

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
IN THE MATTER OF
SIAYA ENVIRONMENTAL AND LAND COURT ELC MISC
APPLICATION NO. E030 OF 2025

AND

TAXATION OF ADVOCATE/CLIENT BILL OF COSTS DATED
12TH DAY OF MARCH 2025

BETWEEN

COUNTY GOVERNMENT OF
SIAYA.....APPLICANT

VERSUS

OLENDO ORARE & SAMBA ADVOCATES
LLP.....RESPONDENT

(Being an application against the decision/Ruling/Order of the Resident Magistrate's Court/DR (Hon.Mkala Jacob Punga) at Siaya dated 8th day of August,2025)

RULING

1 The subject of this ruling is the Chamber Summons Application dated 15/09/2025 and the Preliminary Objection dated 27/10/2025. The summons seeks the following verbatim orders;-

1) SPENT

- 2) That pending the inter partes hearing of this Application this Honourable Court be pleased to Stay the Execution of the Ruling on Taxation of the Applicant's Bill of Costs dated the 12th day of March,2025.
 - 3) That this Honourable Court be pleased to set aside the Ruling of the Taxing Master delivered by the Honourable Mkala Jacob Punga, Deputy Registrar, on the 8th day of August, 2025, save for the itemized items where consent was recorded between parties, if any.
 - 4)** That this Honourable Court be pleased to direct that the Respondent's Bill of Costs be taxed afresh in relation to the items which the Applicant contested.
- 2 The application is premised on the Supporting Affidavit of Joseph Omondi sworn on the 17th day of September,2025. It is deponed that the respondent received instructions to act on behalf of the Applicant in Siaya ELC Misc. Application No. E019 of 2022. The applicant opposed some items on the Bill of costs including but not limited to instructions fees and it was agreed to canvass the issues on the contested items by way of written submissions. That Taxing Master delivered at Ruling on the said Bill on the 8th August,2025 wherein he taxed the bill at Kshs.85,000,000.00/= as instructions fees among other contested items.
- 3 That being aggrieved by the Ruling on the instruction fees and other contested items in the Applicant's submissions,

he reasons for taxation of each item in the said ruling by the letter to this effect dated 13th day of August 2025. A copy is annexed as LO-1. That however, as at the time of filing this Reference the Taxing Master is yet to furnish the Applicant with reasons as requested in the letter.

- 4 That the Taxing Master fell in grave error by taxing the Bill in the manner he did by upholding the Respondent Bill on the issue of instruction fee, as well as other items. The applicant maintains that the bill as taxed specifically on the contested items is excessive in the circumstances impedes access to justice and amounts to unjust enrichment especially considering that the work that was done, if any, is not commensurate to the amount taxed in favour of the Respondent herein.

PRELIMINARY OBJECTION

- 5 The application precipitated a notice of preliminary objection dated 27th day of October 2025 on the grounds that this court has no jurisdiction to hear and determine this matter as the application dated 15th September, 2025 has been filed in contravention of Rule 11(2) of the Advocates Remuneration Order.

RESPONDENTS REPLY AFFIDAVIT

- 6 The respondent responded vide affidavit sworn on 27th day of October, 2025 by Raymond Olendo Advocate who depones as follows;-

- 7 That the Respondent filed their bill of cost dated 12th March, 2025 which was duly served upon the Applicant who entered appearance and participated in taking direction on how to dispose of taxation of the Bill of cost.
- 8 That Applicant requested for time to file a response to the bill of cost especially considering the amount the Respondent was claiming on instruction fees. That the matter was adjourned severally at the instance of the Applicant to allow them file a response to the bill of cost but they never filed any response.
- 9 That the court gave further directions in the presence of the Applicants for parties to file submissions. Thus, the bill of cost as presented was not opposed.
- 8 That the respondent herein filed an affidavit in support of the Bill of cost together with its submission and the court proceeded to tax the bill of cost at kshs.198,476,956. That in the Ruling delivered on 8th August 2025 the learned Magistrate gave a detailed ruling on each and every item that was taxed.
- 9 That Applicant herein having failed, refused and or neglected to respond to the bill of cost despite being given several opportunities filed a letter of objection dated 13th August 2025 seeking reasons for the taxation of each and every item taxed. That without getting a response to their letter stipulating the reason for taxation of each item taxed, the applicant proceeded to file the present reference on 17th September, 2025 which makes the present application fatally defective.

