

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCMISC NO. E304 OF 2024**

JAMES ABIAM MUGOYA  
ISABIRYE .....APPLICANT

**-VERSUS-**

LAKEVIEW DEVELOPMENT LIMITED.....1<sup>ST</sup>  
RESPONDENT

BELGO HOLDINGS LIMITED.....2<sup>ND</sup>  
RESPONDENT

**RULING**

1. Before this court for determination are two notices of preliminary objection filed by the respondents. The 1<sup>st</sup> respondent filed the notice of preliminary objection dated 14<sup>th</sup> November, 2025 challenging the originating application dated 20<sup>th</sup> December, 2024 on the following points of law: -

***1) The Environment and Land Court lacks jurisdiction to determine the originating application whose substance relates to the assessment of costs and/or a reference in a different suit. Article 162 (2) (b) of the Constitution as read with Section 13 of the Environment and Land Court Act limits the jurisdiction “to hear and determine disputes relating to the environment and the use and occupation of, and title to land.”***

***2) The originating application having invoked reliefs unknown to the jurisdictional framework of the Environment and Land Court is incurably defective and incapable of being validated by the***

***Constitution, statute and the inherent power of the court or both.***

2. The 2<sup>nd</sup> respondent also filed the notice of preliminary objection dated 11<sup>th</sup> November, 2025 on the basis of the following grounds:-

- 1) This honourable court does not have any jurisdiction to hear and determine the originating application and more specifically the orders numbered (2) and (3) sought in the application herein dated 20<sup>th</sup> December, 2024.***
- 2) The said application is null and void ab initio.***
- 3) The jurisdiction of this honourable court under Article 162(2)(b) of the Constitution is to “hear and determine disputes” relating to “the environment, the use and occupation of, and title to land.”***
- 4) Under Section 13 (1) of the Environment and Land Court Act, this honourable court has original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution.***
- 5) None of these provisions of law entitle this honourable court in an originating application to determine disputes relating to assessment of costs or a reference therefrom in another case; and***
- 6) The said application is otherwise an abuse of the process of this honourable court.***

3. The respondents' preliminary objections were argued out orally in court in disposition of the same. I have carefully considered the oral arguments by the respective counsel.

4. At the centre of the respondents' objection on a point of law is that this court is divested of the jurisdiction to hear and determine the chamber summons dated 20<sup>th</sup> December, 2024 by virtue of **Article 162(2)(b) of the Constitution** and **Section 13(2) of the Environment and Land Court Act (ELC Act)** which define the court's jurisdiction. **Section 13(2) of the ELC Act** outlines the powers of the court to hear and determine the following disputes:

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*(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;*

*(b) relating to compulsory acquisition of land;*

*(c) relating to land administration and management;*

*(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*

*(e) any other dispute relating to environment and land.*

5. I find it necessary to reproduce the application being challenged by the two preliminary objections. The applicant filed the chamber summons dated 20<sup>th</sup> December, 2024 under the provisions of **Article 159** of the **Constitution** of Kenya, **Rule 11 (2) of the Advocates (Remuneration) Order, Section 3A** of the **Civil Procedure Act** and **Order 42 Rule 6** of the **Civil Procedure Rules** seeking the following orders:-

**1) Spent.**

**2) That this honourable court be pleased to stay the execution and any consequential orders of the ruling delivered by the Taxing Master in MILIMANI ENVIRONMENT AND LAND COURT ELCC E064/2020 on 11<sup>th</sup> December, 2024 pending the hearing and determination of this reference.**

**3) That this honourable court be pleased to set aside the Taxing Master's decision and ruling in MILIMANI ENVIRONMENT AND LAND COURT ELCC E064/2020 delivered on 11<sup>th</sup> December, 2024 and the matter be taxed afresh by this honourable court.**

**4) That the costs of this application be provided for.**

6. The application is premised on the grounds appearing on its face together with the supporting affidavit of even date sworn by the Applicant, James Abiam Mugoya Isabirye. Among the grounds in support of the application is that the taxing officer misdirected himself in the application and interpretation of **Schedule 6(1)(a)** of the **Advocates (Remuneration) Order, 2014** hence acting contrary to the principles of taxation. It was further contended that the decision of the taxing officer to award Kshs.40,000,000/= for item No. 1 in each of the bill of costs was erroneous and unjustifiable.
7. Expounding on his preliminary objection, the learned counsel for the 2<sup>nd</sup> respondent argued that assessment of costs has nothing to do with title, use and occupation to land. The learned counsel for the 1<sup>st</sup> respondent maintained that assessment of costs should be a matter that is within the confines of jurisdiction of the high court.
8. In opposition, the learned counsel for the applicant pointed out that in exercising its jurisdiction, this court has power to issue the reliefs outlined under **Section 13 (5)** of the **ELC Act**. Among the reliefs that this court has power to issue is costs under **Section 13(5)(h)**.

