



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

ELC MISC. APPLICATION NO.E006 OF 2025

IN THE MATTER OF ADVOCATE-CLIENT COSTS

**WAMBEYI MAKOMERE
T/A WAMBEYI MAKOMERE & CO. ADVOCATES APPLICANT**

= VERSUS =

JACKSON KIPSANG BOIT

RESPONDENT

ARISING FROM ELDAMA RAVINE MCCC 85 OF 2014

JACKSON LAGAT & CATHERINE LAGAT PLAINTIFF

= VERSUS =

JOSEPH KIPSANG BOIT

DEFENDANT

RULING

1. The applicant filed the the notice of motion application dated 18th July, 2025 seeking the following orders:-
 - i) Spent

- ii)** That this court be pleased to adopt the amended certificate of cost dated 15th January 2025 as party and party costs assessed and do raise it by ½.
 - iii)** That the said fees of Kshs. 558,975/- be declared to be advocate-client costs.
 - iv)** That upon grant of prayer (iii) above the same be subjected to 16% VAT of Kshs.89,436/=;
 - v)** That this honourable court upon grant of prayer (ii), (iii) & (iv) above do enter judgment against the respondent for the sum of **Kshs.648,411/-;**
 - vi)** That interest do accrue on the taxed costs at the rates from the date of taxation until payment in full.
2. The application is expressed to be brought under **Schedule 7** of the advocates (Remuneration) order, **Section 1A, 1B, & 3A** of the Civil Procedure Act and **Order 51 Rule 1** of the Civil Procedure Rules, 2010.
3. The application is premised on the grounds that the applicant successfully defended and prosecuted a counterclaim in

Eldama Ravine MCC 85 of 2024; that the applicant taxed costs against the plaintiff in that suit at **Kshs. 372,650/-** and an amended certificate of costs was issued; that the applicant took a notice to show cause dated 24th February 2025; that when the notice to show cause came up for hearing, the applicant learnt that the judgment debtor had paid the entire sum of costs to the respondent; that the respondent became evasive and clandestinely recorded a consent in court with the judgment debtor.

4. It is the applicant's case that it is prudent that the advocates costs be assessed as per **Schedule 7 Part (B)** by raising the taxed costs by $\frac{1}{2}$ and be adopted as judgment and execution do ensue after subjecting the assessed costs to 16% VAT as the applicant pays VAT.
5. The application is supported by the affidavit of Wambeyi Makomere, sworn on 18th July 2025, in which the grounds on the face of the application are reiterated.

6. The deponent of the supporting affidavit has annexed the following documents to the affidavit:-

- i) Amended certificate of costs marked MW1;
- ii) Copy of notice to show cause marked MWII;
- iii) Copy of payment agreement marked MWIII;
- iv) Copy of the applicant's VAT number, marked MWIV.

7. In reply and opposition to the application, the respondent filed the affidavit (replying) which he swore on 3rd October 2025 in which he has deponed as follows:-

“.....

3. that it is true I sought the services of the Applicant to represent me in Kabarnet CMCC 85 of 2014 which later gave rise to Kabarnet ELCA E003 of 2023.

4. That the applicant is still my advocate and he continues to represent me in Kabarnet ELCA E003 of 2023. Our Advocate-Client Relationship is very much alive and I honestly don't

understand why this application has been brought against me...

- 5. That further the applicant still represents me in Nakuru HC Succession 796B of 2014 and Eldoret HC Citation 151 of 2014. The later is still pending as the applicant is pursuing costs on my behalf....**
- 6. That be that as it may, the applicant and I entered into an oral agreement on fees and I was to pay him a total of Kshs. 100,000/- as legal fees since the matter was before the subordinate court.**
- 7. That between 18th July 2024 to date, I have made payments totalling to Kshs. 350,000/- for both the lower court and appeal to the applicant and never received receipts for most payments. The payments were in cash or to mpesa no. 0723634810.**
- 8. That from the amounts paid, the only receipts i have received total to kshs. 40,000/-=. My**

efforts to obtain other receipts have been in vain...

9. That it is not true that I secretly entered into agreement with Jackson Lagat. I can confirm that I consulted the applicant who gave me the go ahead and upon signing the agreement I supplied the applicant/my advocate with a copy of the agreement....
10. That after presenting the settlement agreement to the applicant, he requested that i transmit Kshs. 120,000/- to him and keep the rest. I paid that amount between july 2024 and july 2025 in three instalments of 10,000/-, 30,000/- and 80,000/= as exhibited in my mpesa statement. The applicant has never given me any receipt despite visiting his chambers severally.
11. That during my last meeting with the applicant, on 1st september 2025 he informed me that he was pursuing my costs in kabarnet

appeal case and eldoret and would inform me once paid...

