

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC L OM NO. E015 OF 2025

**EURRY MABONGA
T/A MABONGA & CO. ADVOCATES**

ADVOCATE/APPLICANT

VERSUS

**AGRICULTURAL DEVELOPMENT
CORPORATION 1ST
OBJECTOR/RESPONDENT**

**AGRICULTURAL FINANCE
CORPORATION 2ND
OBJECTOR/RESPONDENT**

**ADC/AFC DEVELOPMENT
HOUSE LLP 3RD OBJECTOR
/RESPONDENT**

RULING

1. This Reference arises from the decision of the Hon. Deputy Registrar, (Hon. Vincent Kiplagat), delivered on 18th September, 2025 in **Nairobi Misc. Application No. E115**

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OF 2025. It is brought vide the Objectors’/ Respondents’ Chamber Summons application dated 14th October 2025 where they seek the following Orders:

a) Spent.

b) Spent.

c) That this Honorable Court be pleased to set aside the whole decision of the Hon. Deputy Registrar given on the 18th September 2025.

d) That the costs of this Application be in the cause.

2. The application is premised on grounds on its face and on the supporting affidavit of Rose Muohi, the Property Manager of the 3rd Respondent. She avers that the Deputy Registrar had no jurisdiction to tax the Bill of costs dated 23rd January 2025 in **Nairobi Misc. Application No. E115 OF 2025**. Further, that in his Ruling dated 18th September 2025, the Deputy Registrar failed to consider the issues raised by the Objectors/ Respondents.

3. She also avers that the Applicant had no valid instructions to act for the Objectors, adding that the issues of retainership of an Advocate's services by a client when in dispute can only be determined by a Judge of the Environment and Land Court hence the Deputy Registrar had no jurisdiction to determine the Bill of costs.
4. She also contends that the Deputy Registrar failed to acknowledge that the Objectors/ Respondents were not served with the substantive Bill of Costs and they were not aware that the Bill of costs had been transferred from the High Court Civil Registry for want of jurisdiction to this court, thus his decision ought to be set aside and substituted with an order striking out the impugned Bill of costs.
5. The application is opposed by the Advocate/Applicant vide the replying affidavit of Eurry S. Mabonga. He avers that the assertion that the Objectors/ Respondents were not served are incorrect and misleading as they participated in the impugned taxation proceedings by filing a replying affidavit

and making submissions before the taxing officer. Further, that the taxation was carried out under the Advocates (Remuneration) Order and in accordance with the procedure prescribed thus the Deputy Registrar had jurisdiction to tax the said bill.

6. He also contends that the assertion that the Advocates' retainer is in dispute is a tactical afterthought.
7. The application was canvassed by way of written submissions.

Submissions

8. The Objectors/ Respondents insist that the Deputy Registrar did not have jurisdiction to tax the impugned Bill of Costs since there was a dispute as to the retainer as there was no Advocate -client relationship between the Applicant and themselves, thus pursuant to Rule 12 of the Advocates Remuneration Order 2014, the taxing officer was bereft of jurisdiction to tax the said Bill, but he ought to have referred

it to this Court. Further, that since the Applicant's Bill of Costs was never served upon them, there is no cause of action against them.

9. To buttress their averments, the objectors relied on the following decisions: **Mugambi & Co. Advocates v John Okal Ogwayo & Another (2013) eKLR**, **Wafula Simiyu & Co. Advocates v East Land Hotel Limited (2016) eKLR**, **Wilfred N. Konosi T/AKonosi & Co. Advocates v Flamco Ltd, [2017] eKLR**, **Mereka & Co. Advocates v Zakhem Construction(Kenya) [2014] eKLR**, and the case of **Ochieng Onyango, Kibet & Ohaga Advocates, v Akiba Bank Ltd [2007] eKLR**.

10. On its part, the Advocate /Applicant submits that having fully participated in the impugned taxation proceedings, the Respondents should not be permitted to frustrate proceedings with belated, dishonest claims of non-service as participation cures any alleged defect of service. To this end, it relied on the case of **Shah v Jamnadas [1959] EA 838**.

