



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND APPEAL NO. E028 OF 2022

ANNA MWENDE MUTHOKA1ST
APPELLANT MARY NDILA MUTHOKA.....
.....2ND APPELLANT

VERSUS

GERALD WAMBUA MAKAU
RESPONDENT

RULING

1. This ruling aims to determine the chamber summons dated 10/06/2025 filed by the appellants, which has been moved under the provisions of **Rule 11 (2)** of the **Advocates (Remuneration) Order “Order”**, and all other enabling provisions of the law and the reliefs sought are: -

a. THAT the honourable judge do reverse the decision of the honourable deputy registrar dated May 29 2025, on items 1, 2, 7, 9, 14, 20, 22, 25 and 46 of the bill of costs dated

September 10 2024 and do re-tax the same or do remit with appropriate directions on the said items for re-taxation by the honourable deputy registrar.

b. THAT the costs of this application be provided for.

2. The motion is premised on the grounds set out in the body thereof and supported by an affidavit sworn by the 1st appellant on the instant date, whereby, in a nutshell, the appellants challenge the taxation ruling because the deputy registrar correctly noted that the bill of costs (“BOC”) did not state the value of the subject matter. However, the base figure was erroneously set at Kshs 75,000, despite **Schedule 6 A 1 (a) Advocates Remuneration Order (“ARO”)** specifying a base figure of Kshs 25,200 for presenting or opposing an appeal. Additionally, no enhancing factors, such as complexity or urgency, were stated or applied to the base figure, as required by the **ARO**; and
3. Item 2 was incorrectly taxed at Kshs 66,667, contrary to **Schedule 6 A 3** of the **ARO**, which allows getting up fees only when a respondent appears at the hearing and the court certifies the case as appropriate for such fees; Item 7 was taxed at Kshs 2,300 instead of the correct amount of Kshs 1,000, as the attendance was a mention lasting less than half

an hour, per **Schedule 6 A 7 (d)** of the **ARO**; Items 9, 20, and 46 should have been disallowed entirely since service was effected by email, in accordance with **Schedule 6 A 9 (d)** of the **ARO**; and

4. Item 14 should have been disallowed, as the record of appeal, except for the cover page, contains no new material and only includes copies of pleadings and documents filed in the court below, as per **paragraph 16** of the **ARO**; Item 22 should have been disallowed because there was no attendance by counsel for the respondent and item 25 should also have been disallowed, since the BOC was filed electronically and did not require registry attendance.
5. When served, the respondent vehemently opposed the summons through the replying affidavit of 16/09/2025, where he briefly avers that the disputed items 1 and 2, relating to instruction fees and the getting up fee, were taxed fairly and reasonably within the taxing master's discretion. It is established law that a taxing master's decision should not be disturbed unless there is evidence of improper exercise of discretion or the amount taxed is so unreasonable as to constitute misdirection. In this case, the taxing master considered all relevant factors under the applicable rules and rates. The documents on record supported all costs and were duly proven.

6. Accordingly, and following court directions, the summons is argued through written submissions filed by the law firms of **Mss. Dr. Leonard Maingi & Co. Advocates** for the appellants, dated 15/10/2025, and **Maingi Musyimi & Associates Advocates** for the respondent, dated 30/10/2025. Therefore, upon identifying and considering the issues for determination, this ruling shall, later in its analysis and decision, consider the arguments related to each specific issue and also bear in mind the law and judicial precedents. Thus, having carefully considered the summons, its grounds, affidavits, and the rival submissions, the following issues arise for determination.

a) Whether the summons is filed prematurely.

b) Whether the summons is merited.

c) What orders should this court issue, including an order as to costs?

And they shall be handled separately shortly.

a) Whether the summons is filed prematurely.

7. In addressing this matter, it is essential to emphasise the relevant legislation. In their documents and submissions, both parties agree that, where a party is aggrieved by the decision

of a taxing officer, as is the case with the applicant, procedural guidance is derived from **Order 11**, which states:

“(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."

8. It is regrettable that this first issue was not addressed by any of the parties in their respective documents. Thus, this court's interpretation of **Order 11 (1)** of the **Order** indicates that the filing of a notice of objection concerning items of taxation is a compulsory preliminary step, which an aggrieved party is obliged to undertake by submitting it within a minimum of 14 days from the date the ruling is issued.
9. Once this hurdle is overcome, the appellants, as the aggrieved party, are authorised to proceed to the subsequent stage, which involves obtaining reasons as stipulated by **Order 11 (2)**. However, guided by the persuasive decisions of **Ahmednasir Abdikadir & Co. Advocates v. National Bank of Kenya Limited (2) [2006] 1 EA 5** and **Evans Thiga Gaturu, Advocate v. Kenya Commercial Bank Limited [2012] KHC 4274 (KLR)**, if the appellants deem the ruling of the taxing officer to contain sufficient reasons, they may file the reference within 14 days from the date of the verdict.

10. Nevertheless, if the opinion was that the ruling lacked sufficient reasoning or did not provide any reasons at all, the appellants could, in writing, request additional reasons or clarifications as appropriate, but must submit the reference within 14 days of receiving such a request. Having thoroughly examined the summons before this court and records, there is no evidence whatsoever that the appellants issued a written notice to the taxing officer regarding the items of taxation to which they object, as mandated by **Order 11(1)**. In other words, they omitted a crucial step, as no objection was ever raised with the taxing officer.
11. In consequence of the misstep, this court determines that the appellants acted prematurely and pre-empted the lodging of an objection. Furthermore, in the absence of the notice of objection to the taxed items, which constitutes a significant omission, this court concludes and finds that the reference herein is incompetent, null, and void *ab initio*.
12. Having found the summons incompetent, this court deems it unnecessary to address **issue (b)** and hereby strikes out the chamber summons dated 10/06/2025 with no orders as to costs.

It is so ordered.

Delivered and Dated at Machakos this 17th day of March, 2026.

**HON. A. Y. KOROSS
JUDGE
17.03.2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Mr. L. Maingi for Applicant/ Appellant

No appearance for other parties.

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