of Costs was unopposed, the resulting taxation is considered as being based on an error of principle and should be set aside by a Judge. Reliance was placed in the decided cases of **Strategic Urembo Sacco Limited v Meli [2024] KEELC, Wabuke & Another v Elijit [2025] KEHC** and **Kuloba & Wangila Advocates v Brooklyn Cleaning Services [2025]** (sic) to submit that the Taxing Master had failed to consider that he had already made the payment, wherein under the provisions of Schedule 7, the instruction fees should have been reduced by 35%.
22. He also placed reliance on the definition of ex parte Ruling as stipulated in the **Black's Law Dictionary** and **Mulla, The Code of Civil**

**Procedure**, on what constitutes sufficient cause for setting aside an ex parte Ruling/Judgement, to submit that he had offered a candid and frank explanation as to why he did not participate in the taxation process. First, the Advocate/Respondent had admitted, vide a letter dated 12th September 2022 addressed to the Advocate Complaint Commission, to having an out-of-court settlement, which he had retained to cover his professional fees, thereby marking the matter between the parties as settled. Secondly, the Advocate/Respondent instituted taxation proceedings against him to settle scores after he had made a complaint to the Advocates' Disciplinary Committee. Third, the Advocate/Respondent had, after conducting a Professional misconduct, filed an Application dated 3<sup>rd</sup> August 2022 to cease acting for him.

23. That, however, despite the foregoing, he had appeared before the Taxing Master on 14<sup>th</sup> August 2025 and attempted to explain that there existed an agreement between him and the Advocate/Respondent which ousted the jurisdiction of the court under section 45 of the Advocates Act, but he was not afforded an opportunity express himself or secure legal representation. That indeed, he was not given a fair chance to be heard despite filing Submissions dated 12<sup>th</sup> August 2025, thereby occasioning him serious injustice. Furthermore, the Ruling was delivered without notice contrary to Order 22 Rule 6 of the Civil Procedure Rules, which requires 10 days' notice.

24. That the conduct of the Respondent to cease acting for him after receiving a settlement, and thereafter filed a bill of taxation, and obtained an ex parte (one-sided) ruling, violated several ethical and procedural rules regarding the client-advocate relationship and professional conduct. In this regard, it would be proper for the court to exercise its discretion in his favour. He placed reliance in the Court of Appeal's decision in the case of **Richard Nchapai Leiyangu v IEBC & 2 Others** (sic) and the provisions of Section 3A of the Civil Procedure Act to submit that the fundamental duty of the court is to do justice between the parties failure

to which would entitle the affected party *ex debito justiae* to have any determination affecting him set aside.

25. He placed reliance on the Indian Supreme Court's decision in **Raj BahadurRas Raja v Seth Hiralal** to submit that the court was not powerless to grant relief when the ends of justice and equity so demand, so as to do real and substantial justice to the parties to the suit.
26. That since the Advocate/Respondent did not dispute that there existed a valid agreement for the provision of legal services which had stipulated the agreed fees at the end of the matter, pursuant to the provisions of Section 45 (6) of the Advocates Act, he is estopped from taxing their Bill by virtue of the existence of the said agreement and that the court equally lacked jurisdiction to entertain a matter of that nature. The Respondent had acknowledged payment in full; therefore, the provisions of Section 45(6) of the Advocates Act came into play, and he was estopped from taxing his costs. Reliance was placed in the decided cases of **Central London Property Trust Ltd v High Trees Ltd (1947) K.B. 130** and **Serah Njeri Mwobi v John Kimani Njoroge-Civil Appeal No. 314 of 2009**.
27. That with regards to disbursements, it is good practice for the taxing officer to verify that the party claiming the same had actually remitted payments but, in the instant case, the taxing officer had simply stated that he had taxed the same as they had been drawn by the Advocate/Respondent in the Bill of Costs thus amounting to an error in principle.
28. On the prayer for stay of execution, he placed reliance on the provisions of Order 42, rule 6 (2) of the Civil Procedure Rules to submit that he only became aware of the ex-parte Ruling when he was served with a Demand to Settle, hence it was necessary that he seeks for stay of execution and setting aside of the Ruling. Secondly, the Application had been made without undue delay.

