

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLOM NO. E007 OF 2025

EURRY MABONGA T/A MABONGA

**& CO. ADVOCATES.....APPLICANT/
RESPONDENT**

VERSUS

**AGRICULTURAL DEVELOPMENT
CORPORATION.....1ST
OBJECTOR/APPLICANT**

**AGRICULTURAL FINANCE CORPORATION.....2ND
OBJECTOR/APPLICANT**

**ADC/AFC DEVELOPMENT
HOUSE LLP.....3RD
OBJECTOR/APPLICANT**

RULING

1. Before this court for determination is the chamber summons dated 14th October, 2025 filed by the objectors/applicants, and it is expressed to be brought under **paragraphs 11(2)** of the

Advocates Remuneration Order seeking the following orders:-

1. That this honourable court be pleased to issue a temporary stay of execution of the ruling delivered on 18th September 2025 pending the hearing and determination of this application inter-partes.

2. That this honourable court be pleased to issue a stay of execution of the ruling pending the hearing and determination of this reference.

3. That this honourable court be pleased to set aside the whole decision of the Hon. Deputy Registrar given on 18th September, 2025.

4. That the costs of this application be in the cause.

2. The application is premised on the grounds *inter alia* that the objectors/applicants were dissatisfied with the ruling of the deputy registrar delivered on 18th September, 2025. The application was further supported by the affidavit of Rose Muohi, the property manager of the 3rd objector/applicant sworn on even date. The 3rd objector/applicant deposed that the taxing officer did not have the jurisdiction to tax the bill of costs as the issue of retainership of an advocate's services by a client can only be dealt with by the court hence the error in the ruling. Further, the taxing officer failed to acknowledge that at the time of filing the submissions, they were not served with the substantive bill of costs and were equally not aware that the same was transferred from the high court to this court.
3. The 3rd objector/applicant deposed that having failed to file and serve the substantive bill of costs, there was no cause of action against the respondents, and despite the notice of objection to the taxation, no response has been received hence the reference.

4. The application was opposed vide the replying affidavit of the applicant/respondent sworn on 9th December, 2025. It was deposed that the objectors/applicants participated in the taxation proceedings and suggested an alternative amount to be paid. Further, they filed a replying affidavit to the bill of costs and were mapped into the case and entered appearance, filed a reply and submissions and that they cannot now claim that they were never served with the bill of costs.
5. The applicant/respondent deposed that the taxation proceedings were carried out under the remuneration order and the taxing officer therefore had jurisdiction. Further, that the challenge on retainer agreement is a bare allegation which is unsupported by evidence. The applicant/respondent contended that evidentiary material was provided in the case and the taxing officer was satisfied with the same. He deposed that the assertion that the retainer is in dispute is a tactical attempt, and hence all the allegations in the chamber summons are denied.
6. The application was canvassed by way of written submissions. The objectors/applicants filed their written submissions dated 4th February, 2026. The applicant/respondent also filed his undated written submissions. I have considered the application, the reply

thereof and the written submissions. In my view, the issue for determination is ***whether the application has merit.***

7. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case of **Premchand Raichand Ltd Another -vs- Quarry services of East Africa Ltd and Another No. 3 (1972) EA 162**. The principles laid out are:-

- i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.***
- ii. The taxing master was expected to tax each bill on its merits;***
- iii. The value of the subject matter had to be taken into account;***
- iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;***
- v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs***

were not allowed to rise to a level that would confine access to the courts to the wealthy.

vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference.”

8. In applying the above principles to the circumstances of this case, the objectors/applicants contended that the taxing officer did not have the jurisdiction to tax the bill of costs as the issue of retainership of an advocate’s services by a client can only be dealt with by this court hence the error in the ruling. Further, that the taxing officer failed to acknowledge that at the time of filing the submissions, they were not served with the substantive bill of costs and were equally not aware that the same was transferred from the high court to this court.

9. While contesting service of the bill of costs, and upon perusal of the documents filed by the applicant/ respondent, it is evident that

they participated in the taxation proceedings. Indeed, the objectors/ applicants filed their replying affidavit sworn on 18th July, 2025 and thus service of the bill of costs cannot arise now. Secondly, having read the ruling delivered by Hon. Vincent Kiplagat on 18th September, 2025 the same is indicated as ruling and reasons for taxation on the advocate-client bill of costs dated 23rd January, 2025. Hence, this explains perhaps why the objectors/applicants did not receive any response to their notice of objection.

- 10.** The objectors/applicants further argued that the taxation officer did not have the jurisdiction to deal with the matter, and having seen that the issue of jurisdiction with regard to the applicant/respondent former engagement with the objectors/applicants was raised in their replying affidavit sworn on 18th July, 2025 I note that the taxing officer did not address these issues in his ruling. In fact, no reference was made to the response or the written submissions filed by the parties.
- 11.** In my view, while the objectors/applicants do not object to the taxed amounts as either being manifestly high or low, their contention remains on the issues that were raised in their replying affidavit which issues were not addressed at all. I would point out

that justice as delivered by the courts entails addressing all the issues raised by the rival parties and arriving at a reasonable conclusion where each party is satisfied that their concerns were addressed. In this case, the impugned ruling does not show whether the allegations raised by the objectors/applicants were addressed at all. It is only fair that the said ruling is set aside to enable fair consideration.

12. From the above, I find merit in the chamber summons dated 14th October, 2025. The ruling delivered on 18th September, 2025 by Hon. Vincent Kiplagat is hereby set aside. The advocate-client bill of costs dated 23rd January, 2025 be taxed afresh before another taxing officer besides Hon. Vincent Kiplagat. Each party to bear their own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 23RD DAY OF MARCH, 2026.**

**HON. MBOGO C.G.
JUDGE
23/03/2026.**

In the presence of:

Ms. Benson Agungo - Court assistant

Ms. Kugo holding brief for Mr. Munene for State Law Office

Mr. Kogweno for the Respondent/Applicant