



**Chohan v Mbandu & another (Civil Appeal (Application)
E221 of 2023) [2026] KECA 832 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KECA 832 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL (APPLICATION) E221 OF 2023**

HA OMONDI, JA

APRIL 28, 2026

BETWEEN

TRISHUL VIJAY CHOCHAN APPLICANT

AND

MARTIN ZAKAYO MBANDU 1ST RESPONDENT

KISUMU COUNTY GOVERNMENT 2ND RESPONDENT

*(Being an application against the ruling on taxation of the Court of Appeal at
Kisumu (L. Ogombe, DR.) dated 16th October 2025 in Civil Appeal No. E221 of 2023)*

RULING

1. Martin Zakayo Mbandu, the 1st respondent herein, filed a Bill of Costs dated 9th June 2025 seeking taxation of costs, following the judgment delivered on 24th January 2025, in which the appeal was dismissed with costs to the 1st respondent, and the judgment of the Environment and Land Court was upheld. The dispute related to Land Parcel No. Kisumu Municipality Block 7/757 and 758, in which the appellant had been ordered to vacate or be evicted. The Bill of Costs was drawn at Kshs.838,820, with the principal item being Kshs.600,000 as instruction fees.
2. The applicant filed submissions dated 3rd October 2025 opposing the Bill on grounds that it was exaggerated, not drawn to scale, and contrary to the applicable provisions of the Court of Appeal Rules, 2022, particularly the Third Schedule governing taxation of costs before this Court. The applicant suggested costs to be taxed at Kshs.5,600 only.
3. By a ruling dated 16th October, 2025, the taxing officer taxed the said bill of costs at Kshs.434,931/- in respect of the 1st respondent's Party and Party Bill of costs dated 9th June 2025; the significant sum being instructions fee taxed at Kshs.400,000/-. In her ruling, the taxing officer took into consideration



the applicable provision for taxation under Rule 9(2) of the Third Schedule to the Court of Appeal Rules, 2022, which she identified as:

- i. The nature and importance of the matter;
- ii. The amount or value of the subject matter;
- iii. The interest of the parties;
- iv. The general conduct of the proceedings; and any other relevant circumstances.

The reasons for the taxation were given as:

“...The value of the subject matter is discernible from the lower court’s judgment and the record, being the two parcels of land situated within Kisumu Municipality. Although the precise monetary value was not disclosed, I take judicial notice that property within the municipality commands considerable value, and the subject matter was therefore of substantial worth. In addition to the value and location of the property, the taxing officer has also taken into account the nature and importance of the subject matter, land being inherently of great significance to the parties. In the circumstances, the sum of Kshs. 1,500 proposed by the Appellant is manifestly low and does not reflect the weight and importance of the matter.

Having considered the record, the nature of the dispute, the pleadings, and the limited scope of argument on appeal, I find an award in the sum of Kshs. 400,000 is appropriate in the circumstances, as instruction fees.

4. Upon perusal of the said reasons the applicant was dissatisfied with the taxing officer’s decision on Item 1 (one) being the instruction fees, which in their view was overtaxed; and that the taxing officer failed to consider that the value of the subject matter was not ascertainable from the pleadings, judgment or record and therefore exercised discretion on an erroneous basis. Consequently, pursuant to rule 117 of the Court of Appeal Rules, 2022, the applicant has by the letter dated 28th October, 2025, referred the decision on instruction fees for review by the judge of the court with a view to having the same varied and appropriately reduced, on grounds that the figure is excessive.
5. The applicant admits that the amount proposed instructions was low in the circumstances; and ought to have been instructions chargeable in filing notice of appeal as under Rule 19 on the scale of costs and not instructions to oppose the appeal. Nonetheless, the appellant submits that the amount awarded by the taxing officer was still high in the circumstances and the relevant factors for award were not reasonably considered by the taxing officer. The taxing officer’s finding that the amount was awarded based on the provisions of rule 9(2) of the Court of Appeal Rules 2022 which provides that:
 - i. The fee to be allowed for instruction to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than one thousand shillings.
 - ii. The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.
6. According to the applicant, the taxing officer misapplied the afore-going in her finding that the value of the subject matter was discernible from the lower court’s judgment and the two parcels situated within



Kisumu Municipality which in her view commanded considerable value, such the subject matter was of a substantial worth. It is argued that this finding was erroneous, taking into account that the monetary value of the subject matter could only be ascertained from a valuation, which in this case was not provided nor available to the court for reference.

7. It is argued that that the taxing officer ought to have considered other factors reasonable to determine instructions fees having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances, to determine this amount rather than ascertain the value of the subject matter on a presumption, just because the properties were situated within Kisumu Municipality.
8. This Court is urged find it appropriate to consider the other factors under Rule 9(2) and vary the taxing officer's decision with an appropriate amount proposed at Kshs.50,000/-, noting that this appeal was expedited by the general conduct of parties at its prosecution; and the general conduct of the proceedings were not complex; that the Taxing officer also failed to consider that the appellant had already been condemned to pay costs before the superior court and this was relevant factor to consider in determining the appellant's capacity to bear the costs in the appeal.
9. The 1st respondent objects to the reference dated the 28th day of October, 2025 on grounds that the reference was in violation of rule 117(4) of the Court of Appeal Rules. The respondents submit that rule 117(4) of the Court of Appeal Rules is couched in mandatory terms; and provides that a reference from the decision of the taxing officer shall be filed within 7 (seven) days of the decision, yet in this instance, the impugned ruling was delivered on 16th October, 2025 and the reference was electronically filed on 5th November, 2025, clearly outside the prescribed seven-day period; that no leave was sought or obtained to file the reference out of time. It is the respondent's contention that where a statute or procedural rule provides a specific timeline, the same must be complied with strictly; that jurisdiction flows from compliance with the law, and the failure to comply renders the process incompetent ab initio; and the reference herein offends Rule 117(4):

An application for a reference may be made to the Registrar informally at the time of taxation or in writing within seven days thereafter.