12. That on 20th september, i was told by the respondent in the appeal case he had paid all costs of the appeal to my advocate. I tried to reach my advocate but he wasn't picking my calls.

13. That I decided to visit kabarnet court registry to confirm the same and was shocked to learn that my advocate had filed a new case accusing me of not paying his fees. I even visited his chambers to seek clarity but he seemed to be avoiding me.

14. That it is now clear that further to the Kshs.350,000/= paid to my advocate over the years, he has also pocketed Kshs. 336,909.22/= being costs in Kabarnet ELCA E003 of 2023 totalling to Kshs. 686,909.22/=.

15. That the applicant has thus approached this court in bad faith seeking to avoid

accountability and extort every cent in my pocket and I believe justice should not be unreasonably expensive as the applicant wishes.

16. That given the applicant is still my advocate and I don't owe him any fees I pray that the application be dismissed.

17. That I also seek intervention of the court to compel the Applicant to issue me with payment receipts..."

8. In a rejoinder, the applicant filed a supplementary affidavit sworn on 10th November, 2025 in which he has deponed as followed:-

".....

2. That what has been deponed to by the respondent at paragraphs 3rd, 4th, and the 5th of the said affidavit is correct.

3. That I am a stranger to the contents of paragraph 6 of the replying affidavit.

- 4. That the main reason for this application is to make it clear as to what is due in fees having and still representing the respondent both at the High Courts in Nakuru, Eldoret and in the appeal before this court.**
- 5. That for sure once the costs in the lower court Eldama Ravine are determined it will be easier to apportion any payments made by the respondent and in relation to what case.**
- 6. That paragraph 14 of the replying affidavit is offensive and in this regard such a litigant should be warned and informed that advocates do not “pocketed” money but indeed earn for the work done.**
- 7. That in fact by virtue of paragraph 14 to which the court awarded party and party costs for the said appeal (Kabarnet ELCA E003 of 2023) at Kshs. 336,909.22/= the law mandates an advocate to charge as under;**

i.e Taxed Costs

Kshs.336,909.22/=

Taxed costs raised by ½ being

Kshs.505,363.84/=

Plus 16% VAT thereof Kshs. 80,

858.21/=

Total Kshs.586,

222.05/=.

8. That what is deponed to herein at paragraph 7 above it is contemptuous for the respondent to use the term “he has also pocketed Kshs.336,909.22/=” and such litigants should be warned so that to respect the professional work rendered.

9. That in fact from what the respondent has alluded the only respectable thing he could have done could have been to respect the profession that has defended his rights and sit down to settle the sum due for services rendered.

- 10. That it is a slap to the profession for the respondent to have been represented by our firm at three high courts (Nakuru HC Succ No.796B of 2014 and Eldoret HC Citation No.151 of 2014 (still active) and Kabarnet ELCA NO.E003 of 2023 and Eldama Ravine EMCC No. 85 of 2014 and to turn up and use the term “pocketed”).**
- 11. That question left to answer is what was paid for what if at all was paid.**
- 12. That from the said replying it is evident that this court should forthwith determine the cost chargeable and awardable to the applicant.**
- 13. That this is a straight forward application and should be allowed as prayed.**
- 14. That no cause has been shown by the respondent why the application herein should not be granted.”**

9. Pursuant to directions given on 6th October 2025, the application was to be disposed of by way of written submissions.

10. On 17th November 2025, the applicant informed the court that he would be relying on the affidavits filed.

11. The respondent filed submissions dated 14th November 2025, in which he addresses the court as states/submits as follows:-

“...In my replying affidavit I have exhibited that I have been paying my advocate his fees as agreed and don’t understand why he chose to bring me to court when he could easily call me to his office or write a letter on any fees payable.

In paragraph 4 of my Advocate’s supplementary affidavit, he states as follows:

“THAT the main reason for this application is to make it clear as to what is due in fees having and STILL representing the respondent at the High

Courts in Nakuru, Eldoret and in the appeal before this court.”

This is a confirmation that he is still my Advocate at no time I appointed another advocate to act for me or filed a notice of intention to act in person. If anything is to arise in the said Kabarnet CMCC 85 of 2014 he is still on record and will act for me and as such he need not come to court to determine costs when I am still his client and he is still my advocate.