- 10 That its mandatory for an Applicant objecting taxation to annex the ruling giving reasons by the taxing master supporting the taxation as was stated by Mwilu J in **Muriu Mungai & Co. Advocates Vs. New Kenya Co-Operatives Creameries Ltd, Nairobi(Milimani) HMC No.692 of 2007**, however, the applicant herein has made a fatal error of failing to make the present application in the present file being SIAYA ELC MISC. APPLICATION NO.E025 of 2025 instead they have filed a whole new miscellaneous application and omitted to annex the ruling containing the reasons and decision being challenged thus incapacitating the court from determining whether the reasons for the taxed item was sufficient. A copy of the ruling delivered on 8th August,2025 is annexed.
- 11 THAT the application filed herein has been filed prematurely as the taxing master has not rendered a response to the Applicant's letter dated 13th August,2025 detailing the reasons for the taxed items and thus should be dismissed.
- 12 That the applicant has filed this application out of time without leave of court for extension of time as the ruling being challenged herein delivered on 8th August 2025 contained the reason for the items taxed and the applicant was supposed to file the present application within 14 days of delivery of the said ruling however, they filed more

that 30 days later which makes the application and or reference a nullity.

- 13 That the Applicant herein had entered into a Public - Private Partnership with an investor for the reclamation and development of the Yala Swamp into a commercial farm covering over 50,000 acres meant to transform Siaya County into an economic hub and a center for agriculture worth over 50,000 acres (herein “the Swamp Land”). The estimated value of the Swamp land is Kshs.15 billion as per the valuation report by the Government valuer. The Applicant instructed the Respondent to defend this interest and the investment as the swamp is currently mechanically controlled and managed through weir, and it needs an investor to manage it otherwise it will flood people’s homes and farmland all the way to Busia County. A copy of the said valuation report is attached.
- 15 That the petition also sought the impugning of allocation of the swamp land to the area communities, the Kenya Wildlife Service and the private investor where the Applicant herein had been granted 10% ownership on the investment worth billions of shillings.
- 16 The petition involved six parties of whom were the National Government, The County Government, and Independent Constitutional Commission and a private company of repute and high investments in the Country. The applicant herein, through the National Land Commission, is the custodian of the Swamp Land.

- 17 The complexity of the Petition and its far-reaching effects as demonstrated in the particulars of the Service Rendered, under item 1 of the Bill. Moreover, the petition also delved into the sensitivity and complexities of dealing with public and/or community, which has in extreme cases led to loss of life and properties.
- 18 Communities and public Land rights have hitherto not been fully and efficiently invoked until the 2010 constitution and which is a novel area of constitutional law litigation and/or public interest litigation vis a vis how authorities charged with the management of public and/or community land are regulated.
- 19 The petition also sought the distinction of whether the Swamp Land was Community Land or Public Land to determine the applicable Law to the dispute. The petition also sought the intricate and delicate balancing act between economic and social development of the larger County of Siaya and the revenue to the National Government and the limited interests of the community.
- 20 That to demonstrate the vast effect, the complexity, novelty of the matter in the Siaya ELC Misc.App No. E019 of 2021 the economic value of the Yala Swamp as at the year 2010 was Kshs.83,065,468,670/= as demonstrated at page 38 of the Kenya Institute of Public Policy and Analysis Research (KIPPRA); title to Convert the Yala Wetland; An Economic Valuation Research on paper No.116 Of 2010 – the research paper is annexed.

- 21 That the expansive nature and complexity and value of the Yala Swamp affirmed by the KIPPRA report above was further demonstrated by Onyango O. Dedan, The Economic Benefits Yala Wetlands Resources in the Lake Victoria Basic Threats and Management Strategies for Sustainable Development in the African Journal of Education Science and Technology of April, 2023, Vol 7. No. 3. A copy of the journal is annexed.
- 22 That the importance, the expansive land cover and the vast ecosystem of the Yala Swamp of 51,267.2 acres is confirmed by Nature Kenya, Yala Swamp Ecosystem Service Assessment Report; Balancing Development and Conservation in Kenya's largest fresh water wetland in the East Africa Nature History Society, 2015.
- 23 The applicant states they also obtained copy of the proposal by Lake Agro Limited to the County Government of Siaya on what they will provide for the community if they are allocated the suit parcel of land which includes building schools, hospitals, roads and supporting the sugarcane out growers among other things. The copy is attached.

