

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT KILGORIS
ELCL MISC E022 OF 2025

JAMES LESHAN KORIO.....1ST
APPLICANT

JOAB LEPOSE.....2ND
APPLICANT

VERSUS

MOSES L. KORINKO.....1ST
RESPONDENT

MUJAID KUROMONGI.....2ND
RESPONDENT

SIMEON TIEPOON.....3RD
RESPONDENT

DAVID OLE NTUNKAI.....4TH
RESPONDENT

RULING

1. The Ruling is in respect of the reference dated 20.11.2025 initially filed by the Mr. James Leshan Korio as acting in person but who later instructed a firm of Advocates to represent him.
2. The grounds in support of the reference were 15 in total and *interalia*
 - (i) That there was non-service of the Bill of costs prior to the taxation.
 - (ii) The Bill of costs were taxed contrary to settled principles, which rendered the award excessive, unjustified and not in compliance with the Advocates Remuneration order.
3. The Applicant thus sought for orders that the certificate of taxation dated 10th day of November 2025; be set aside; fresh taxation of the reference and a stay of execution of the costs.

4. The Respondent filed a Replying affidavit albeit out of time and stated *inter alia*,
 - (i) that the reference ought to have been filed in the parent file to wit Kilgoris ELC Petition No. E005/2024 and not by way of this Miscellaneous application. That the Bill of costs was served through email address disclosed in their pleadings wit, jmleshan@gmail.com and petersagwe3@gmail.com.
 - (ii) That despite the service no response was filed to the Bill of costs resulting to the same being taxed as drawn.
5. The Reference was argued by way of written submissions since Mr. Kitonga's call dropped on the date that the matter was to proceed by way of oral submission.
6. Only the Applicants filed submissions, they submit that there were procedural irregularities that rendered the taxation null and void. The irregularities cited revolved around the issue of non-service of the Bill of costs.
7. The Applicants placed reliance on the decision in the case of Republic Vs. Taxing Master High court at Nairobi Civil Case No. 582/2011) but a copy of this decision was not supplied).
8. The Applicant submitted further that no reasons were given for taxation and that the instruction fees were manifestly high so as to invite a finding that the figure was arrived at on the wrong principles.
9. On the strength of the above and a host of other authorities they cited the Applicants urge the court to allow the reference.
10. The Applicant further submitted that the taxation was done within one week of filing contravening the 14 days within with the Order 22 Rule 10 of the Civil Procedure Rule.

Issues for Determination

11. The issues up for determination arising from the reference is;
 - (i) whether or not the reference is competent?

- (ii) Whether or not the reference is merited, and
- (iii) What reliefs ought to issue.

Analysis and Determination

12. On issue No. 1, the court finds that the Reference was filed timeously on 20th of November 2025 while the Ruling on the taxation had been delivered on 10th of November 2025. The certificate of taxation itself was signed on 2nd December 2025.
13. The Reference having been filed timeously under Rule 11 of the Advocates Remuneration Order, the same is competent and the court shall dwell on the other issues raised in the reference especially the issue of non-service of the Bill of costs before determining the other issues.
14. The gravaman of the reference is that there was no service of the Bill of costs. The Respondent in his Replying affidavit deposed to service of the Bill of costs and taxation notice via email.
15. He annexed an affidavit of service sworn by Brian Mulisa advocate to that effect. The said affidavit of service did not however annex a copy of the email sent to the Applicants as proof of service upon them.
16. As noted earlier the Respondents filed a Replying affidavit but did not file submissions on the reference.
17. The onus was on the Respondents to prove service of the Bill of costs. This they did not do, and it lends weight on the issue of non-service as raised by the Applicants. The authority cited by the Applicants was not supplied to court, neither does it exist on the kenyalaw.org website.
18. In view of the non-service, the Ruling in respect of the taxation was thus exparte, and thus applying the general principles of setting aside exparte orders for non-service, as restated in the decision in the

case of James Kanyita Nderitu and Another Vs. Marlos Philotas Ghikas and Another Civil Appeal No. 6/15.

19. Where in the case of non-service as in this case, the court ought to set aside the order *ex debito justitiae* and having found that there was no service, the court shall not consider other issues but hereby allows the application in terms that;
- (i) The Ruling in respect of the taxation delivered on 10th November 2025 is set aside in its entirety.
 - (ii) The Bill of costs dated 24th of October 2025 shall be taxed afresh before any other taxing Master, other than Hon. W.C Waswa; in this regard the said Bill of costs shall be served upon the Respondents before the taxation Notice is issued.
 - (iii) Costs of the reference to abide by the outcome of the taxation.

Dated at Kilgoris this 14th day of May 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA – Sylvia/Clara

Ms. Kitonga for the Applicants

Mr. Mulisa for Respondents