



REPUBLIC OF KENYA



Ngatho & another v Moki Savings Cooperative Society Limited & 21 others (Environment and Land Miscellaneous Case E222 of 2025) [2026] KEELC 1347 (KLR) (9 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1347 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E222 OF 2025**

CG MBOGO, J

MARCH 9, 2026

BETWEEN

LILIAN WAIRIMU NGATHO 1ST APPLICANT

ELIZABETH MURUNGARI NJOROGE 2ND APPLICANT

AND

MOKI SAVINGS COOPERATIVE SOCIETY LIMITED 1ST RESPONDENT

LUCY WANJIRU KIRUHI 2ND RESPONDENT

BEATRICE NJERI GACHUKIA 3RD RESPONDENT

JOYCE WARINGA NJUGUNA 4TH RESPONDENT

SUSAN MUGURE NJUGUNA 5TH RESPONDENT

JAMES NJOROGE MWANGI 6TH RESPONDENT

SAMUEL KARIMI KARIGI 7TH RESPONDENT

VENANSIO MBATARU KARIUKI 8TH RESPONDENT

MICHAEL MBIRA NGIGI 9TH RESPONDENT

FRANCIS KARIUKI MACHARIA 10TH RESPONDENT

GEORGE MURIGU GITHUKU 11TH RESPONDENT

SAMMY THUMBI NYAMBARE 12TH RESPONDENT

SIMON GATHII MACHARIA 13TH RESPONDENT

JAMES NDUATI KURIA 14TH RESPONDENT

JAMES MARAGWA WERU 15TH RESPONDENT

JUSTINE WILLY KARIUKI 16TH RESPONDENT



JAMES MATHU WAKABA	17 TH RESPONDENT
DAVID MWANGI G GUCECA	18 TH RESPONDENT
JAMES NJOROGE NJAU	19 TH RESPONDENT
CECILIA NDURUKA	20 TH RESPONDENT
RICHARD GICHINI NJOROGE	21 ST RESPONDENT
BETH WAIRIMU KAHIU	22 ND RESPONDENT

RULING

1. The applicants filed the chamber summons dated 29th July, 2025 under the provisions of Articles 50 and 159 of *the Constitution*, Sections 3A, 27 and 89 of the *Civil Procedure Act* and Paragraphs 11 (4) and 49 of the Advocates (Remuneration) Order seeking issuance of the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. Spent.
 5. This honourable court be pleased to set aside the decision of the honourable taxing officer delivered on the 12th of November, 2024 in ELC No. 745 of 2001 and all consequential orders thereto.
 6. This honourable court be pleased to re-tax the 2nd and 13th to 22nd defendants' bill of costs, 8th to 12th defendants' bill of costs and the 3rd to 7th defendants' bill of costs in ELC No. 745 of 2001; or in the alternative, this court be pleased to remit the bill of costs for re-taxation before a different taxing master with appropriate directions thereof.
 7. The costs of this application be in the cause.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit sworn by Elizabeth Murungari Njoroge supposedly on 28th July, 2025. Chief among the grounds in support of the application is that the taxing officer erred in principle for the award of instruction fees on the grounds that the matter had been in court since 2001 as a factor to the matter's complexity. The 2nd applicant deposed that the amount of Kshs.6,581,663/= is a colossal amount and if paid, it would render the application herein nugatory and occasion grave prejudice upon the applicants. It was further deposed that the reference is arguable and that it has been filed timeously.
3. The 2nd respondent, Lucy Wanjiru Kiruhi, filed her replying affidavit sworn on 22nd September, 2025. She deposed that the present application is an attempt by the applicants to frustrate payment of the taxed costs, and further, that the same has been made way out of time yet the applicants have not provided any explanation for the inordinate delay. She urged the court to dismiss the application with costs.
4. The 8th to 12th respondents filed grounds of opposition dated 22nd October, 2025 challenging the instant application on the following grounds.