SUBMISSIONS

- 24 The application and the preliminary objection were heard concurrently by way of written submissions.

ANALYSIS AND DETERMINATION

PRELIMINARY OBJECTION

25 According to the Black Law Dictionary a preliminary objection is defined as:

‘In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....’

26. In **Nitin Properties Ltd V Singh Kalsi & Another [1995] eKLR** the court stated thus; -

'A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.'

27 The court in **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors Ltd (1969) EA 696** described a preliminary objection as hereunder; -

'So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.'

28 The preliminary objection is raised on the strength of Rule 11 of the Advocates Remuneration Order which provides for the process to be followed where a party desires to file

an objection to a decision of taxing master and appeal thereof to the Court of Appeal and reads; -

Objection To Decision On Taxation And Appeal To Court Of Appeal

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.

The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

Appeal.

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.

- 29 Arising from the above all that the court is required to do is to look at the procedure and if it has been met as against the pleadings filed and the court need not go into the facts of the case to determine the outcome of the preliminary objection. It is the finding of this court that the preliminary objection is properly raised.
- 30 Coming back to the provisions of Rule 11 above, it is not in dispute that a ruling dated 8/8/2025 was delivered by the Hon Mkala in his capacity as the Deputy Registrar ELC and taxing master. The applicant has filed the present reference being aggrieved by the decision of the taxing master.
- 31 It has been contended that the applicant having not participated in the proceedings regarding the Bill of Costs the subject of this reference is barred from raising any issue against the decision of the taxing master. I respectfully disagree with this proposition. A decision has been rendered by the taxing master anyway, and the Respondent is aggrieved by the same and as long as the respondent is aggrieved it is entitled to audience on the same, subject to compliance with the relevant rules and procedures.

- 32 The application is dated 15/9/2025. The impugned ruling was delivered on 8/8/2025. The applicant states that being aggrieved it sought reasons for taxation of each item vide letter dated 13/8/2025. This is not in dispute. The letter is made pursuant to the provisions of Paragraph 11 of the Advocates Remuneration Order. That since then the taxing master has not furnished the applicant with reasons as requested.
- 33 The applicant has submitted that the taxing officer had 14 days to respond to the request which he failed to do. That this failure does not bar the applicant from filing a reference. This argument is correct and I respectfully agree. However, the issue is the period within which the reference ought to be filed after realisation there is no answer forthcoming from the taxing officer. Should the applicant wait indefinitely to file the reference?
- 34 The above question was aptly answered in Misc. Application 343 of 2011 **Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Limited (ruling) (2012) eKLR** and **Kerendi Manduku & Company Vs Gatheca Holdings Limited Nairobi(Milimani) HCMA No. 202 of 2005** cited by the respondent.
- 35 Any reference filed beyond the 14 days and if the aggrieved party still desires to file the reference, they would first have to seek leave of the court to file the reference out of time as required under Rule 11(4).

- 36 The reference herein clearly has been filed out of time even excluding the 14 days apportioned to the taxing officer to give the response.
- 37 Clearly leave was required and which has not been sought. I have read the decisions cited by the Applicant none of them have made away with the requirement for leave to file a reference out of time.
- 38 For the above reasons the present application cannot be cured. It is defective in the absence of leave of this court. For this reason the court will not delve into the merits of the decision of the taxing master.
- 39 The application and L.Misc E030 of 2025 is hereby struck out. There will be no orders as to costs.

It is so ordered.

Dated, signed and delivered at Siaya this 8th day of May 2026

HON. A. E. DENA

JUDGE

8/05/2026

**Ruling delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Mr. Okanda appearing alongside Mr. Were for the Applicant

Mr. Mario Holding brief for Mr. Olendo for the Respondent.
Court assistant: Nelima Janepher

ORIGINAL