

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLOM NO. E011 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**

ARISING FROM
REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLMISC NO. E119 OF 2025

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

VERSUS

**AGRICULTURAL DEVELOPMENT
CORPORATION.....1ST
OBJECTOR/RESPONDENT
AGRICULTURAL FINANCE
CORPORATION.....2ND
OBJECTOR/RESPONDENT
ADC/AFC DEVELOPMENT
HOUSE LLP.....3RD
OBJECTOR/RESPONDENT**

RULING

1. Before me is the chamber summons dated 14th October, 2025 filed the attorney general on behalf of the objectors/applicants. It is expressed to be brought under **Paragraph 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 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 being dissatisfied with the ruling of the deputy registrar delivered on 18th September, 2025 the objectors/applicants are intent on challenging the said ruling. The application is further supported by the affidavit of Rose Muohi, the property manager of the 3rd objector/applicant. She deposed that the deputy registrar had no jurisdiction to tax the bill of costs and failed to consider the issue raised by the respondents on account that the respondent had no valid instructions to act for the objectors.

3. The 3rd objector/applicant further deposed that the issues of retainer can only be dealt with by the Judge hence the error in the ruling. Further, that as at the time of filing the submissions, they had not been served with the substantive bill of costs, and they were not aware that the same had been transferred from the high court registry to this court's registry. It was further deposed that the respondent having failed to serve the substantive bill of costs, there was no cause of action against the objectors. That despite service of the notice of objection, no response has been received hence the application.
4. The application was opposed vide the replying affidavit of the respondent sworn on 9th December, 2025. The respondent deposed that the assertions on lack of service are incorrect and misleading as the objectors/applicants participated in the taxation proceedings by filing pleadings and making submissions before the deputy registrar. It was further deposed that the objectors/applicants filed a replying affidavit to the bill of costs, and they were mapped into the case and filed a memorandum of appearance.
5. The respondent deposed that the deputy registrar had the jurisdiction to tax the bill of costs as provided in law. Further, that the courts have affirmed that the deputy registrar may determine

whether a retainer exists where the facts are not genuinely disputed.

6. The application was canvassed through written submissions. The objectors/ applicants filed their submissions dated 4th February, 2025. The respondent filed their undated submissions. I have considered the application, the reply thereof and the written submissions filed by both parties. 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 contending 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. 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. In my view, the taxing officer should have first determined the issue on

jurisdiction as raised by the objectors/applicant and once satisfied that it had the jurisdiction, proceed to tax the bill of costs

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 court 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. I direct that the advocate-client bill of costs dated 23rd January, 2025 be taxed afresh before a taxing officer other than Hon. Vincent Kiplagat. Each party to bear their own costs.

It is so ordered.

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

**HON. MBOGO C.G.
JUDGE**

23/04/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Kogweno for the Respondent

Ms. Kugo for the Applicant

ORIGINAL