

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC CASE NUMBER EO21 OF 2023

LEXO ENERGY LIMITED
PLAINTIFF

VERSUS

SAMUEL OTIENO NYANYA **1ST**
DEFENDANT


RULING

1. The application dated **22nd August 2025** seeks orders that the court do set aside the ruling and taxation of the bill of costs dated delivered on 18th August 2025, and also that the court do grant leave to the defendant/applicant to unconditionally defend the bill of costs dated 3rd June 2025. The application is premised on alleged non-service of the bill of costs on the applicant.
2. The applicant alleges that the bill of costs was taxed as drawn without considering the fact that the subject matter of the suit was non-liquidated and the subject of the suit was a lease agreement at a monthly rent of Kenya Shillings 550,000/-; that the taxation based on property value is erroneous in law and has resulted in a manifestly excessive and unjust costs against the defendant; that the defendant is desirous of challenging the taxation, but he has been denied an opportunity to do so due to non-service.
3. The plaintiff filed the replying affidavit of its Legal and Human Resources Manager Kelvin Gathara who deponed that the bill of cost was served before it was taxed. What is alleged by the bill of costs and the notice of taxation dated 11th June 2025 were served on

Wandai Matheka and company advocates by electronic mail on 3rd June 2025 vide the same electronic mail address appearing on the defense pleadings and on the present application; it is stated that the said advocate failed to attend court on 14th July 2025 when the matter came up for taxation and the bill was taxed *ex parte*. But the taxing master considered each item in the bill during the taxation exercise and did tax off some amount.

4. This court heard the highlights of both parties' submissions on 2nd February 2026.
5. The preliminary issue that this court must handle is whether the application is properly before it. The application is not a by any stretch of imagination a reference regarding costs. It seeks the setting aside orders made by a Deputy Registrar. Ordinarily setting aside applications are placed before the judicial officers who made ruling thereon for the proposed reconsideration of their decisions. The matter having been dealt with as a taxation, it is only the taxing master who should be dealing with the issue as to whether or not there was sufficient evidence of service to warrant setting aside. There is nothing to suggest that the placing of this matter before me was not an inadvertent administrative mishap and in those circumstances rather than strike out the application I find that it should be placed before the Deputy Registrar for her action.
6. Consequently, this court orders that the application dated **22/8/2026** shall be placed before the current Deputy Registrar of this court for hearing and determination.

**Dated, signed and delivered at Malindi on this 28th day of
April, 2026.**

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**