



REPUBLIC OF KENYA



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Mavoko Land Development Co Ltd v Mlolongo Catholic Church & 2 others (Environment and Land Case 70 of 2016) [2026] KEELC 1524 (KLR) (17 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 70 OF 2016**

**AY KOROSS, J
MARCH 17, 2026**

BETWEEN

MAVOKO LAND DEVELOPMENT CO LTD PLAINTIFF

AND

MLOLONGO CATHOLIC CHURCH 1ST DEFENDANT

FRANCIS OF ASISI HEALTH CENTRE 2ND DEFENDANT

FRANCIS OF ASISI SECONDARY SCHOOL 3RD DEFENDANT

RULING

1. This ruling concerns the defendants' notice of motion dated 5/05/2025. It is said to have been filed under the provisions of Section 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, the *Advocates Act*, and all enabling provisions of the Law. The defendants seek the following orders from this court:
 - a. That judgment be and is hereby entered for the defendants, and decree be and is hereby issued for the taxed costs of kshs. 6,300,506.67/= against the plaintiff.
 - b. That the costs of this motion be borne by the plaintiff.
2. The motion is based on the grounds listed on its face and Benjamin Karanja Kyalo's supporting affidavit, who is the defendant's counsel, sworn on 5/05/2015. A summary of the grounds in support of the motion are that the defendants' bill of costs was duly taxed on 12/03/2025 at kshs. 6,300,506.67/- and a certificate of taxation was issued on 12/03/2025 in confirmation thereof. That it is expedient and in the interest of justice to grant the application to facilitate execution. A copy of the certificate of taxation was availed to this court.
3. In opposition to the motion, Jackson Makali Kalolwe, the secretary general of the plaintiff, submitted an affidavit deposed on 7/08/2025, wherein he states that he was dissatisfied with the taxation ruling



issued on 12/03/2025. Consequently, he filed a notice of appeal, which was duly served. Furthermore, in pursuit of the appeal, the plaintiff also requested typed proceedings of the party and party bill of costs, for which it made the necessary payments. The court has yet to issue the requested proceedings, and the memorandum of appeal raises weighty grounds and has a high chance of success. He also presented copies of the notice of appeal, correspondence requesting the typed proceedings, proof of payment thereof, and a memorandum of appeal.

4. Following the court's directions, the motion is argued through written submissions filed by the law firms of Mss. Kyalo, Muia & Co. Advocates for the defendants, dated 17/03/2025, and Wilfred K. Babu & Co. Advocates for the plaintiff, dated 15/10/2025. 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 motion, its grounds, affidavits, and the rival submissions, the following singular issue arises for determination: whether this court should enter judgment as sought.
5. We shall now proceed to address this issue. With regard to the pertinent legislation, Section 51(2) of the [Advocates Act](#) confers upon this court the authority to issue the judgment sought in the motion. This statutory provision explicitly states:

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

6. This law clearly provides that once a taxing master has assessed the costs, as shown by the court's ruling of 12/03/2025, a certificate of costs is issued, similar to the one in this case dated 12/03/2025. Once these are satisfied, it follows that, unless they are set aside and/or altered, or a dispute exists on retainer or if any proceedings are pending before a court of competent jurisdiction and evidence is provided to substantiate this, no other action would be required from the court except to enter judgment. This position of the law is supported by the binding Court of Appeal decision in Peter Odiwuor Ngoge T/ A O.P. Ngoge & Associates v Washington Jalango Okumu [2012] KECA 15 (KLR), which is relied upon by the advocate. The decision clarifies the court's role in handling such applications as follows:

“Her duty in our view, was to look into whether there was a certificate of taxation and whether it was properly drawn and then look into whether retainer was not disputed. If these aspects were satisfied then the court should have acted and given summary judgment. Introducing a new concept called extent of retainer was in our view avoiding the issues that were before the learned Judge for Section 51(2) did not authorise the learned Judge to extend the requirements of the law.”

7. A similar position was taken in the decision of Lubulellah & Associates Advocates v N K Brothers Limited [2014] KEHC 8685 (KLR) that has been relied upon by the defendants, which states: -

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the



taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012. The aforesaid position has been held by this court in HC Misc 486 of 2012 E.W. Njeru & Co Advocates vs Zakhem Construction (K) Limited and HC Misc 487 of 2012 E.W. Njeru & Co Advocates vs Zakhem Construction (K) Limited and several other courts regarding the entry of judgment upon issuance of a Certificate of Costs that had not been set aside or impugned.”

8. The plaintiff, for unspecified reasons, did not emphasise the relevant proviso or pertinent jurisprudence but instead lamented that the taxing master proceeded to assess the bill of costs without considering the subject matter and assigned an excessively high valuation of Ksh. 300,000,000/-. In this court’s respectful opinion, these constitute grounds or arguments that would support a taxation reference in accordance with Order 11 of the Advocates (Remuneration) Order, rather than arguments that would typically arise in cases where a party seeks judgment on taxed costs.
9. The plaintiff appears to acknowledge this; however, it asserts that, rather than opting for a taxation reference by stating that the taxation constituted an infringement of the law and facts-he preferred to pursue an appeal on a point of law and fact. Based on the documents on record, a notice of appeal has been filed against the taxation ruling to the Court of Appeal. It is evident that the memorandum of appeal has not yet been filed. The defendants, without revealing many details, argue that this appellate procedure is unusual, as an appropriate forum exists.
10. This court concurs with the defendants as once a bill of costs has been taxed by a taxing officer and an applicant (in this case, the plaintiff) is aggrieved by this decision, it is generally guided by Order 11 of the Advocates (Remuneration) Order. This legal provision sets forth a detailed procedure, stating 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.”
11. From the record, in the present case, the plaintiff duly adhered to the requirements of Order 11(1) of the Advocates (Remuneration) Order by issuing a written notice of objection to the taxing officer on 24/03/2025. However, it failed to seek the reasons for any particular items of taxation; suffice it to say, it can only be concluded that the reasons provided in the ruling dated 12/03/2025 were deemed



sufficient by it. However, rather than lodging a reference in accordance with the provisions of Order 11(2), the plaintiff misapprehended the law, as evidenced by its annexures, and filed a notice of appeal. This action clearly contravenes the principle of hierarchy of courts as explicitly outlined in Order 11(2), which stipulates that a reference is, by its nature, an appeal, and if a party is dissatisfied with the taxing master's decision, it appeals to the superior court and if still disgruntled, the party may, with leave, appeal to the Court of Appeal.

12. The plaintiff bears sole responsibility for its current circumstances, as it is the author of its own misfortune. The decision dated 12/03/2025 and the certificate of costs issued on the same date remain unaltered and in effect. There is no dispute regarding the retainer, and the certificate of costs has been properly drawn. The certificate of taxation is conclusive, and this court has the jurisdiction to enter judgment for the taxed amount. Accordingly, this court finds that the notice of motion dated 5/05/2025 is well-founded. As costs follow the event, the defendants shall be awarded costs assessed at Kshs. 15,000/-. Consequently, this decision grants the notice of motion and issues the following final orders:-
- a. Judgment is entered in favour of the defendants for the sum of Kshs. 6,300,506.67/- plus interest at 14% per annum from 12/03/2025 until payment in full.
 - b. The costs of the notice of motion, assessed at Kshs. 15,000/- is awarded to the defendants, to be borne by the plaintiff.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 17TH DAY OF MARCH, 2026.

HON. A. Y. KOROSS

JUDGE

03.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Kyalo for Applicant

Ms Onyancha for Mr. Babu for Plaintiff.

