

**REPUBLIC OF KENYA**

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

**ELC L OM NO. E008 OF 2025**

**EURRY MABONGA T/A  
MABONGA & CO. ADVOCATES .....**

**APPLICANT/RESPONDENT**

**VERSUS**

**AGRICULTURAL DEVELOPMENT  
CORPORATION ..... 1<sup>ST</sup>**

**OBJECTOR/APPLICANT**

**AGRICULTURAL FINANCE  
CORPORATION ..... 2<sup>ND</sup>**

**OBJECTOR/APPLICANT**

**ADC/AFC DEVELOPMENT  
HOUSE LLP ..... 3<sup>RD</sup> OBJECTOR**

**/APPLICANT**

**RULING**

1. What is before the Court for determination is the Objectors' Chamber Summons application dated the 14<sup>th</sup> October 2025 in which they seek the following Orders:

**ELC L OM NO. E008 OF 2025**

**Ruling**

**a) Spent.**

**b) Spent.**

**c) That this Honorable Court be pleased to set aside the whole decision of the Hon. Deputy Registrar given on the 18<sup>th</sup> September 2025.**

**d) That the costs of this Application be in the cause.**

2. The application is premised on grounds on its face and on the supporting affidavit of ROSE MUOHI, the Property Manager of the 3<sup>rd</sup> Objector. She avers that the Deputy Registrar had no jurisdiction to tax the Bill of costs in **ELC Misc. Application No. E122 OF 2025**. Further, that in his Ruling dated 18<sup>th</sup> September 2025, the Deputy Registrar failed to consider the issues raised by the Respondents on account that the Applicant had no valid instructions to act for the Objectors.

3. She avers that the issues of retainership of an advocate's services by a client when in dispute can only be determined by a Judge of the Environment and Land Court, hence the error in the Deputy Registrar's Ruling. Further, that the Deputy Registrar failed to acknowledge that the Objectors were not served with the substantive Bill of Costs and they were not aware that the said Bill of Costs had been transferred from the High Court Civil Registry for want of jurisdiction to this Court, thus his decision ought to be set aside and substituted with an Order striking out the said Bill of Costs.
4. The application is opposed by the Applicant/Respondent vide the replying affidavit of EURRY S. MABONGA. He avers that the assertion that the Objectors were not served is incorrect and misleading as they participated in the impugned taxation proceedings by filing a replying affidavit and making submissions before the Taxing Officer. Further, that the taxation was carried out under the Advocates (Remuneration) Order and in accordance with the procedure

prescribed thus the Deputy Registrar had jurisdiction to tax the Bill of Costs. He contends that the assertion that the Retainer is in dispute is a tactical afterthought.

5. The application was canvassed by way of written submissions.

### **Submissions**

6. The Objectors insist that the Deputy Registrar did not have jurisdiction to tax the impugned Bill of Costs since there was a dispute as to the Retainer as there was no Advocate - Client relationship between the Applicant and themselves: Further that pursuant to Rule 12 of the Advocates Remuneration Order 2014, the Taxing Officer was bereft of jurisdiction to tax the said Bill of Costs and ought to have referred it to this Court. Since the Applicant's Bill of Costs was never served upon them, there is no cause of action against them.

7. To buttress their averments, the Objectors relied on the following decisions: **Mugambi & Co. Advocates v John Okal Ogwayo & Another (2013) eKLR; Wafula Simiyu & Co. Advocates v East Land Hotel Limited (2016) eKLR; Wilfred N. Konosi T/A Konosi & Co. Advocates v Flamco Ltd, [2017] eKLR; Mereka & Co. Advocates v Zakhem Construction (Kenya) [2014] eKLR and Ochieng Onyango, Kibet & Ohaga Advocates v Akiba Bank Ltd [2007] eKLR.**
8. On its part, the Applicant/Respondent submits that having fully participated in the impugned taxation proceedings, the Objectors should not be permitted to frustrate proceedings with belated, dishonest claims of non-service as participation cures any alleged defect of service. To this end, it relied on the case of **Shah v Jamnadas [1959] EA 838.**
9. On whether the Taxing Officer had jurisdiction to tax the impugned Bill of Costs, it submits that pursuant to paragraph

10 of the Advocates (Remuneration) Order, a Deputy Registrar is the statutory domain of the Taxing Officer. It reiterates that it offered legal services to the 3<sup>rd</sup> Respondent, which is a limited liability partnership with legal capacity to enter into legally binding contracts and in any case, the lack of Retainer must be proved by the party objecting and the Respondents did not prove it.

