

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELC CASE NO. 558 OF 2008

GEORGE KAMAU NJUGUNA.....1ST

PLAINTIFF/RESPONDENT

STEPHEN GATHECHA MBUGUA.....2ND

PLAINTIFF/RESPONDENT

VERSUS

FLORENCE WAIRIMU MBUGUA.....1ST

DEFENDANT/APPLICANT

GRACE WANJIKU MBUGUA.....2ND

DEFENDANT/APPLICANT

PETER CHEGE KIARIE.....3RD

DEFENDANT/APPLICANT

SYLVIA MURUGI MBUGIA.....4TH

DEFENDANT/APPLICANT

**(Sued as the Administrators and personal Representatives
of the Estate of JOSEPH KIARIE MBUGUA (Deceased) and
in their individual capacity)**

**THE ATTORNEY GENERAL FOR AND
ON BEHALF OF THE REGISTRAR OF LANDS.....5TH**

DEFENDANT

RULING

1. The 1st to the 4th defendants/applicants herein filed the chamber summons dated 2nd October, 2025 expressed to be brought under

Rule 11(2) of the Advocates Remuneration Order and Sections 1A, 1B and 3A of the Civil Procedure Act seeking the following orders:-

- 1. Spent.**
- 2. That pending interparties hearing of this application and the eventual determination of this reference, this honourable court be pleased to stay execution of the ruling by the Honourable Vincent Kiplagat, Deputy Registrar dated 18th September, 2025 arising from the plaintiff's party and party bill of costs dated 17th February, 2025.**
- 3. That the honourable court be pleased to set aside the ruling by the honourable Vincent Kiplagat, deputy registrar dated 18th September, 2025 arising from the plaintiff's party and party bill of costs dated 17th February, 2025.**
- 4. That the decision of the learned deputy registrar delivered on 18th September, 2025 with respect to the plaintiff's bill of costs dated 17th February, 2025 be set aside and taxed afresh by this honourable court or be remitted to a taxing master, other than the Hon. Vincent Kiplagat for taxation.**

5. That the costs of this application be provided for.

2. The application is premised on the grounds on its face. It is further supported by the affidavit of Lawrence Muriithi Mbabu, the learned counsel on record for the 1st to 4th defendants/applicants which was sworn on even date. The learned counsel deposed that the plaintiffs/respondents served them with the party and party bill of costs dated 17th February, 2025.
3. He deposed that the 1st to 4th defendants/applicants disputed the bill of costs which was taxed at Kshs.978,145/- vide the ruling delivered on 18th September, 2025. The learned counsel deposed that the taxing officer failed to consider the scale of fees prescribed under **Schedule 6** of the **Advocate (Remuneration) Order 2014** by awarding an amount that is high, and further merely stated that the other items are allowed as claimed without any evidence of receipt in the taxed bill of costs, which is contrary to the law.
4. The learned counsel therefore contends that the taxing master put into account irrelevant factors or excluded relevant factors while arriving at Kshs.978,145/- as the taxed amount and that the

ruling on the bill of costs is against the interests of justice and offends the rules of natural justice and ought to be set aside.

5. The Plaintiffs/respondents filed grounds of opposition dated 2nd February, 2026 opposing the reference application on the following grounds:

1. No grounds for the revocation of the taxing masters' decision have been laid.

2. The reference has no basis in substance and procedurally.

3. The reference is time barred.

6. The chamber summons was canvassed through written submissions. The 1st to 4th defendants/applicants filed their written submissions dated 10th February, 2026. The plaintiffs/respondents filed their written submissions dated 12th February, 2026. I have considered the application, the grounds of opposition and the written submissions filed by both parties. The issue for determination is *whether the taxing officer erred in his ruling that would warrant this court's intervention.*

7. The 1st to 4th defendants/applicants challenge the ruling delivered by the taxing officer on 18th September, 2025 on the grounds that

the taxed amount awarded to the plaintiffs/respondents was high and that the ruling itself was against the principles of law and natural justice. I have perused the pleadings on record, and I note that the plaintiffs/ respondents filed the party and party bill of costs dated 17th February 2025 seeking a sum of Kshs.2,928,145/- while the taxing officer taxed the same off to Kshs.978,145/-.

8. The taxing officer noted in the ruling that there was no valuation report to ascertain the suit land's value, therefore he was entitled to exercise his discretion and proceeded to do so.

9. The 1st to 4th defendants/applicants relied on the Supreme Court authority of **Outa v Odoto & 3 others (Petition 6 of 2014) [2023] KESC 75 (KLR)** where it was held that the principles for setting aside a taxing master's decision are if:-

a. there is an error of principle committed by the taxing officer;

b. the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy; (and I may add, conversely, if the award is so manifestly deficient as to amount to an injustice to one party).

- c. the court is satisfied that the successful litigant is entitled to fair reimbursement for the costs he has incurred, (and I may add, the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party); and**
- d. the award proposed is so far as practicable, consistent with previous awards in similar cases.**

To these general principles, I may add that;

- i. There is no mathematical formula to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances,**
- ii. Although the taxing officer exercises unfettered judicial discretion in matters of taxation that discretion must be exercised judicially, not whimsically,**
- iii. The single Judge will normally not interfere with the decision of the taxing officer merely because the Judge believes he would have awarded a different figure had he been in the taxing officer's shoes.**

10. Since the value of the land which was the substratum of the suit was not ascertainable from the pleadings or documents filed or the judgment, the taxing officer had to exercise his discretion in assessing and taxing the plaintiffs/respondents bill of costs.
11. The Court of Appeal affirmed this position in the case of **Joreth Limited v Kigano & Associates [2002] eKLR** relied upon by the plaintiffs/respondents where they held that:-

“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 importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

12. From the court’s point of view, the taxing officer did not make any error of principle in taxing the bill of costs, nor is the taxed amount manifestly excessive as per the guidelines of the Supreme

Court in the **Outa v Odoto(Supra)** case quoted above.

- 13.** From the above, this court finds the chamber summons dated 2nd October, 2025 lacking in merit and it is hereby dismissed with no order as to costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 19TH DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
19/02/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Ms. Mika holding brief for Mr. Mbabu for the Applicant

Mr. Wanyango holding brief for Mr. Namada for the 1st and 2nd

Respondents