



**Sehmi v Sehmi & 4 others (Environment and Land Case
659 of 2017) [2026] KEELC 1932 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1932 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 659 OF 2017
LG KIMANI, J
MARCH 19, 2026**

BETWEEN

HARJEET SEHMI PLAINTIFF

AND

JOGINDER KAUR SEHMI 1ST DEFENDANT

GURPAL SINGH SEHMI 2ND DEFENDANT

TEJPARKASH SINGH SEHMI 3RD DEFENDANT

**OTIENO OMUGA T/A OTIENO OMUGA & OUMA
ADVOCATES 4TH DEFENDANT**

**ERICK BENGI T/A BENGI, MIRITI & ASSOCIATES
ADVOCATES 5TH DEFENDANT**

RULING

Background

1. The Applicant filed a Chamber Summons dated 19th May 2023 seeking to review and set aside the ruling on taxation of costs delivered on 2nd September 2021. The Applicant argued that the Taxing Officer erred by adopting Kshs. 30,000,000 as the value of the subject matter, failing to consider relevant legal principles, taxing a defective Bill of Costs that did not specify the applicable Advocates Remuneration Order schedule, and failing to recognize that the dispute arose from a family inheritance matter which should have been treated under the succession framework.
2. The Respondents opposed the application through Grounds of Objection and a Replying Affidavit, contending that no error of principle had been demonstrated. They also argued that the application was filed out of time and that the matter properly fell within the jurisdiction of the Environment and Land Court, not succession law.



3. In a ruling delivered on 23rd May 2024, Justice Omenge held that the dispute was indeed an Environment and Land Court matter and not a succession dispute. While the Court agreed that the Taxing Officer properly grouped the Respondents according to their representation, it found that the value of the subject matter had not been properly established from the pleadings, judgment, or settlement. The Court therefore found that an error of principle had occurred, set aside the taxation ruling of 2nd September 2021, and ordered that the Bills of Costs be re-taxed before a different Taxing Master.
4. Following the order for re-taxation, Judith Omollo, Senior Deputy Registrar, conducted the taxation and delivered a ruling on 17th September 2024. She taxed the 1st–3rd Respondents’ Bill of Costs jointly, and the 4th and 5th Respondents’ Bills separately, applying Schedule 6 of the Advocates Remuneration Order, 2014. The bills were taxed based on the Kshs. 13,292,266 held in an escrow account, resulting in awards of Kshs. 392,107.32 to the 1st–3rd Respondents, Kshs. 401,370.32 to the 4th Respondent, and Kshs. 388,297.35 to the 5th Respondent.
5. The Applicant subsequently filed a Notice of Objection dated 23rd October 2024 under Paragraph 11(1) of the Advocates Remuneration Order, challenging the taxation, particularly the instruction fees, the effect of the withdrawal of the suit under Order 25 Rule 1, and the failure to recognize that the dispute was primarily between the Applicant and the 1st–3rd Respondents.
6. On 3rd December 2024, Judith Omollo directed that the reasons for the taxation were contained in the ruling of 17th September 2024.

The Applicant’s case

7. The Applicant filed a Chamber Summons application dated 17th December 2024, subject matter of this ruling, praying:
 1. That this Honourable Court be pleased to set aside the entire Ruling of the Taxing Officer, the Honourable Judith Omollo, delivered on 17th September 2024;
 2. That this Honourable court be pleased to remit the Bills of costs dated 29th July 2020 for the 1st, 2nd and 3rd Respondents, on 19th April 2021 for the 4th Respondent, and 25th November 2020 for the 5th Respondent, back to the Honourable Deputy Registrar Judith Omollo for fresh taxation;
 3. That the Honourable court be pleased to issue and /or grant such other and/or further orders and/or directions regarding the fresh taxation as it may deem fit and just; and
 4. The costs of this application be in the cause.
8. Frank Habakkuk Nabutete, the Applicant’s Counsel, swore an Affidavit on 17th December 2024 in support of the application. He swore that the Taxing Master had randomly and arbitrarily calculated the instruction fee based on the money in the escrow account for all of the Respondents.
9. The attester deposed that the Taxing Master did not take the time to consider that the 4th and 5th Respondents had been sued for refusing to give an account and disclose the status of the escrow account holding Kenya shillings Six Million, Nine Hundred and Thirteen Thousand and thirty-three [Ksh 6,913,033/-] only.

The Respondents’ case

10. The 4th Respondent filed Grounds of Opposition dated 3rd February 2025 stating that:



1. The Applicant's Chamber Summons has been filed out of time contrary to the provisions of Rule 11 (1) of the Advocates Remuneration Order No.64/1962;
2. The Applicant has failed to apply for enlargement of time within which to file the Chamber Summons contrary to Rule 11 (4) of the Advocates Remuneration Order; and
3. The annexures to the Affidavit in support of the Applicant's Chamber Summons are fatally defective.

