



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**ELC MISC APPLICATION NO. E001 OF 2026**

**ERICK KIRIMI CHARLES.....**  
**.....APPLICANT**

**=VERSUS=**

**LEVIEW KINYUA IRAUKA NGETI.....1ST**  
**RESPONDENT**

**GERVASION MICHEU IRAUKA.....2ND**  
**RESPONDENT**

**GODFREY MWENDA NDEKE.....3RD**  
**RESPONDENT**

**RULING**

1. Falling for determination in this ruling is the chamber summons dated 14/1/2026 (***the reference***), brought by **Erick Kirimi Charles**. It was brought under **rule 11** of the **Advocates (Remuneration) Order 1962**. The reference challenges the taxation ruling/award of the Principal Magistrate Court at Chuka, rendered on 7/1/2026 in **Chuka CMC E&L Case No E036 of 2024** (*the said suit has been transferred to Chuka Environment and Land Court and is now Chuka ELCL Case No E003 of 2026*). Through the impugned ruling, the Principal Magistrate (*the taxing officer*) taxed the respondents' bill of costs dated 29/7/2025 at Kshs

111,000. Vide a notice dated 8/1/2026, the applicant objected to the item relating to instruction fees, which the taxing officer assessed at Kshs 100,000.

2. The reference was premised on the grounds outlined in the chamber summons and in the applicant's affidavit dated 14/1/2026. It was canvassed through written submissions dated 26/1/2026. The case of the applicant is that the item on instruction fees related to the applicant's counterclaim in **Chuka CMC E&L Case No E036 of 2024**, which was a claim of adverse possession in relation to land parcel number **Karingani/Mugirirwa/5581** (a subdivision of **Karingani/ Mugirirwa/97**). The applicant is emphatic that the counterclaim was not a liquidated claim and faults the taxing officer for holding that the instruction fees of Kshs 100,000 was based on "***the value of the subject matter as raised in paragraph 3 (d) of the defence and counterclaim.***" The applicant contends that no monetary value was pleaded nor disclosed in his defence and counterclaim. He adds that no monetary value was disclosed in the pleadings relating to the primary suit.
3. Citing **paragraph 7** of the **Advocates (Remuneration) (Amendment) Order 2014**, the applicant argues that the remuneration order provides for a ceiling of Kshs 50,000 as instruction fees on a claim of this nature, adding that because the counterclaim was withdrawn before trial, the respondent was entitled to only 75% of the sum of Kshs 50,000, which translates to Kshs 37,500. The applicant faults the taxing officer, arguing that he applied the wrong principle in assessing instruction fees.

4. The applicant urges this court to tax instruction fees at Kshs 37,500. In the alternative, he urges the court to order a re-taxation of the bill of costs by a different taxing officer.
5. The respondents opposed the reference through a replying affidavit sworn on 20/1/2026 by **Njeru Ithiga**, the respondents' counsel. The respondents elected not to file submissions and relied solely on the affidavit. The deponent deposed that the applicant's counterclaim for orders of adverse possession in the lower court was withdrawn and the applicant was ordered to pay costs of the withdrawn counterclaim to the respondents. He added that the sum of Kshs 100,000 which was subsequently assessed as instruction fees was justified "*considering the fact that the counterclaim was against 3 defendants and that they instructed one advocate to defend them.*" Counsel contended that the bill of costs was drawn to scale, adding that the taxing officer found no good reason to interfere with it. It was the case of the respondents that the applicant had not demonstrated any good reason to justify this court's interference with the decision of the taxing officer. They urged the court to reject and dismiss the reference.
6. The court has considered the reference; the response to the reference; and the submissions tendered. The court has also considered the relevant legal frameworks and the prevailing jurisprudence on the key issue in the reference. The single question to be determined in this ruling is whether the taxing officer committed an error or errors that would justify this court's interference with his award on instruction fees.