- i. The letter dated 22nd November, 2024 does not amount to a notice of objection as contemplated in Rule 11 of the Advocates Remuneration Order.
 - ii. Therefore, the court lacks jurisdiction to grant prayers 2 – 5 of the application.
 - iii. In the alternative the application has been filed after unreasonable delay.
 - iv. The application is otherwise incompetent.
5. The 3rd to 7th respondents filed their grounds of opposition dated 16th September, 2025 also challenging the instant application on the following grounds:-
1. That the court does not have jurisdiction to grant the prayers sought in the application or at all.
 2. That there has been inordinate delay in making the application which has not been explained, satisfactorily or at all.
 3. That the reasons for the decision on taxation of the various items were contained in the ruling delivered on 12th November, 2024 which counsel for the 1st and 2nd plaintiffs had in his possession as he was writing the letter dated 22nd November, 2024.
 4. That it is a misrepresentation of facts that the reasons for the decision on taxation were only given on the 25th July, 2025 as mischievously claimed by the applicants.
 5. That the letter dated 22nd November, 2024 by the applicant’s counsel to the deputy registrar did not seek the reasons on decision on taxation but it was an invitation to the deputy registrar to do “a thorough review of the bill of costs taking into consideration the issues raised hereinabove” which power of review the deputy registrar did not and does not have. The said letter did not therefore initiate the process envisaged and provided under Rule 11 of the Advocates Remuneration Rules.
 6. That the letter dated 22nd November, 2023 by the applicants’ counsel to the deputy registrar was not meant to be and is not an initiation of the process of a reference to a judge provided under Rule 11 of the Advocates Remuneration Order, it was meant to be acted on by the deputy registrar to do “a closer examination which will reveal the errors,” powers which the deputy registrar does not have.
 7. That there is no objection valid or otherwise that has been raised to the taxation done on 12th November, 2024.
 8. That there is no power to stay recovery of costs.
 9. That the application is aimed at getting a stay of execution which the Hon. Justice Oguttu Mboya rejected when he handed down the judgment.
 10. That the application is otherwise an abuse of the process of the court.
7. In a further affidavit sworn by the 2nd applicant on 12th November, 2025 she reiterated the contents of her supporting affidavit urging the court to allow the orders sought. The 2nd respondent filed her supplementary affidavit sworn on 27th October, 2025. She reiterated the contents of her replying affidavit.
8. The chamber summons was canvassed by way of written submissions. The applicants filed their written submissions dated 20th November, 2025. They submitted that the jurisdiction to grant the prayers sought in the application stems from paragraph 11 of the Advocates Remuneration Order and further



argued that the letter of objection dated 22nd November, 2024 is valid and meets the legal threshold. They went on to submit that as the plaintiffs, they are entitled to access to justice without undue regard to procedural technicalities under Article 159 of *the Constitution*. They urged the court to allow the application as prayed.

9. The 3rd to 7th respondents filed their written submissions dated 3rd November, 2025 and 24th November, 2025 respectively. They submitted that the applicants' institution of this suit instead of filing a reference in ELC No. 745 of 2001 contravened the mandatory provisions of Section 34 of the *Civil Procedure Act*. Further, that although the applicants' advocate wrote a letter dated 22nd November, 2024 to the deputy registrar, he did not point out the items in the bill costs to which an objection was being raised. They urged the court to dismiss the application with costs.
10. The 8th to 12th respondents filed their written submissions dated 11th November, 2025. They reiterated that Section 34(1) of the *Civil Procedure Act* had been contravened and therefore the application ought to be dismissed.
11. The 2nd, 13th to 22nd respondents filed their written submissions dated 20th November, 2025. They argued and submitted that the application herein is incompetent for contravening Section 34(1) of the *Civil Procedure Act* and hence, the court has no jurisdiction to determine the same. A plea was made for the court to dismiss the application with costs.
12. I have considered the chamber summons, the replies thereof and the written submissions filed by the respective parties. The issue for determination is whether the application herein is competent or has merit and whether this court's jurisdiction has been properly invoked.
13. Section 34 (1) of the *Civil Procedure Act* sets out as follows: =-

'All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.'
14. The originating application herein being the chamber summons dated 29th July, 2025 has been filed as a miscellaneous application in a separate suit as opposed to being filed within MILIMANI ELC No. 745 of 2001.
15. I am fully in agreement with the argument by the respondents that the instant application seeking to set aside 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.
16. In the case of *Mwirebua v Mutonga* [2025] KEELC 7064 (KLR), the court aptly 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.”



17. 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 hereunder:-

“It must be borne in mind that the substantive provision that the 1st 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).”

18. Lastly, in the case of *Mumo Matemvu 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.”

19. In the end, it is evident that the application herein is incompetent, irregular and unprocedural having been filed outside the substantive suit. This court is bereft of the jurisdiction to hear and determine the same. Accordingly, the chamber summons dated 29th July, 2025 is hereby struck out. Each party to bear their own costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 9TH DAY OF MARCH, 2026.

HON. MBOGO C.G.

JUDGE

09/03/2026.

In the presence of:

Ms. Benson Agungu - Court assistant

Mr. Githinji for the Applicants

Mr. Ong'ato for the 2nd and 13th to 22nd Respondents

Mr. Karuga for the 8th to 12th Respondents

Mr. Masore Nyang'au for the 3rd to 7th Respondents