The Applicant's submissions

11. Counsel filed submissions dated 6th October 2025 on behalf of the Applicant.
12. Counsel submitted that the Taxing Master erred in determining the escrow amount, as the figure given in the ruling was only one out of four figures pleaded. Counsel pointed out that paragraph 15 of the Plaint referred to the sum of Kenya Shillings Six Million Nine Hundred and Thirteen Thousand and Thirty-Three (Kshs 6,913,033/-) only.
13. Counsel further submitted that the Taxing Master failed to consider the pleadings in order to ascertain the causes of action as against the Applicant and the Respondents, particularly paragraph 15(i), (ii) and (iii) of the Plaint. Counsel argued that the figures contained in those sub-paragraphs were improperly aggregated, which resulted in an erroneous value of the subject matter being adopted in the ruling.
14. It was Counsel's submission that while the value relating to the 4th and 5th Respondents was ascertainable, the value relating to the 1st, 2nd and 3rd Respondents was not ascertainable from the pleadings. Counsel relied on the decisions in Peter Muthoka & Joseph Mumo Kivai v Ochieng, Onyango, Kibet & Ohaga Advocates, Civil Appeal No. 328 of 2017, and Otieno Ragot & Company Advocates v Kenya Airports Authority, Civil Appeal No. 39 of 2017.
15. Counsel further contended that the cause of action against the 1st, 2nd and 3rd Respondents was different from that against the 4th and 5th Respondents, and therefore the instruction fees ought to have been assessed differently.
16. Counsel also submitted that the Taxing Master failed to take into account that the 5th Respondent did not file a Defence, a factor which ought to have been considered in assessing the instruction fees.
17. Counsel argued that the Taxing Master failed to properly exercise her discretion, as she did not explain why she adopted the figure of Kenya Shillings Thirteen Million Two Hundred and Ninety-Two Thousand Two Hundred and Sixty-Six (Kshs 13,292,266/-) as the value of the subject matter.
18. Counsel further submitted that the withdrawal of the suit by the Applicant ought to have resulted in a reduction of the instruction fees. It was submitted that the applicable percentages for awarding costs should have been those provided under Schedule 6 Part A paragraph 1(a) and (b) of the Advocates (Remuneration) Order.
19. Counsel also contended that the Taxing Master failed to consider the nature and importance of the case to the parties, as stated in E.A. Building Society Limited v A.G.A. D'Souza & Another, Civil Appeal No. 59 of 1995. Counsel further submitted that the dispute between the Applicant and the 1st, 2nd and 3rd Respondents was essentially a succession matter, relying on Cecilia Karuru v Barclays Bank of Kenya & Credit Reference Bureau Africa, Nyeri HCCC No. 17 of 2014, and Christine Wangari Gachigi & 3 Others v Elizabeth Wambui & 8 Others, Nakuru High Court Succession Cause No. 96 of 2000.



20. Counsel additionally submitted that, as held in *First American Bank of Kenya Limited v Gulab P. Shah & Others*, HCCC No. 2255 of 2000 [2002] 1 EA 65, the court has inherent jurisdiction in all causes. Counsel argued that the Taxing Master failed to properly exercise that jurisdiction in assessing the costs.
21. Counsel further submitted that the Taxing Master misunderstood the principle that costs follow the event and the rationale behind an award of costs. Counsel argued that costs are intended to fairly reimburse the successful litigant and should not be imposed as a punitive measure upon the unsuccessful party. In this regard, Counsel relied on Kuloba J.'s book *Judicial Hints on Civil Procedure* and G.V. Odunga's *Digest on Civil Case Law and Procedure*
22. Counsel therefore prayed that the taxation decision of the Honourable Senior Deputy Registrar dated 17th September 2024 be set aside.

The 4th Respondent's Submissions

23. Counsel filed submissions dated 30th September 2025 on behalf of the 4th Respondent, relying on the Grounds of Opposition dated 3rd February 2025.
24. Counsel identified the following issues for determination:
 - i. Whether the application is properly before the court;
 - ii. Whether the annexures to the Applicant's Supporting Affidavit are proper; and
 - iii. Whether the instant application amounts to an abuse of the court process.
25. On the first issue, Counsel submitted that a party aggrieved by a taxation ruling must file a notice of objection within 14 days, in accordance with Rule 11(1) of the Advocates (Remuneration) Order. Counsel further submitted that a party who is unable to comply with the timelines ought to seek extension of time pursuant to Rule 11(4).
26. Counsel noted that the taxation ruling was delivered on 17th September 2024, while the Applicant filed the Notice of Objection on 23rd October 2024 and the Reference on 17th December 2024, well outside the stipulated timelines.
27. Counsel therefore submitted that the Applicant's failure to comply with Rule 11 rendered the application fatally defective, and no valid orders could issue therefrom. Counsel relied on the decision in *Lubulellah & Associates Advocates v N.K. Brothers Limited* [2014] eKLR.
28. Counsel further argued that the timelines prescribed by law are mandatory and substantive and must be strictly complied with, relying on *Moses Mwicigi & 14 Others v Independent Electoral and Boundaries Commission & 5 Others* [2016] eKLR.
29. Counsel also urged the court to note what they described as the Applicant's repeated failure to comply with court timelines, which they characterized as a pattern of non-compliance and disregard for court rules. Counsel asserted that they obtained the Taxing Master's ruling on 11th October 2024, and therefore the Applicant's assertions regarding delay were misleading.