7. It is now a settled principle of our civil law that the taxation decision of a taxing officer would not be interfered with unless it is demonstrated that the decision was based on an error of principle or the fee awarded was so manifestly excessive or manifestly low as to justify an inference that it was based on an error of principle. [see (i) ***First American Bank of Kenya v Shah & Others [2002] 1 EA 64***; and (ii) ***Republic v Ministry of Agriculture & 2 others: Ex-parte Muchiri W’Njuguna & Others [2006] eKLR***.
8. There is common ground in this reference that the applicant’s counterclaim in the lower court was a claim for orders of adverse possession. The court has perused all the pleadings. There was nothing pleaded in terms of the monetary value of the suit land that was the subject matter of the counterclaim in the lower court. To this extent, the taxing officer made a grave error in purporting to base his award on a non-existent value of the suit land/subject matter. The correct position is that the applicant’s counterclaim was unliquidated, in the sense that the applicant did not sue for a specific sum. Consequently, taxation of instruction fees ought to have been done under **rule 2 of Schedule 7 of the Advocates (Remuneration) (Amendment) Order 2014** (as amended) which provides as follows:

***“2. In any suit or appeal by the nature of which no specific sum is sued for, claimed for, or awarded in the judgment (other than proceedings falling under paragraph 3 below); such costs as the court in its discretion but not***

***less than Kshs. 20,000 if undefended or unopposed and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed Kshs. 50,000.”***

- 9.** The applicant’s defence and counterclaim in **Chuka CMC E&L Case No E036 of 2024**, dated 16/10/2024, attracted a reply to defence and a defence to counterclaim, dated 25/10/2024. It therefore follows that the ill-fated counterclaim was a defended/contested claim. However, the suit was withdrawn before it reached the stage of getting-up for trial and actual trial. This is a factor that a taxing master would have to take into account when exercising discretion to assess instruction fees under **rule 2 of Schedule 7**.
- 10.** The applicant faulted the taxing officer for awarding instruction fees that exceeded the ceiling of Kshs. 50,000 provided for under **rule 2 of Schedule 7**. Does the ceiling of Kshs 50,000 cover defended causes? I do not think so. The ceiling of Kshs 50,000 is a figure contained in a proviso to the general rule. The general rule is that the taxing officer is granted discretionary power to award instruction fees that is reasonable. The above general power is fettered when the unliquidated claim is undefended. Where the unliquidated claim in a subordinate court is undefended, the maximum sum that the taxing officer may award as instruction fees is Kshs 50,000.
- 11.** In the cause giving rise to this reference, the ill-fated counterclaim that culminated in the bill of costs and ultimately in the impugned ruling was defended/opposed by

the respondent. Consequently, the applicant is wrong in contending that the instruction fees should not have exceeded Kshs. 50,000.

- 12.** Was the instruction fees supposed to be subjected to the 25% reduction provided for under **rule 1 (b) of Schedule 7**? I do not think so. The 25% reduction applies to liquidated claims covered under **rule 1**. Instruction fees relating to unliquidated claims is covered under **rule 2** and is not subject to the reduction contemplated under **rule 1**.
- 13.** For the above reasons, the court finds that there was a partial misdirection/error on part of the taxing officer to the extent that he relied on a value that did not exist in the pleadings.
- 14.** What should be the proper remedy in the circumstances? The discretion under **rule 2 of Schedule 7** is granted to the taxing officer. It has emerged that that discretion was never exercised. The taxing officer proceeded under a non-existent provision and relied on a non-existent value. In the circumstances, the proper thing to do is to let the taxing officer exercise the discretion by assessing instruction fees under **rule 2 of Schedule 7 of the Advocates (Remuneration) (Amendment) Order 2014**.
- 15.** In the end, the award of the Principal Magistrate Court on instruction fees in the ruling dated 7/1/2026 is set aside and the new taxing officer is directed to re-tax the item relating to instruction fees. The court is alive to the fact that it issued an order transferring the Lower Court file to the Environment and Land Court. Indeed, the transfer has been effected and

the suit has now been registered in the Environment and Land Court as **Chuka ELCL Case No E003 of 2026**. The re-taxation will, in the circumstances, be undertaken by the taxing officer of the Environment and Land Court in the now transferred cause.

- 16.** The error giving rise to this reference was committed by the taxing officer. In the circumstances, parties will bear their respective costs of the reference.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 23RD DAY OF APRIL, 2026.**

**B M EBOSO [MR]  
JUDGE**

**In the Presence of:**

Mr. Njeru Ithiga for the Respondent  
Applicant - Absent  
Court Assistant - Nicholas