10. It is argued that the Court is therefore divested of jurisdiction to entertain it; and that Article 159 of *the Constitution* cannot be invoked to sanitize non-compliance with mandatory procedural timelines. In this regard, reference is made to the holding by the Supreme Court of Kenya in *Nicholas Kiptoo arap Korir Salat vs. IEBC & 7 Others* [2014] eKLR held that extension of time is not a right but an equitable remedy that must be sought formally and granted. The Court is thus urged to find that in the absence of leave, there is no proper reference before court; and that the Reference is incurably defective and ought to be struck out with costs.
11. On a without prejudice basis, the respondent submits that in the event the court finds the reference competent, the same is devoid of merit, based on the case of *First American Bank of Kenya Ltd vs. Shah & Others* [2002] eKLR, which settled the law that a Judge will not interfere with the discretion of a Taxing Master unless:
 - i. The Taxing Master erred in principle; or
 - ii. The award is so manifestly excessive or so low as to amount to an error in principle.



12. It is thus contended that taxation of costs is a matter of judicial discretion; and the Court does not substitute its own view merely because it would have awarded a different figure; further, that the value of the subject matter was ascertainable and therefore the award of Kshs.400,000/= was excessive. The court is referred to *Joreth Ltd vs. Kigano & Associates* [2002] 1 EA 92, which indicated that, the value of the subject matter for purposes of taxation must be determined from the pleadings, judgment or settlement. Where the same is not expressly ascertainable from those documents, the Taxing Master is entitled to exercise discretion. That, if the pleadings did not specifically quantify the value or if the matter involved issues beyond a simple monetary claim, the Taxing Master was perfectly entitled to exercise discretion guided by:
- i. The nature and importance of the matter
 - ii. The complexity of the issues
 - iii. The interest of the parties
 - iv. The time spent
 - v. The general conduct of the proceedings.
13. It is submitted that there is no demonstration that the Taxing Master applied the wrong principles, considered irrelevant factors, or failed to consider relevant ones. It is further contended that an award of Kshs.400,000/= in an appellate matter cannot be said to be manifestly excessive in the absence of proof that the applicable scale was disregarded. The applicant merely asserts excessiveness without demonstrating: the correct scale that ought to have been applied, the specific mathematical or legal error, the principle that was. The appellants' Reference invites this Honourable Court to re-tax the Bill, which is not the function of a Judge on reference. Further, that in any event, the applicant has failed to demonstrate any error in principle or any basis upon which this Honourable Court can interfere with the learned Taxing Master's discretion. The respondents therefore pray that: The Reference be struck out with costs; or in the alternative the reference be dismissed with costs.
14. The applicant contends that the bill as taxed is manifestly excessive, specifically, the applicant takes issue with the instruction fee which had been proposed at Kshs.750,000/= and taxed at Kshs.400,000/=, contending that it is not in accordance with the applicable law; that there is no evidence to support the award.
15. The first issue to settle is whether the reference is properly before this Honourable Court as it relates to the court's jurisdiction. In the case of *Republic vs. Magistrate's Court, Mombasa: Absin Synergy Ltd (I.P)* (Judicial Review E033 of 2021) (2022 KEHC 10 (KLR) the term jurisdiction was defined to mean:
- “... the authority, which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The statute, charter, or commission under which the court is constituted imposes the limit of this authority. The authority may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited.”
16. Indeed, that authority flows from either *the Constitution* or Legislation or both; and a court of law cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by the law. [See The Supreme Court of Kenya in the case of *Benson Ambuti Adegwa & 2 others vs. Kibos Distillers Ltd & 5 others* (2020) eKLR. The basis for this concern is to be filed within 7 (seven) days of the decision. The impugned ruling was delivered on 16th October, 2025 and the reference was electronically filed on 5th



November 2025, outside the prescribed seven-day period; and that no leave was sought or obtained to file the reference out of time.

17. To place matters in context, I reproduce the provisions of Rule 117 (1) which is to the effect that:

A person who is dissatisfied with a decision of the Registrar in his or her capacity as taxing officer may require any matter of law or principle to be referred to a judge for the judge's decision and the judge shall determine the matter as the justice of the case may require.

Rule 117(4) provides that:

An application for a reference may be made to the Registrar informally at the time of taxation or in writing within seven days thereafter.

18. The operative word here is MAY, which is permissive; and directory rather than mandatory. However, the key concern is whether this permissiveness relates to the form in which the application ought to be made or whether it extends to the period within which the reference should be filed. A purposive and literal meaning demonstrates that it is the form to be used in pursuing a reference, which is permissive, but the seven- day period is statutory, and failing to meet it means the right to have the taxation reviewed is not automatically available. This would then mean that for the applicant to make any further step in this application, it would first have to file a separate application under rule 4 of the Court of Appeal Rules to seek leave of the court to file the reference out of time. The end result is that this court cannot go beyond the observation made as the reference filed out of time without a formal extension of time and it is thus rendered incompetent and is dismissed with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF APRIL, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

