



Mabonga t/a Mabonga & Co. Advocate v Agricultural Development Corporation & 2 others (Environment and Land Originating Motion E014 of 2025) [2026] KEELC 2747 (KLR) (7 May 2026) (Ruling)

Neutral citation: [2026] KEELC 2747 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND ORIGINATING MOTION E014 OF 2025**

MN KULLOW, J

MAY 7, 2026

BETWEEN

EURRY MABONGA T/A MABONGA & CO. ADVOCATE APPLICANT

AND

AGRICULTURAL DEVELOPMENT CORPORATION 1ST OBJECTOR

AGRICULTURAL FINANCE CORPORATION 2ND OBJECTOR

ADC/AFC DEVELOPMENT HOUSE LLP 3RD OBJECTOR

RULING

1. What is before the Court for determination is the Applicant's Chamber Summons application dated 14th October 2025. The Applicant seeks orders to stay the execution and set aside the decision of the Taxing Master delivered on 18th September 2025, and that the costs of the application be provided for.
2. The application is premised on the grounds set out therein and is supported by the affidavit sworn by Rose Muohi. The Applicant deposes that the Taxing master had no jurisdiction to tax the bill of costs being that the respondent had raised issues of their not being any agreement as between the respondent and objectors hence had been acting without instructions. That the issues of retainer as raised could only be adjudicated upon by the Environment and Land court. That further the applicant herein were not served with the bill of costs. That the objections were raises to the deputy registered on the ruling which objections had not been responded to hence filing of this application.
3. The Respondent opposed the application through a replying affidavit sworn on 9th December 2024. He deponed that the applicant should not be entertained on the application. He further deponed that the averments are misleading being that the applicant entered appearance and fully participated in the taxation proceedings before the deputy registrar.



That further the assertion that the Registrar had no jurisdiction to tax the Bill of Costs is legally incorrect when the taxation was carried out under the Advocates (Remuneration) Order and in accordance with the procedure prescribed by that Order.

That the Deputy Registrar retains jurisdiction unless the retainer dispute is real, and incapable of determination which was not the case here.

4. The matter was canvassed by way of written submissions, the applicant filed submissions dated 24th March 2026 whereas the Respondent filed submissions that are undated both parties reiterating the contents in their respective pleadings.
5. Upon considering the application and the filed submissions the only issue for determination is whether the court should stay the execution of the ruling delivered on 18th September 2025.
6. The applicant has challenged the taxation ruling based on lack of jurisdiction of the taxing officer to tax a bill of costs where retainer is challenged. It asserted that the issue of retainer must first be determined by the court before the bill is taxed. I have perused through the pleadings filed in relation to the bill of costs. The applicant herein filed a replying affidavit dated 18th July 2025 which affidavit raised the issue of the respondent not being in any contractual relationship with the applicant and that no instructions had been issued to the firm to follow up on rent arrears through his Law firm or in the preparation of leases. From the said affidavit, it is clear that the applicant raised the issue of retainer. The issue of whether or not an advocate was duly retained in the case of Kenindia Assurance Co Limited -Vs- Olendo [2023] KEELRC 2638. The Court held that a Taxing Officer acts without jurisdiction if they proceed to tax a Bill where the retainer is disputed. The proper course of action would have been to determine on the issue of retainer first as a Taxing Officer has the jurisdiction to hear and determine the issue of retainer as it is a core issue on whether a matter can be sustained or not. I am guided by the decision of the Court of Appeal in Wilfred N. Konosi t/a Konosi & Co. Advocates -Vs- Flamco Limited NRB CA Civil Appeal No. 154 of 2014 [2017] eKLR where the Court in holding that the Deputy Registrar had jurisdiction to determine, as a preliminary issue of whether an advocate/client relationship existed as a prelude to taxation held as follows: -

“The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in *Taparn vs Roitei* [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the Advocates Remuneration Order confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered. The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.

7. In the impugned ruling the issue of retainer has not been addressed and the taxing master going ahead to tax the bill of costs without 1st addressing the issue of retainer, therefore acted outside of its jurisdiction.



Final disposition

Consequently, I find merit in the Notice of Motion application dated 14th October 2025 and I exercise my discretion and make the following orders;

- i. The impugned orders in the ruling dated 18th September 2025 are hereby set aside pending the determination of this reference
- ii. That the issue of retainer shall first be determined by a different Taxing Master before proceeding to the quantum of costs
- iii. Parties shall meet their own respective costs to this application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 7TH DAY OF MAY 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Ms. Kuso for Munene _ for the Applicant

N/A for Respondent

Philomena W. Court Assistant

