



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. E010 OF 2023

CATHERINE MUMBUA NDUNDA (*Suing as the administrator of the Estate of David Ndunda Nzivo-(Deceased)*)
.....PLAINTIFF

VERSUS

WINDSOR HOMES LIMITED.....
DEFENDANT

RULING

1. This ruling aims to determine the chamber summons dated 30 April 2025, filed by the defendant, which has been moved under the provisions of **Articles 4** and **159** of the **Constitution of Kenya, Sections 1A** and **1B** of the **Civil Procedure Act, Paragraph 11** of the **Advocates Remuneration Order**, and all other enabling provisions of the law. The reliefs sought are:

a) Spent.

b) Spent.

c) THAT the decision of the taxing officer delivered on 17th April 2025 be set aside, and the party and party Bill of Costs be taxed afresh before a different taxing officer.
d) THAT the costs of this application be provided for.

2. The motion is based on the grounds set out in the body thereof and supported by an affidavit sworn by Daniel Ojijo Agili on the instant date, whereby, in a nutshell, the defendant asserts that the taxing officer erred by: misdirecting herself regarding the principles underlying and/or guiding the taxation of instruction fees in this matter; misapplying the case of **Joreth Ltd v. Kigano & Associates, Civil Appeal No. 66 of 1999 [2002] 1 EA 92 [2002] eKLR**; erroneously determining that the value of the subject matter was Ksh 63,000,000; misdirecting herself concerning the issue of valuation, as no specific value of the subject matter was claimed in the pleadings; and that further, the judgment of the court and/or any settlement did not establish such a value.
3. When served, the plaintiff's representative, Catherine Mumbua Ndunda, vehemently opposed the summons through her replying affidavit of 30/09/2025, where she briefly avers that the firm of **Ms. Omwanza & Areba Associates Advocates** is not properly on record in this matter because they did not

follow the rules for changing advocates after judgment, as set out in **Order 9 Rule 9** of the **Civil Procedure Rules 2010**.

4. Additionally, judgment was delivered on 13th November 2024, and a notice of change of advocates dated 4th December 2024 was filed by **Ms. Omwanza & Areba Associates Advocates** without the court's leave or obtained the required consent between the outgoing and incoming advocates. The taxing officer did not apply the wrong principles when deciding on the instruction fee of Ksh.1,150,000. The taxing officer correctly based the instruction fees on the joint venture agreement dated 17th December 2010, which was central to the case and showed the value of the suit property as Ksh.63,000,000 in 2010.
5. Accordingly, and following court directions, the summons is argued through written submissions filed by the law firms of **Mss. Omwanza & Areba Associates LLP** for the defendant, dated 19 November 2025, and **King'oo & Associates Advocates** for the plaintiff, dated 15 December 2025. Therefore, upon identifying and considering the issues for determination, this ruling shall, in its analysis and decision, consider the arguments related to each specific issue and bear in mind the law and judicial precedents.

6. Thus, having carefully considered the summons, its grounds, the affidavits, and the rival submissions, this court adopts the following issues for determination, as framed in the submissions: (a) **Whether the law firm of Ms. Omwanza & Areba Associates LLP is competently on record?** (b) **Whether the taxing officer erred in principle, warranting the setting aside of the ruling?** We shall proceed.

a) Whether the law firm of Ms. Omwanza & Areba Associates LLP is competently on record?

7. On matters of law, **Order 9 Rule 9** of the **Civil Procedure Rules** governs the post-judgment process by which an advocate or party seeks to come on record in place of an advocate previously on record. This provision provides as follows:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

8. This proviso does not hinder a litigant from selecting an advocate of their choice. The purpose of this legal provision is to address instances where a litigant attempts to evade paying the legal fees of an advocate who was previously engaged, as well as to inform the court and involved parties of such a change.
9. However, it outlines procedures to be adhered to and if a party seeks to change Advocates, post-judgment, the first scenario is that the incoming advocate or litigant who now wants to act in person must make a formal application to the court with notice to all parties who participated in the suit for grant of leave to come on record or act in person.
10. In the alternate scenario, the incoming advocate or litigant in person has to obtain the written consent of the previous advocate on record, file the consent in court, and then seek leave to come on record.
11. In this matter, the issue before the court pertains to a reference against the decision of a taxing officer, and as held

in **GACAU KARIUKI & CO. ADVOCATES v. ALLAN MBUGUA NG'ANG'A [2012] KEHC 3128 (KLR)**, a decision with which this court aligns itself, a reference is not regarded as an appeal, although it may bear certain similarities. In the context of a reference, the court's primary concern is whether the taxing master has correctly directed herself on a matter of principle. Furthermore, this court associates itself with the persuasive decision in **Sawe & 134 others v. Rono & 3 others [2024] KEHC 4867 (KLR)**, which held as follows concerning leave to come on record in taxation proceedings:

“In short, the requirement to seek leave would always arise where an Advocate seeks to come on record in a suit of any nature that has already been substantively concluded. Such an Advocate would be coming on record to make applications such as for setting aside of orders or for Review or for post-Judgment reliefs such as enforcement of a decree or orders or taxation of costs or to seek stay of execution or leave to appeal or other similar remedies.”

12. Consequently, guided by the law and judicial precedents, the question arises as to whether the defendants complied with the law. The plaintiff contends that the law firm of **Ms. Omwanza & Areba Associates LLP** did not, whereas the

defendant asserts that it entered into a consent with the law firm of **Ms. Litwaji, Achieng & Kiprop Advocates**, pursuant to **Order 9 Rule 9** of the **Civil Procedure Rules**. This consent is dated 6 November 2024, which predates the issuance of the substantive judgment by this court. It also argues that the plaintiff is raising new issues on appeal. This latter argument about new issues is dead on arrival, as a reference is not an appeal [**See GACAU (Supra)**]. Faced with these counterarguments on the competency of this law firm, this court has been inclined to consider the record.

13. From the record, the incoming law firm on 4 March 2025 filed a notice of change dated 4 December 2024. This occurred subsequent to the court rendering judgment on 13 November 2024, thereby constituting a clear violation of **Order 9 Rule 9** of the **Civil Procedure Rules**, as no leave had been sought by the firm. Following the impugned ruling, the firm also filed a notice of objection to taxation proceedings dated 25 April 2025, and subsequently filed the present summons-all without leave. When the issue of their competency was raised by the plaintiff in her replying affidavit during the hearing of the motion, the firm promptly prepared a consent with the erstwhile counsel, backdated to 6 November 2024.

14. This court has employed the term "backdated" in reference to the fact that, as of 13 November 2024, the date on which

the judgment was delivered, **Mr. Nyamagwa** was still the counsel of record and therefore, the issue of consent could not have arisen during the proceedings at that time. Moreover, although the consent to come on record was filed on 18 November 2025, the incoming counsel has not sought leave to be duly admitted on record for the purpose of adoption as an order of the court. Additionally, in the court's respectful opinion, even if such leave had been sought and granted (after 18 November 2025, when the consent was filed), it would not, nonetheless, serve to rectify any prior irregularities.

15. In the circumstances, this court agrees with the plaintiff's counsel and finds the motion is incompetent as it offends the provisions of **Order 9 Rule 9** of the **Civil Procedure Rules**. This finding renders a determination of the 2nd issue unnecessary. In the end, this court hereby strikes out the chamber summons dated 30 April 2025, with each party bearing their respective costs.

It is so ordered.

Delivered and Dated at Machakos this 21st day of April, 2026.

**HON. A. Y. KOROSS
JUDGE**

21.04.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Mr. Omwanza Nyamweya for the applicant.

No appearance for respondent.

ORIGINAL