9. It is not in doubt that the respondents filed their respective party and party bill of costs in relation to the proceedings in ELCC no. E064 of 2020 which were assessed approximately at an amount of Kshs.40,000,000/=. It is also not in contest that the deputy registrar of this court assessed the said costs as have been awarded in the said proceedings.
10. The review of a decision by the deputy registrar of this court is a matter that lies within the powers of this court. **Section 12** of the **ELC Act** sets out as follows: -
- (1) Any person aggrieved by a decision of the registrar on matters relating to judicial functions of the Court may apply for review by a judge of the court in accordance with the rules.***
- (2) The judge may confirm, modify or reverse the decision of the registrar referred to in subsection (1).***
11. On account of the above provisions of the law, the respondents' argument that this court cannot hear and determine a dispute pertaining to the assessment of costs by the taxing officer is nothing but a futile endeavour.

12. The other limb of the respondents' preliminary objection is that the originating application herein being the chamber summons dated 20<sup>th</sup> December, 2024 has been filed as a miscellaneous application in a separate suit as opposed to being filed within ELCC No. E064 of 2020.
13. I am fully in agreement with the argument by the respondents that the chamber summons application herein seeking a review of the decision of the taxing officer ought to have been filed within the original suit and not as a miscellaneous application. One simple basis for this finding is that the court cannot retax a bill of costs without studying and examining of the primary documents and pleadings forming the bedrock of the party and party bill of costs.
14. In the case of **Mwirebua v Mutonga [2025] KEELC 7064 (KLR)**, the court observed as follows:-
- “The applicant, however, has chosen to file the reference vide a miscellaneous application. To my mind, the deployment and usage of a miscellaneous application to challenge the certificate of taxation issued vide ELC appeal E023 of 2024, was erroneous and illegal. For good measure, a miscellaneous application cannot be filed to address issues which are underpinned in an existing substantive file.”***

15. Similarly, in **Scope Telematics International Sales Limited v Stoic Company Limited & another [2017] KECA 545 (KLR)**, the Court of Appeal considered a situation where a miscellaneous application was deployed in lieu of a substantive suit and stated as hereunder:-

*“It must be borne in mind that the substantive provision that the 1<sup>st</sup> respondent invoked was Section 7 of the Act. The 1st respondent was seeking an interim measure of protection pending arbitration. The procedure applicable in such circumstances is clearly spelt out by Rule 2 of the Arbitration Rules, 1997. Suffice it to say that the rule is couched in mandatory terms. Our jurisprudence reflects the position that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or Statute, that procedure should be strictly followed (See Speaker of National Assembly vs. Njenga Karume [2008] 1 KLR 425). The 1st respondent did not proffer any reason or excuse for its failure to premise its application upon a suit as was required by the rules. It however sought to rely on Article 159 of the Constitution for the proposition that justice is to be administered without undue regard to technicalities. That Article also provides that alternative forms of dispute resolution mechanisms like arbitration should be promoted by the courts. There are however many decided cases to the effect that Article 159 of the Constitution should not be seen as a panacea to cure all manner of indiscretions relating to procedure (See*

***Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Ors [2010] eKLR).***

16. Lastly, in the case of **Mumo Matemu v Trusted Society Of Human Rights Alliance & 5 Others Civil Appeal No. 290 of 2012**, the court expressed itself as follows:-

***“In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under Section 1A and 1B of the Civil Procedure Act (Cap 21) and Section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases.”***

17. In the end, it is evident that the chamber summons application herein is misplaced having been filed outside the substantive proceedings. The applicant ought to have filed the chamber summons in the file containing the substantive pleadings
18. From the above, the respondents’ preliminary objections dated 14<sup>th</sup> November, 2025 and 11<sup>th</sup> November, 2025 are hereby upheld. The chamber summons dated 20<sup>th</sup> December, 2024 is hereby struck out with costs to the respondents. The costs of each preliminary objection is assessed at Kshs.50,000/- each totalling Kshs.100,000/- to be awarded to the respondents.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 3<sup>RD</sup> DAY OF MARCH, 2026.**

**HON. MBOGO C.G.  
JUDGE  
03/03/2026.**

***In the presence of:***

*Ms. Benson Agunga - Court assistant*

*Mrs. Ikegu holding brief for Ms. Wamithi for the Applicant*

*Mr. Kimani Kiragu (Senior Counsel) for the 1<sup>st</sup> Respondent*

*Mr. Akber Ismail holding brief for Mr. Ochieng Oduol (Senior Counsel) for the 2<sup>nd</sup> Respondent*