30. On the principles governing taxation, Counsel submitted that the Taxing Master properly applied the law and relied on *Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited* [2012] eKLR, where it was held that:

“Where there are reasons on the face of the decision, it would be futile to expect the Taxing Officer to furnish further reasons.”
31. On the second issue, Counsel submitted that the Applicant failed to properly refer to the annexures in the Supporting Affidavit and further failed to have the annexures sealed with the Commissioner for Oaths’ stamp, contrary to Rule 9 of the Oaths and Statutory Declarations Rules, relying on *Francis A. Mbalanya v Cecilia N. Waema* [2017] eKLR.
32. Counsel further submitted that costs were awarded in 2018, yet the issue remained unresolved seven years later.
33. Counsel argued that the Applicant was effectively re-litigating the issue of costs on the same grounds, despite the matter having already been properly determined, thereby offending the doctrine of finality in litigation.
34. Counsel further submitted that the Applicant was employing delay tactics to avoid paying costs lawfully due to the 4th Respondent.
35. Counsel therefore argued that the application constituted an abuse of the court process, relying on *Satya Bhama Gandhi v Director of Public Prosecutions & 3 Others* [2018] eKLR, and urged the court to dismiss the application with costs to the 4th Respondent.

Analysis and Determination

36. The Court has considered the Plaintiff/Applicant’s Reference by way of the Chamber Summons dated 17th December 2024, the supporting affidavit and the Grounds of objection filed by the 4th Respondent. The issues for determination are:

SUBDIVISION - A. Whether the reference is incompetent on account of the Applicant’s failure to lodge a notice of objection to taxation within the time prescribed under Rule 11(1) of the Advocates Remuneration Order. B. Whether the application has merit

37. The application is brought pursuant to Rule 11(2) of the Advocates Remuneration Order, challenging the decision of the Taxing Officer delivered on 17th September 2024 in which the Taxing Master taxed the 1st to 3rd Respondents’ bill of costs at Kenya shillings Three Hundred and Ninety-Two Thousand One Hundred and Seven and thirty-two cents [Ksh 392,107.32/-] only, based on the money in the escrow account; (Kenya shillings Thirteen Million Two Hundred and Ninety-Two Thousand Two Hundred and Sixty-six [Ksh 13,292,266/-).
38. The 4th Respondent’s Bill of Costs dated 19th April 2021 were taxed at Kenya shillings Four Hundred and One Thousand Three Hundred and Seventy and thirty-two cents [Ksh 401,370.32/-] only, based on the money in the escrow account and other items taxed off.
39. The Applicant seeks orders that the taxation be set aside and that the Bills of costs dated 29th July 2020 for the 1st, 2nd and 3rd Respondents, on 19th April 2021 for the 4th Respondent and 25th November 2020 for the 5th Respondent be remitted back to the Honourable Deputy Registrar Judith Omollo for fresh taxation.



40. The application is supported by the affidavit of Frank Habakkuk Nabutete, the Applicant's Counsel, where he swore that the Taxing Master had randomly and arbitrarily calculated the instruction fee based on the money in the escrow account for all of the Respondents.
41. He further deposed that the Taxing Master did not take the time to consider that the 4th and 5th Respondents had been sued for refusing to give an account and disclose the status of the escrow account holding Kenya shillings Six Million, Nine Hundred and Thirteen Thousand and thirty-three [Ksh 6,913,033/-] only.
42. The 4th Respondent opposed the application through Grounds of Opposition dated 3rd February 2025 stating that: The Applicant's Chamber Summons has been filed out of time contrary to the provisions of Rule 11 (1) of the Advocates Remuneration Order No.64/1962; and that the Applicant failed to apply for enlargement of time within which the to file the Chamber Summons contrary to Rule 11 (4) of the Advocates Remuneration Order; and
43. The Applicant further stated that the annexures to the Affidavit in support of the Applicant's Chamber Summons are fatally defective.

