

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT MILIMANI
MISC CAUSE E236 OF 2021

A.I. ONYANGO & CO. ADVOCATES -
ADVOCATE/RESPONDENT
VS
FREDRICK KANGETHE CHEGE - **CLIENT/APPLICANT**

RULING

**(In respect to the Client's Notice of Motion Application dated
25/9/2025)**

1. This ruling concerns the Notice of Motion dated 25/9/2025. The application is expressed to be brought under the provisions of Sections 1A, 1B,3A, 63 (c) and (e) of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks in the main that;
 - a. Upon the interpartes hearing and determination of this Application this Honourable Court directs that the Certificate of Taxation and the Warrants of Attachment be discharged forthwith.
 - b. Upon the inter partes hearing and determination of this Application this Honourable Court directs that the Judgment and subsequent Decree be set aside unconditionally and/or vacated and that the Respondent be allowed to file and prosecute his Reply to the Advocate-Client Bill of Costs as a matter of right.
 - c. Upon the inter partes hearing of this Application the Respondent be granted leave to cross-examine the process server (s) who purportedly served him with the Bill of Costs and the subsequent Notices.
 - d. The costs of this application be in the cause.

2. The Applicant's case, as set out in the grounds in support of the application and in the Affidavit of Fredrick Kangéthe Chege dated 25/9/2025, is that he was never served with the Advocate-Client Bill of Costs, the Notice of Taxation, or the hearing Notice for the adoption of the Certificate of Taxation as Judgment of this Court. He contends that the whole process proceeded ex parte, with no Notices served on him, and therefore seeks to cross-examine the process server, Stanley Lisiolo Makhaya. He argues that the Ruling on Taxation was made without disclosure of the existence of an Agreement on fees payable, and that he had offset part of the fees as agreed.
3. He deposes that he retained the Advocate to prosecute his case, being ELC Number 1256/2013. That the Legal Fees Agreement dated 16/10/2013 set the fees payable at Kshs. 75,000/=, of which he paid Kshs. 40,000/= while instructing the Advocate, with the balance to be paid in instalments. That, unfortunately, their relationship fell out during the course of the proceedings.
4. The Applicant avers that on 23/9/2025, his son, while playing in the compound, picked up and handed him a Proclamation Notice dated 16/9/2025. He further avers that only after his Counsel on record perused the Court file did he learn of the taxation proceedings, particularly the Advocate-Client Bill of Costs, which had been taxed at Kshs. 432,717/=. He accuses the Advocate of falsifying an Affidavit of Service and of failing to disclose to the Court the existence of a valid legal fee-agreement. He argues that he has been condemned unheard, thereby occasioning a miscarriage of justice. He states that he has a viable response to the Bill of Costs, hence the orders sought.

The Advocate's Replying Affidavit

5. The application is opposed by the Advocate vide the Replying Affidavit sworn by Isaac Aloo, an Advocate practising in the applicant's office, dated 13/10/2025, erroneously indicated as a 'Supporting Affidavit'. The Advocate avers that, while taking instructions from the Applicant to

represent him in ELC No. 1259 of 2023, the Applicant provided 2 mobile numbers for communication between them. That the Bill of Costs together with the Notice of Taxation was duly served upon the Applicant through his Telephone Number as indicated in the Affidavit of Service. That the Bill of Costs was initially listed for taxation on 5/7/2023 but was deferred to 23/8/2023 when it was delivered.

6. Counsel avers that after the Ruling was delivered, they informed the Applicant that the Bill of Costs had been taxed at Kshs. 432,712/=. However, the Applicant did not respond to the letter aforesaid at all thus the Applicant sought to adopt the Certificate of Costs as Judgment of the Court vide the application dated 20/9/2023.
7. Counsel avows that the Applicant visited their chambers on 4/9/2023 and confirmed that he had received their Bill of Costs dated 18/11/2024 and their letter of 7/9/2023. The Applicant expressed a desire to have the issue of the taxed costs resolved amicably, to which he was amenable. He further avers that the Applicant was also served with the application dated 20/9/2023 by their process server, Stanley Lisiola Makhaya. The Applicant did not file any response to the said application or to the Ruling adopting the Certificate of Costs of Judgment of the Court on 11/7/2024. He contends that the Applicant has been aware all along of the taxation process but chose not to respond accordingly.

The written submissions

8. The Court directed that the application be canvassed by way of written submissions. The Client/Applicant complied and filed his submissions dated 14/2/2026. The Advocate/Respondent, on the other hand, did not file any submissions despite the lapse of the time granted to comply. The Court has had the opportunity to read the Client's submissions and has duly considered them.