29. That he will suffer substantial loss since the Advocate/Respondent intends to proclaim his properties to the extent of Kshs. 406,875/=. That he was a divorcee, unemployed and a father of two children who depended on him for their daily needs.
30. That the Advocate/Respondent herein had brought in the instant taxation purposely to score personal differences with him because he had made a complaint against him at the Advocates' Complaints Commission, which issue would come out clearly were he given his day in Court. He placed reliance on the provisions of Order 10 rule 11 of the Civil Procedure Rules and the decided case of **Pithon Waweru Maina v Thuka Mugiria (1983) eKLR**, seeking the court to set aside the ex-pare ruling in the interest of justice. He prayed for his application dated 26<sup>th</sup> November 2025 to be allowed.
31. The **Advocate/Respondent's Submissions** dated 15<sup>th</sup> January 2026 were founded on the provisions of Rule 11 of the Advocates Remuneration Order to submit that the Client/Applicant had failed to comply with the provisions of the said Rule that mandatorily requires that a party objecting to a taxation must, within 14 days, give notice in writing to the taxing officer specifying the items objected to. Subsequently, the instant Application was fatally defective. He placed reliance in the decided cases of **Machira & Co. Advocates v Arthur K. Magugu & Another [2012] eKLR** and the Court of Appeal decision in the case of **Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board [2005] eKLR** to submit that the Applicant, having failed to so comply, was barred from challenging the taxation by way of the present Application.
32. That further, the Applicant did not request reasons, nor did he file a reference pursuant to the provisions of Rule 11 (2) of the Advocates Remuneration Order but had instead filed the present Application seeking stay, an approach unknown in law under the Advocates Remuneration Order. He placed reliance in the decided case of Ahmednasir **Abdikadir & Co. Advocates versus National Bank of Kenya Ltd [2006] eKLR**,

where it had been held that where reasons are contained in the ruling itself, a party must proceed to file a reference under the provisions of Rule 11 (2), and that failure to do so was fatal. He submitted that the taxation ruling delivered on 30<sup>th</sup> October 2025 contained reasons, thus the Applicant's failure to file a reference had confirmed acquiescence to the taxation.

33. It was his submission that the participation in taxation proceedings had barred the allegations of ex parte proceedings. That indeed, the Applicant had actively participated in the taxation proceedings by appearing before the Deputy Registrar, taking directions and filing written submissions dated August 2025. Reliance was placed in the decided case of **Republic versus Advocates Disciplinary Tribunal ex parte Apollo Mboya [2019] eKLR**, to submit that the allegations that the Ruling herein had been delivered ex parte were false, misleading and unsupported by the record.
34. That in any case, a stay of execution could not issue without a Judgement or Decree. That in the instant case, a Certificate of Costs had not been issued nor had it been adopted as a Judgement of the court under the provisions of Section 51 (2) of the Advocates Act. He placed reliance on the decided case of **Lubulellah & Associates Advocates versus N K Brothers Ltd [2014] eKLR**, and thus submitted that the Applicant's fear of execution was speculative, premature and unfounded.
35. On the failure to demonstrate the grounds for stay, he placed reliance in the decided case of **Butt v Rent Restriction Tribunal [1982] KLR 417** on the principles of stay and **Kenya Shell Ltd versus Benjamin Karuga Kibiru & Another [1986] KLR 410** to submit that the Applicant had not demonstrated any substantial loss, prejudice or imminent execution.
36. That in any event, the delivery of a ruling was a judicial act that did not require the participation of parties, provided that the date had been given in their presence. Reliance was placed in the decided case of **James**

**Mwangi Gichuki versus National Bank of Kenya Ltd [2016] eKLR,** to submit that no prejudice was occasioned by the delivery of a ruling in the absence of parties where the date had been duly taken.

37. It was his submission that the Applicant's attempt to litigate issues pending before the Advocates' Complaint Commission within taxation proceedings had amounted to an abuse of the court process as was held by the Court of Appeal in its decision in the case of **Muchanga Investments Ltd versus Safaris Unlimited (Africa) Ltd & Others [2009] eKLR.**

38. In conclusion, he submitted that the Applicant had failed to comply with the provisions of Rule 11 of the Advocates Remuneration Order, had not filed a reference, had not demonstrated prejudice and sought stay orders where no executable decree exists. That subsequently, the Application dated 26<sup>th</sup> November 2025 is incompetent, premature, and an abuse of the court process; hence, the same should be dismissed with costs to the Advocate/Respondent, and the taxation ruling dated 30<sup>th</sup> October 2025 be upheld.

#### **Determination.**

39. I have considered the Applicant's Application dated 26<sup>th</sup> November 2025, where he seeks to have the Taxing Master's ex parte ruling on the Bill of Costs Set aside or reviewed so that he can file a formal objection to the Bill of Costs. And so as to prevent the Advocate from attaching or selling his property to recover the fees, he also seeks orders of stay of execution of the ruling.

40. The Applicant's argument/basis of the application is that the taxation process was flawed and unjust because there was no proper service of the Bill of Costs. He contends that there was a prior agreement with his counsel, the Respondent, that fees would be drawn from the decretal sum, which agreement ousted the court's jurisdiction to tax the bill. He also claims that the ruling was delivered on 30<sup>th</sup> October 2025 without

notice, despite being originally scheduled for the 18<sup>th</sup> September 2025. Lastly, he alleges that the Respondent had settled the case out of court without his consent, withheld Ksh 210,000, and failed to represent his interests professionally.