The Law

44. The procedure for challenging the decision of a taxing officer is governed by Rule 11 of the Advocates Remuneration Order. Rule 11(1) provides that:

“Should any party object to the decision of the taxing officer, he may, within fourteen days after the decision, give notice in writing to the taxing officer of the items of taxation to which he objects.”
45. The Taxing Master delivered a Ruling dated 17th September 2024 on the orders for re-taxation. The Applicant filed a Notice of Objection dated 23rd October 2024, over a month after the Honourable Taxing Master's Ruling. It is noteworthy that the time for filing the Notice of Objection starts running from the date of the ruling and not the date of receiving the ruling.
46. The Applicant, in a letter dated 13th November 2024 to the Deputy Registrar of this court, stated that he got the ruling of the Deputy Registrar on 11th October 2024 and filed the Notice of Objection dated the same date. Counsel also sought from the Deputy Registrars reasons for the ruling, but encountered difficulties in being given the said reasons, while some parties to the suit were given expeditious services. The Court notes that the Applicant used the same stance as he did in the previous application. In light of the previous situation, Counsel ought to have anticipated such a situation and taken early steps to file their objection in time or file for extension of time.
47. The Court is alive to the fact that the Court has discretion to enlarge time under Rule 11 (4) of the Advocates (Remuneration) Order, which states that:

“The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”
48. However, such enlargement of time must be sought through an appropriate application supported by a satisfactory explanation for the delay. The principles governing extension of time were articulated



- by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others*. [2014] KESC 12 (KLR) where the Court held that extension of time is a discretionary remedy which must be justified by sufficient cause.
49. In the present case, no such application has been made in which the Applicant would have explained the delay in filing the notice of objection. The Applicant also failed to seek the Court's indulgence to regularise the procedural default.
50. The judges in *Mwiciigi & 14 others versus Independent Electoral and Boundaries Commission & 5 others* [2016] KESC 2 (KLR) cited by the 4th Respondent, explain the importance of procedure;
- “This court has on a number of occasions remarked upon the importance of rules of procedure in the conduct of litigation. In many cases, procedure is so closely intertwined with the substance of a case that it befits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is the handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the court would not hesitate to declare the attendant pleadings incompetent. Yet procedure, in general terms, is not an end in itself. In certain cases, insistence on a strict observance of a rule of procedure could undermine the cause of justice.”
51. In the case of *Chauri v District Land Adjudication Officer, Tigania West/East District & 2 others* (Environment and Land Appeal 114 of 2019) [2025] KEELC 3286 (KLR) (20 March 2025) (Ruling) JO Omboya stated thus;
- “Moreover, it is not lost on this court that where the notice of objection to taxation is invalid for noncompliance with the provisions of Rule 11[1] of the ARO, then the intended reference or better still, the reference [if any] filed is deficient, incompetent and thus invalid.”
52. In the case of *M/s Lubuleliah & Associates Advocates v N K Brothers Limited* [2014] KEHC 7393 (KLR), Kamau J, cited by the 4th Respondent, stated that:
- “Bearing all the facts of this case, the court finds itself more persuaded by the Respondent's submissions that the present application was filed out of time and without orders of the court to enlarge time to allow its filing.”
53. This court subscribes to the saying that ‘equity aids the vigilant, not the indolent.’ This Court has in this regard held that the timelines for the doing of certain things and taking of certain steps are indispensable to the proper adjudication of cases. This court also subscribes to the popular saying, ‘once bitten, twice shy’.
31. The Black's Law Dictionary, 10th Edition, defines abuse as:
- “a departure from legal or reasonable use; misuse.” An abuse is done when one makes an excessive or improper use of a thing or employs such a thing in a manner contrary to the natural legal rules for its use. Situations that may give rise to an abuse of Court process are indeed exhaustive, but basically, it involves situations where the Court process has not been or resorted to fairly, properly, and honestly to the detriment of the other party.
54. The Court finds that the notice of objection to the taxation ruling was filed outside the fourteen-day period prescribed under Rule 11(1) of the Advocates Remuneration Order and no application for



extension of time has been made. The reference before this Court is therefore procedurally defective and incompetent.

55. Having determined that the application herein is defective and incompetent, the Court finds that it has no obligation to consider or make findings on the merits of that application.

56. Accordingly, the Court makes the following orders:

1. The Applicant's Reference by way of the Chamber Summons dated 17th December 2024 is hereby struck out for being incompetent due to the filing of the Notice of Objection and the Chamber Summons out of time.
2. The Respondent shall have the costs of the reference.

DELIVERED, DATED AND SIGNED VIA MICROSOFT TEAMS THIS 19TH DAY OF MARCH, 2026.

HON. L. G. KIMANI

JUDGE ENVIRONMENT AND LAND COURT

The Ruling is read in the presence of-

Nabutete for the Plaintiff/Applicant

Omuga for the 1st 2nd & 3rd Respondents

M/s Shisia holding brief for Patrick Lutta for the 4th Defendant