- 11.** On whether the taxing officer had jurisdiction, it submits that pursuant to paragraph 10 of the Advocates (Remuneration) Order, a Deputy Registrar is the statutory domain of the taxing officer. It reiterated that it offered legal services to the 3rd Respondent which is a limited liability partnership with legal capacity to enter into legally binding contracts and in any case, the lack of retainer must be proved by the party objecting and the Objectors/ Respondents did not prove this.
- 12.** To buttress its averments, the Applicant relied on the following decisions: **Omulele & Tollo Advocates v Mount Holdings Ltd [2016] eKLR** and **Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd [2006] eKLR.**

Analysis and Determination

- 13.** Upon consideration of the instance Chamber Summons application including the respective affidavits and rivalling submissions, the only issue for determination is whether the

decision of the Hon. Deputy Registrar (Taxing Officer) issued on the 18th September 2025 in Nairobi Misc. Application No. E115 OF 2025 should be set aside.

14. The Objectors raised several reasons by which they seek to challenge the impugned decision issued in **Nairobi Misc. Application No. E115 OF 2025**, being that they were not served with the Bill of costs, that the Deputy Registrar had no jurisdiction to tax the said Bill of Costs because there was no Client-Advocate relationship between the Applicant and themselves and that there was a dispute as to the retainer.

15. The Advocate/ Applicant insists that the Objectors were served and that they participated in the suit by filing pleadings and making submissions. It also avers that the retainer between them was not objected to and that the Deputy Registrar had jurisdiction to tax the Bill of Costs.

16. On whether the Objectors were served with the impugned Bill of costs, the Court will consider the affidavit of service

and the record in **Nairobi Misc. Application No. E115 OF ELC L OM NO. E015 OF 2025** **Ruling**

2025 to ascertain the issue of service and participation. I note the Objectors indeed filed replying affidavits in the aforementioned miscellaneous cause and I hence find that they were indeed served.

17. On whether there was an Advocate -client relationship between the Objectors and the Applicant and whether there was a retainer between them, in **Ochieng’ Onyango, Kibet & Ohaga Advocates v Akiba Bank Limited [2007] KEHC 2677 (KLR)** it was stated that:

“...the burden of proof to establish the retainer is always on the shoulder of the Advocates. That is the correct proposition of the law. And more weight will be given to the contention of the client that he did not instruct the Advocate to act for him. I hasten to add that the yardstick for such proof is not beyond reasonable doubt. In fact it is the normal the perimeter of balance of probability.”

18.Further, the Court of Appeal held as follows in **Omulele & Tollo Advocates -vs- Mount Holdings Limited [2016] eKLR:**

“As with any other agreement, the onus of proving the existence of the retainer agreement lies with he that wishes to enforce it. This is in line with the ordinary rules of contracts and evidence.”

19.On the contention that the Deputy Registrar did not have jurisdiction to tax the impugned Bill of costs on the basis that there was a dispute concerning retainership, the Court of Appeal stated as follows in **Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited [2017] KECA 431 (KLR):**

“As a Judicial Officer sitting to tax a bill of costs between an advocate and his or her client, a taxing officer must determine the question whether he/she has jurisdiction to tax a Bill if the issue of want of advocate/client relationship is raised. An allegation that the advocate/client relationship does not obtain in taxation of an

advocate/client Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question. A decision in taxation where an advocate/client relationship does not exist is a nullity for want of jurisdiction.”

20. From the facts which are before me and the record in the Misc 115 of 2025, while associating myself with the decisions cited, it is my considered view there was no retainer nor an Advocate Client relationship between the Applicant and Objectors. Insofar as the Applicant insists that even if he was a legal officer, he was entitled to fees as an Advocate, I find that the Taxing Officer indeed erred in principle when he failed to take into account that the Applicant was a legal officer of the 2nd Respondent and benefited from sitting allowances. I opine that the Applicant's professional legal claims were not based on deliberate and documented instructions with proof of engagement. In my view there was conflict of interest on the part of the Applicant.

21. In the foregoing, I find the instant Chamber Summons application dated 18th September, 2025 merited and I will proceed to set aside the whole decision of the Hon. Deputy Registrar given on the 18th September 2025.

22. Each party to bear their own costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
16TH DAY OF MARCH, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Kugo for Munene for Objectors/ Applicant

Court Assistant: Joan