- 10.** To buttress its averments, the Applicant relied on the following decisions: **Omulele & Tollo Advocates v Mount Holdings Ltd [2016] eKLR; Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR** and **Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd [2006] eKLR.**

### **Analysis and Determination**

- 11.** Upon consideration of the instant Chamber Summons application including the respective affidavits and rivalling submissions, the only issue for determination is whether the

decision of the Hon. Deputy Registrar (Taxing Officer) issued on the 18<sup>th</sup> September 2025 in Nairobi Misc. Application No. E122 of 2025 should be set aside.

**12.** The Objectors raise several reasons by which they seek to challenge the Taxing Officer's decision issued in **Nairobi Misc. Application No. E122 OF 2025**, being that they were not served with the Bill of Costs, that the Deputy Registrar had no jurisdiction to tax the said Bill of Costs because there was no Client-Advocate relationship between the Applicant and themselves. Further, that there was a dispute as to the Retainer. The Applicant on the other hand argued that the Retainer between them was not objected to and that the Deputy Registrar had jurisdiction to tax the impugned Bill of Costs.

**13.** On whether the Objectors were served with the impugned Bill of Costs, the Court will consider the affidavit of service and the record in **Nairobi Misc. Application No. E122 OF**

**2025** to ascertain the issue of service including participation. However, I opine that the main issue in contention is whether there existed a Retainer between the Applicant and the Objectors.

**14.** The Respondent insists that the Objectors were served and that they participated in the suit by filing pleadings and making submissions. I note the Objectors filed their Memorandum of Appearance on the 18<sup>th</sup> July, 2025. Further, they also filed their replying affidavit sworn by ROSE MUOHI on 18<sup>th</sup> July, 2025. They further filed written submissions on the 20<sup>th</sup> August, 2025. The question I ponder is that if indeed they were not served as claimed then how come they fully participated in the aforementioned miscellaneous cause. To my mind, I find that the Objectors' participation in the aforementioned miscellaneous cause, cured any alleged defect of service.

15. On the issue of Retainer, it is not in dispute that there was a relationship between the Applicant and the objectors but whether there was a Retainer or not, needs to be determined. In **Ochieng’ Onyango, Kibet & Ohaga Advocates v Akiba Bank Limited [2007] KEHC 2677 (KLR)** it was stated that:

*“...the burden of proof to establish the retainer is always on the shoulder of the Advocates. That is the correct proposition of the law. And more weight will be given to the contention of the client that he did not instruct the Advocate to act for him. I hasten to add that the yardstick for such proof is not beyond reasonable doubt. Infact it is the normal the perimeter of balance of probability.”*

16. Further, the Court of Appeal held as follows in **Omulele & Tollo**

**Advocates -vs- Mount Holdings Limited [2016] eKLR:**

*“As with any other agreement, the onus of proving the existence of the retainer agreement*

*lies with he that wishes to enforce it. This is in line with the ordinary rules of contracts and evidence.”*

17. On the contention that the Deputy Registrar did not have jurisdiction to tax the impugned Bill of Costs on the basis that there was a dispute concerning Retainership, the Court of Appeal stated as follows in **Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited** [2017] KECA 431 (KLR).

*“As a Judicial Officer sitting to tax a bill of costs between an advocate and his or her client, a taxing officer must determine the question whether he/she has jurisdiction to tax a Bill if the issue of want of advocate/client relationship is raised. An allegation that the advocate/client relationship does not obtain in taxation of an advocate/client Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question. A decision in taxation where an advocate/client relationship does not exist is a nullity for want of jurisdiction.”*

**18.** From the facts before Court including the record in **Nairobi Misc.**

**Application No. E122 OF 2025**, while associating myself with the decisions cited, I find that there was indeed no Retainer nor an Advocate Client relationship between the Applicant and Objectors. I further find that the Taxing Officer erred in principle when he failed to take into account that the Objectors' arguments that there was no Retainer between them, and that the Applicant's interest was conflicted with that of the Objectors and a breach of fiduciary duty including a violation of the Advocates (Professional Conduct) Regulations as well as Clauses 4.2 and 6 of the 3<sup>rd</sup> Respondent's Management Committee Charter. In my view I hold that the Taxing Officer ought to have found that the Applicant had benefitted from three revenue streams being his monthly salary as a Legal Officer of the 2<sup>nd</sup> Respondent, sitting allowances whilst appearing for meetings of the 3<sup>rd</sup>

Respondent and purported legal fees claimed from the Tenants of the 3<sup>rd</sup> Respondent.

- 19.** In the foregoing, I find the instant Chamber Summons application dated 14<sup>th</sup> October, 2025 merited and I will proceed to set aside the whole decision of the Hon. Deputy Registrar given on the 18<sup>th</sup> September 2025.
- 20.** Each party to bear their own costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS  
7<sup>TH</sup> DAY OF MAY, 2026**

**CHRISTINE OCHIENG  
JUDGE**

**In the presence of:**

Ms Kugo for Objectors/Applicants

Court Assistant: Joan

ORIGINAL