



**Muchene & another v Mwaura (Environment and Land Case
368 of 2017) [2026] KEELC 1977 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 1977 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 368 OF 2017**

CG MBOGO, J

APRIL 13, 2026

BETWEEN

GODFREY JOHN MUCHENE 1ST PLAINTIFF

RAOUL EMMANUEL MUCHENE 2ND PLAINTIFF

AND

RACHEAL NDUITA MWAURA DEFENDANT

RULING

1. Before this court for determination is the chamber summons dated 31st October, 2025 filed by the defendant/applicant and it is expressed to be brought under paragraph 11 of the Advocates Remuneration Order and Article 159 (2)(d) of *the Constitution*, seeking the following orders:-
 1. That the reference herein be deemed as duly filed.
 2. That taxing officer's ruling delivered on 12th June, 2025 on party and party bill of costs dated 14th October, 2024 be set aside and the said bill be taxed as such amount as this honourable court may deem appropriate.
 3. That the costs of this application be provided for.
2. The application is premised on the grounds inter alia that on 12th June, 2025, the taxing officer taxed the party and party bill of costs dated 14th October, 2024 at Kshs.3,869,906/- which amount is exorbitant.
3. The application is supported by the affidavit of the defendant/applicant sworn on even date. She deposed that the taxing officer only assessed items 1 and 2 of the party and party bill of costs and failed to consider her objection and submissions which were on record as of 3rd June, 2025. The defendant/applicant deposed that the taxing officer erred in law and fact in taxing items 1 and 2 without regard to the provisions of the advocates remuneration order and the principles that attend to the taxation. As a result, the taxing officer awarded instruction fees and getting up fees twice.



4. The defendant/applicant deposed that the taxing officer erred in finding that items 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 67, 68, 70, 72, 73, 87, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 were drawn according to scale.
5. She urged the court to reconsider these items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 67, 68, 70, 72, 73, 87, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 and make its own assessment.
6. The chamber summons was argued through written submissions. The defendant/applicant filed written submissions dated 17th December, 2025, further written submissions dated 12th February, 2026. The plaintiffs/respondents filed written submissions dated 28th December, 2025.
7. I have considered the application, and the written submissions filed by the respective parties. The issue for determination is whether there is merit in the application.
8. 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."
9. The plaintiffs/respondents filed the amended plaint dated 3rd October, 2021 seeking the following reliefs:-
 - i. A Declaration that the suit property, Dagoretti/Uthiru/884(Mother Title), having been gifted to the Plaintiff's father, the late Godfrey John Muchene by the late grandfather, Caxton Mukiri Muchene for love and affection and transferred to him by his grandfather in the year 1992; the Plaintiff's father immediately upon the transfer became the absolute registered proprietor.
 - ii. A Declaration that the plaintiff having been gifted and had a transfer registered in respect of the suit property, Dagoretti/Uthiru/884(Mother Title),for love and affection; he became the absolute registered proprietor effective the April 11, 2016 when he was issued with the Title Deed.



- iii. A Declaration that the Defendant has no proprietary right over the said Suit Property, Dagoretti/Uthiru/884, (Mother Title), recognizable in law.
 - iv. An Order of Mandatory Injunction directing the Defendant to surrender and handover possession of the suit property to the plaintiff.
 - v. Further and without prejudice to the foregoing, Orders of Eviction of the Defendant from the suit Property to be executed by the Officer Commanding Kabete Police Station; and
 - vi. Costs of the Suit.
10. In response thereto, the defendant/applicant filed the amended statement of defense and counterclaim dated the 19th October, 2021 and sought for the following reliefs:-
- a. Dismissal of the Plaintiffs' suit with costs to the defendant;
 - b. An order of Declaration that there exists a customary implied trust over that entire house, developments erected on the suit property. And/or in alternative a declaration that the defendant is entitled to the said parcel of land under the doctrine of adverse possession.
 - c. An order of Permanent Injunction restraining the Plaintiff's either by themselves, their agents, servants, employees or anyone acting under their instructions from evicting, harassing, selling, transferring or in any interfering with the Defendant's quiet and peaceful enjoyment of the suit Property being land parcel number Dagoretti/Uthiru/884.
 - d. Costs of the suit and Counter claim.
 - e. Any other relief that this honourable court may deem just to grant.
11. The suit was heard and found in favour of the plaintiffs/ respondents, and in a judgment delivered on 19th October, 2022 the court granted the following orders:-
- i. A Declaration be and is hereby issued declaring that the suit property, Dagoretti/Uthiru/884(Mother Title), having been gifted to the Plaintiff's Father, the late Godfrey John Muchene by the late grandfather, Caxton Mukiri Muchene for love and affection and transferred to him by his grandfather in the year 1992; the Plaintiff's father immediately upon the transfer became the absolute registered proprietor.
 - ii. A Declaration be and is hereby issued declaring that the Plaintiff having been gifted and had a transfer registered in respect of the suit property, Dagoretti/Uthiru/884(Mother Title), for love and affection; he became the absolute registered proprietor effective the April 11, 2016 when he was issued with the Title Deed.
 - iii. A Declaration be and is hereby issued declaring that the Defendant has no Proprietary right over the said suit property, Dagoretti/ Uthiru/ 884, (Mother Title), recognizable in law;
 - iv. The Defendant be and is hereby directed to vacate the suit property and to grant vacant possession thereof to the Plaintiff within a duration of 120 days from the date hereof.
 - v. In default to vacate and grant vacant possession of the suit property within the designated 120 days, the Plaintiff shall be at liberty to evict the Defendant from the suit property.
 - vi. In the event of the Eviction being carried out and undertaken by the Plaintiff, the costs/ expenses incurred in levying the Eviction shall be certified by the Deputy Registrar and same shall be borne by the Defendant.