41. The Respondents' response to the Application is that it is an abuse of the court process based on the fact that the Applicant had participated, filed written submissions on 12<sup>th</sup> August 2025, and appeared in person before the Deputy Registrar on 14<sup>th</sup> August 2025. He argues that the Applicant failed to challenge specific items in the Bill of Costs and instead raised "irrelevant and scandalous" historical matters. He noted that no "Certificate of Costs" had been issued yet; therefore, no execution was to occur, and the Applicant's fears were speculative. Lastly, he maintained that the taxation was conducted transparently and that the Applicant's allegations of non-service were an afterthought.
42. From the analysis of the above, I find the issues for determination arising therein as being;
- i. Is the Application fatally defective for failing to follow the procedure in Rule 11 of the Advocates Remuneration Order?
  - ii. Whether the Taxation Ruling was *ex-parte*.
  - iii. Whether the Applicant should be granted leave to file their Objection to the Bill of Costs.
  - iv. Whether there should be stay of execution.
43. Choosing between a Notice of Motion and a Reference is not just a technicality, but the make-or-break point of a case. The two paths operate under different sets of rules such that when they clash, the specific law, the Advocates Remuneration Act, would override the general law, which is the Civil Procedure Act, because the general-purpose of the provisions of Orders 42 and 51 of the Civil Procedure Rules, is to ask the court for various orders, such as staying execution, setting aside a judgment, or seeking a review. However, the purpose of Rule 11 of the Advocates

Remuneration Order is exclusively to challenge a Taxing Officer's decision and therefore because the Applicant's dispute was specifically about a Bill of Costs, he ought to have adhered to these provisions of the law because where a specific procedure is provided by statute, like Rule 11, a party cannot ignore it and use the general Civil Procedure Rules.

44. Rule 11 of the Advocates Remuneration Order provides as follows:

*(1) Should any party object to the decision of the Taxing Officer, he may within fourteen days after the decision give notice in writing to the Taxing Officer of the items of taxation to which he objects.*

*(2) The Taxing Officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.*

*(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.*

*(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.*

45. It is not disputed that pursuant to the parties' filing their submissions on a Bill of Costs dated the 7<sup>th</sup> May 2025, in which the Applicant

participated, the court gave them the 18<sup>th</sup> September 2025 as the day when the ruling was to be delivered. I therefore find that at this point, it cannot be said that the ruling was was *ex-parte*. The record then shows that the ruling was not delivered on the date scheduled but, on the 30<sup>th</sup> October, 2025, to which the Applicant had, pursuant to the provisions of Rule 11(1) of the Advocates Remuneration Order, a window of 14 days to file his Notice of Objection to the taxing officer specifying the items objected to.

46. From the record, the said Notice of Objection dated the 12<sup>th</sup> November was filed in the wrong court, wherein, vide the directions issued on the 18<sup>th</sup> November 2025, the Applicant was advised accordingly. By the time the Applicant filed the Notice of objection, the 14-day window had lapsed. His argument was that the ruling had been delivered without notice.
47. I have gone through the proceedings and the Respondent's response to the Applicant's Application, and I found no evidence that the Applicant was ever served, as no Affidavit of Service was annexed to the Respondent's Replying affidavit, nor was there any information on the mode of service by which the Applicant had been served.
48. A ruling delivered without notice—especially when a date was not previously set in the presence of the parties—is considered a "procedural irregularity and this goes against the core principle of natural justice on the right to be heard (*Audi Alteram Partem*). It is trite that where a court delivers a taxation ruling without the 10-day notice required by Order 22, Rule 6 of the Civil Procedure Rules, under the principle of *ex debito justitiae* (as a matter of right), a party who was not notified of a judgment or ruling is entitled to have it set aside which then narrows the court's discretion to look for a sufficient cause, because such ruling ought to be set aside because apart from the process itself being flawed, the said ruling without Notice was in violation of Article 50(1) of the Constitution in the circumstance herein.

49. In the end, and so as not to pre-empt the rights of the parties herein, I find that there having been no notice issued to the Applicant of the date for ruling of 30<sup>th</sup> October 2025, he was prejudiced as he was deprived of the opportunity to exercise his mandatory right under Rule 11(1) of the Advocates Remuneration Order to lodge a Notice of Objection within the statutory fourteen (14) days, wherein the Respondent moved to enforce a Bill of Costs to which he had a bona fide defense against, thereby preventing him from requesting the Taxing Officer's reasons for the decision, which is a prerequisite for filing a Reference to the Judge.
50. Failure to notify a party of a ruling is a breach of Article 50(1) of the Constitution (Right to a Fair Hearing), and Article 47 (Fair Administrative Action), and therefore a party cannot be penalized for failing to take a step in a proceeding they were not aware was happening.
51. To this effect, the Applicant's application dated 26<sup>th</sup> November, 2025 is partially allowed, and time is enlarged for him to file his Notice of Objection by a period of 14 days from the date of this ruling. The prayer seeking stay of execution is premature and is denied.
52. Each party shall bear its own costs.

**Dated and delivered via Microsoft Teams at Naivasha, this 5<sup>th</sup> day of March 2026.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT- JUDGE**