Be that as it may, the application before court seeks to determine the costs payable. The advocates remuneration order Rule 10 defines a taxing officer as follows:-

“The taxing officer for the taxation of bills under this order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the chief justice may in writing appoint.”

Article 162(2) of the Constitution establishes the Environment and Land Court as a court of equal status to the High Court and it is my understanding that this Honourable Court has a Deputy Registrar who conducts its administrative duties including assessment of costs.

From the above definition I understand that a judge is not a taxing officer thus cannot assess costs as sought by my advocate in his application. In fact, the Court of Appeal in Kiiru t/a Kinamba General Suppliers & Transport v Kenya Ferry Services & another (2025) KECA 664 (KLR) held as follows:-

“Lastly, it is trite law that assessment of costs is undertaken administratively by the Deputy Registrar pursuant to paragraph 10 of the Advocates Remuneration Order. All the trial court is required to do is to make a general order on whether or not costs are granted. The assessment of costs is then left to the Deputy Registrar after a

successful party fills a Bill of Costs...Costs upon finalization of proceedings must be assessed by the Deputy Registrar. It then follows that the award of Kshs. 600,000 as costs is hereby set aside and substituted for an order that the parties are at liberty to pursue taxation of such costs by Taxing Officer”.

That I have never been served with a Bill of Costs or Notice of Taxation by the Taxing Officer as required by law. From my layman’s understanding of the Advocates Remuneration Order, the Advocate ought to have approached the court with a bill of costs and not a notice of motion. I thus believe the application before court is not just defective but asking a judge to usurp the Deputy Registrar’s powers and assess costs. Allowing such an application shall amount to assessing costs through the backdoor.

Further is is my understanding that a Judge can only handle this matter if a party seeks to challenge costs assessed by the Deputy Registrar or for adoption of a certificate of taxation issued by the Deputy Registrar. I thus pray that prayer ii, iii, iv and v in the application be dismissed.

As regards interest. Rule 7 of the Advocate Remuneration Rules is clear that interest is chargeable at fourteen (14%) per cent per anum, from the expiration of one month from delivery of the bill to the client. I reiterate that I have never been served with a bill of costs and there is no reference point as to when interest is calculatable.

I thus pray that the Court goes ahead to dismiss the application before it and awards me costs for my trouble.”

Analysis and determination

12. I have read the application, the response thereto and the submissions filed by the respondent in respect thereof. Through the application, the applicant basically wants this court to assess the costs payable to him by the respondent as advocate-client fees.
13. Regarding the fees payable to him as Advocate-Client fees, the applicant urges this court to determine that item by using the amount assessed by the taxing master as party-party costs and increase it by one-half.
14. The respondent opposes the proposed approach of assessment of advocate-client costs on among other grounds, that such costs ought to be assessed by a taxing master and not this court.
15. The issues of law regarding determination of advocate-client fees was addressed and settled by the Supreme Court in the case of **Kenya Airports Authority vs. Otieno Ragoti &**

Company Advocates, Supreme Court Petition No. E011 of 2023 where the Supreme Court stated/held:-

“We find that the proper interpretation of Schedule VI Part B is that in assessing fees thereunder, including instruction fees, a Taxing Officer is required to exercise his/her discretion guided by the prescribed scale in part A. To our minds, that does not mean, as the impugned majority judgment found, that a Taxing Officer is simply to apply the mathematical formula to the instruction fees ascertained in the taxed Party-Party costs....If the instruction fees in a certificate of Party-Party costs is disputed when it comes to the assessment of the same in Advocate-Client costs under Part B Schedule VI, the Taxing Officer should subject the disputed items to evaluation and judicial determination according to the circumstances of each case.”

16. It is clear from the foregoing determination of the Supreme Court, that the jurisdiction to assess or determine the fees payable to an advocate as advocate-client fees vests with the taxing master and not this court. It is also clear that in determining the fees payable to an advocate, the taxing master exercises his/her judicial discretion and does not simply multiply the amount assessed as party-party costs in order to arrive at the amount payable as advocate-client fees as suggested by the applicant in this application.
17. The upshot of the foregoing is that the instant application is found to be based on a misapprehension of law and is hereby dismissed with costs to the respondent.

**Dated, signed and delivered virtually at Busia this 10th
day of March, 2026.**

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Rubia h/b for Mr Wambeyi for the Applicant

N/A for the Respondent

Court Assistant; Tracy

ORIGINAL