- vii. An order of Permanent Injunction be and is hereby granted to restrain the Defendant whether by herself, servants, employees and/or anyone claiming under the said Defendant, from remaining on, re-entering upon and/or otherwise interfering with the Plaintiff's Title to and in respect of LR No Dagoreti/Uthiru/884.
 - viii. The Defendant's counterclaim be and is hereby Dismissed.
 - ix. Cost of the suit and the counter-claim be and are hereby awarded to the plaintiff.
12. The defendant/applicant contends that the taxing officer taxed items 1 and 2 without regard to the provisions of the advocates remuneration order and the principles attendant thereto and in addition, he awarded the instruction fees twice. On this I believe the defendant/applicant meant items 3 and 4 of the bill of costs. She further argued that items 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 67, 68, 70, 72, 73, 87, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 were drawn according to scale. She urged the court to reconsider these items and make its own assessment.
 13. While relying on the case of Joreth Ltd v Kigano & Associates [2002] 1 EA 92, and Premchand Raichand (supra), the defendant/applicant submitted that time spent in litigation does not itself convert a straightforward dispute into a complex one. In response thereto, the plaintiffs/respondents argued that an award of Kshs.500,000/- as instruction fees was reasonable noting the duration spanning 5 years.
 14. In the impugned ruling, the taxing officer, stated as follows:-

“This court in taking into account the activities and processes that culminate to instruction fees sought and taking into account the subject matter, its value, nature and importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings. Having considered these factors, including the scope of the plaintiff's work in prosecuting the matter, I assess the instruction fees at Kshs.500,000/-. Consequently, I tax off Kshs.1,500,000.00 from this item. As for item 2, I tax getting up fees at Kshs.166,667 which is one third of the instruction fee. Therefore, Kshs. 500,000 is taxed off from this item.”
 15. On other items, the taxing officer found that they were drawn to scale and proceeded to tax them as drawn. Indeed, from the pleadings contained in this suit, the value of the suit property could not be ascertained and looking at the prayers sought and awarded, which were mostly declaratory orders, it was reasonable for the taxing officer to arrive at the sum of Kshs.500,000/- as the instruction fees. I will not belabour much on the contention that the taxing officer taxed the bill twice since the plaintiff and the counter claim are one suit. The plaintiffs/respondents have, through the authorities cited demonstrated that a plaintiff and a counterclaim are separate suits which ought to be billed separately during taxation. I cannot agree any further.
 16. In the case of Kipkorir, Titoo & Kiari Advocates vs Deposit Protection Fund Board (2005) 1 KLR 528, the Court of Appeal held as follows:-

“On a reference to a Judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the Taxing officer erred in principle in assessing the costs – an example for an error of principle is where



the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles.”

17. While I place reliance on the above cited authority, and even by a plain reading of the impugned ruling, I would agree with the defendant/applicant that indeed the taxing officer failed to consider the written submissions filed against the bill of costs. The impugned ruling does not make any reference to the objection contained in the defendant’s/applicant’s written submissions dated 4th March, 2025 and the reasons for rejecting the defendant/applicant’s arguments. In addition, the taxing officer did not find it necessary to address the court attendance fees, the disbursements, drawings as raised in the written submissions.
18. If say, the rest of the items were taxed according to scale, the award of the sum of Kshs.3,869,906/= would still be wrong for the reason that items 3 and 4 were considered to be taxed according to scale.
19. In my view, there is sufficient reason to disturb the findings made by the taxing officer in his ruling delivered on 12th June, 2025. In the interest of justice, it is only fair that the bill of costs dated 14th October, 2024 is taxed afresh.
20. From the above, I find merit in the chamber summons dated 31st October 2025 and I grant the following orders:
 1. The ruling delivered on 12th June, 2025 by Hon. Vincent Kiplagat on the party and party bill of costs dated 14th October, 2024 is hereby set aside and the said bill is remitted for taxation afresh before another taxing officer other than Hon. Vincent Kiplagat.
 2. Each party to bear their own costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 13TH DAY OF APRIL, 2026.

HON. MBOGO C.G.

JUDGE

13/04/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Omaiyo for the Respondent

Mr. Ondago for the Defendant/Applicant