Analysis and Determination

9. I have considered the application, the rival affidavits and the Client's submissions. The Court is of the view that the issues for determination are:
- a. Whether the Applicant has demonstrated sufficient cause to set aside the Certificate of Taxation dated on 23/10/2023.
 - b. Whether leave should be granted to challenge the taxation of the Bill of Costs dated 18/11/2024.

Whether the Applicant has demonstrated sufficient cause to set aside the Certificate of Taxation issued on 23/10/2023

10. The law recognizes that a Certificate of Taxation, unless set aside or altered, is final as to the amount of costs (See Section 51(2) of the Advocates Act). However, that finality does not oust the Court's inherent jurisdiction to intervene where sufficient cause is shown.
11. The concept of sufficient cause was considered by the Court of Appeal in Attorney General vs the Law Society of Kenya & Another Civil Application No.133 of 2011 as follows:
- "Sufficient cause or good cause in law means: the burden placed on a litigant usually by Court, rule or order to show why a request should be granted or an action excused. (See Black's Law Dictionary, 9th Edition page 521), sufficient cause must be rational, plausible, logical, convincing, reasonable and truthful. It should not therefore be an explanation that leaves doubt in the Judges mind. The explanation should not leave unexplained gaps in the sequence of events."
12. In the present case, the Applicant avers that he failed to challenge the taxation attributing it to lack of notice. He maintains that he was never served with the Bill of Costs, notice of taxation, or subsequent applications. Was there proper service of the Bill of Costs and the Notice? The affidavits of service on record by the Advocate's Process Server, Stanley Lisiola Makhaya are contested. The said Process Server's

Affidavit of Service dated 3/5/2023 indicates that the Client was served with the Advocate-Client Bill of Costs dated 18/11/2021 and Taxation Notice dated 18/4/2023. That service was effected through the Client's Telephone Number 0780512658.

13. Although, the Process Server attached a WhatsApp text with '2 ticks' to confirm receipt of the text by the Client/Applicant, the said text does not indicate the phone number of the recipient. The Court is therefore not able to ascertain whether the text was sent to the Client's alleged contact.
14. There is also the Affidavit of Service dated 13/3/2024. The process server alleges that on 4/3/2024, the Client/Applicant visited the Advocates' Chambers and that he effected service of the Notice of Motion Application dated 20/9/2023 seeking entry of judgment on him. However, the Advocate's Reply herein, states at Paragraph 12 that the Client/Applicant visited his chambers on 4/9/2023 when service of the application was effected upon him.
15. Evidently, there is a contradiction over when the Client/Applicant visited the Advocate's Chambers. Whereas the Advocate states that he was there on 4/9/2023, the Process Server states that it was on 4/3/2024. As both are sworn statements, the question is whose averments the Court should believe. Given the serious consequences flowing from the taxation and subsequent decree, I am persuaded that the issue of service requires closer scrutiny than has been afforded.
16. It is therefore my finding that the Client/Applicant has demonstrated sufficient cause to warrant the setting aside the Certificate of Taxation issued herein.

Whether leave should be granted to challenge the taxation of the Bill of Costs dated 18/11/2024.

17. The Client/Applicant contends that there was a Legal Fees Agreement dated 16/10/2013, which set out fees of Kshs. 75,000/=. He further

contends that he paid Kshs. 40,000/= and that the balance was to be cleared during the course of the proceedings. In my view, this raises a triable issue as to whether there was a Retainer Agreement between the Advocate and the Client, which ousts the costs from taxation. This issue ought to be tested on the merits before the Court, after examining the evidence adduced.

18. The Court cannot, in the face of this dispute, shut out the Applicant without giving him an opportunity to ventilate his objection. While it is true that litigation must come to an end, justice demands that parties be accorded a fair hearing. To deny the Applicant an opportunity to challenge the Bill of Costs in the circumstances of contested service would amount to condemning him unheard, contrary to the dictates of Article 50 of the Constitution.
19. In the result, I find merit in the Motion. It is determined in the following terms;
 - a. The Certificate of Taxation issued on 23/10/2023 and the subsequent orders issued on 11/7/2024 adopting the certificate of taxation as a Decree of the Court are hereby set aside.
 - b. The Client/Applicant is hereby granted conditional leave to file an objection and/or response against the Advocate's Bill of Costs within fourteen (14) days from the date hereof.
 - c. The Warrant of Attachment issued herein are hereby discharged.
 - d. In the interest of justice, each party shall bear its own costs of the application.
20. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF APRIL 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

1. N/A for the Appellant
2. Mr Nganga Kamau for the Respondent
3. CA- Elizabeth

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