



**Munga & 9 others v Munga (Civil Appeal 172 of 2019)
[2024] KEHC 15275 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15275 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 172 OF 2019
A MSHILA, J
NOVEMBER 22, 2024**

BETWEEN

**GEOFFREY KARONGO MUNGA & 9 OTHERS & 9 OTHERS & 9 OTHERS & 9
OTHERS & 9 OTHERS APPLICANT**

AND

GEOFFREY NJUGUNA MUNGA RESPONDENT

RULING

Background

1. Before the Court is the Amended Chamber Summons dated the 16th day of July, 2024 which was brought under the provisions of Rule 11 (2) of the Advocates Remuneration (Principal) Order, Order 22 Rule 25 of the Civil Procedure Rules and all other enabling provisions of the law; the Applicant sought for orders that;
 - a. Spent
 - b. There be a stay of execution of the decision of the Deputy Registrar issued and dated the 10/07/2024 pending the hearing and determination of this application;
 - c. The decision of the taxing master in Thika ELC MISC. 9 of 2021 delivered on 10/07/2024 be set aside in its entirety and the Bill be referred back for fresh taxation before a different taxing master/DR.
 - d. The costs of this Application be borne by the Respondent.
2. The Application was supported by the sworn Affidavit of Geoffrey Karongo Munga who stated that the Deputy Registrar fell in error of principle by taxing the Bill as if the Applicant was an advocate of the High Court yet he was acting in person.



3. The Deputy Registrar failed to consider the submissions of the Applicant herein in opposition to the Bill which was a glaring error in principle; The Applicant was condemned unheard contrary to the dictates of *the Constitution* on fair hearing and the right to be heard;
4. The taxed amounts were exorbitantly and manifestly high for a simple application seeking reinstatement of a dismissed suit;
5. The Applicant prayed for the setting aside and re-taxation of the Bill as all the items therein were erroneously taxed on wrong principles of law;

Applicants Submissions

6. It was the Applicant's argument that the matter related to Thika CMCC No. 1281 of 1997 and the Respondent proceeded to file a miscellaneous application in the Kiambu High Court and had it taxed thereat instead of at Thika ELC; the taxing master having no jurisdiction therefore the Bill of Costs as filed was incompetent ab-initio;
7.type in details.....

Respondents Submissions

8. In response it was the Respondent's case that the advocates remuneration order is only applicable to advocates or to parties who are represented by advocates as such a party who is not an advocate cannot claim costs on the basis of the advocates remuneration order. In the alternative, the appeal in question was said to be a simple and on a single issue as such the amount of Kshs. being claimed is inordinately high more so for a party acting in person. The respondent examined specific items and in the end it was submitted that the bill of costs should be taxed at Kshs. 3,417.50.
9. The Respondent further filed his supplementary submissions in regard to the 28 items introduced in the consolidated bill. The second part of the bill was said to be premature as CMCC 265 of 2016 – Kiambu being the case where it emanates is still pending for hearing and determination as the same was reinstated by the high court in civil appeal no. 172 of 2019. It was submitted that the costs for the notice of motion cannot be taxed in the high court as the same should be claimed in CMCC No. 265 OF 2016. Further it was submitted that the deputy registrar lacks jurisdiction to entertain the bill in respect of the 28 items as CMCC NO. 265 OF 2016 is a lower court file. In the alternative, the respondent reiterated that the applicant being a party acting in person cannot claim under the advocates remuneration order. Reference was made to the case in Milimani ELC 124 and 125 OF 2021. The respondent reiterated his earlier submissions being that there were no complex issues in the notice of motion and after analyzing each item it was submitted that the second part of the bill touching on the notice of motion dated 10th April, 2019 should be struck out with costs to the respondent.
10. It is therefore just and fair that leave be granted to enable filing of a Bill of costs for disbursements.

Issues for Determination

11. After reading the submissions filed herein this court has framed the following issues for determination which are;
 - i. Whether the taxing master applied the wrong principles during the taxation of the Bill of Costs;
 - ii. Whether there are sufficient grounds to warrant interference with its decision.
 - iii. Whether the Ruling of the Taxing Officer delivered on 10/07/2024 should be set aside



Analysis

Whether the taxing master applied the wrong principles during the taxation of the Bill of Costs; whether there are sufficient grounds to warrant interference with its decision; whether the Ruling of the Taxing Officer delivered on 10/07/2024 should be set aside

12. The undisputed facts are that a Bill of Costs dated 15th July, 2024; The Bill was taxed and the Ruling of the Deputy Registrar dated 10/07/2024 gave rise to this reference; Instead of filing the Bill of Costs in the parent file HC.Civil Appeal No.172 of 2019 the Applicant moved the court by way of a Miscellaneous matter;
13. It is also not disputed that the Geoffrey Njuguna Munga was not an Advocate of the High Court of Kenya but a layman who acted in person both in the lower court matter and on appeal;
14. It was the Applicants contention that the Bill of Costs dated 15/07/2022 was wrongly filed and the taxed costs awarded by the Taxing Master was meant for an Advocate as opposed to a lay person.
15. Therefore, the question then arises as to whether the Deputy Registrar had the jurisdiction to tax an Advocate/Client Bill of Costs as opposed to one related to Party and Party Costs;
16. The locus classicus on jurisdiction is the celebrated case of Owners of Motor Vessel ‘Lilian S’ vs Caltex Oil (Kenya) Ltd [1989] KLR 1 where the Court of Appeal held;

‘I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’
17. The jurisdiction of this court to intervene in the decision of Taxing Officer, is limited. In Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR the Court of Appeal explained that,

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”
18. This court can only interfere in the decision of the taxing master if its shown that:
 - a) The taxing master has misdirected himself;
 - b) Applied wrong principles; and
 - c) The amount taxed is extremely excessive or extremely low.
19. In light of this holding, the Bill of Costs as filed was incompetent ab-initio as it was not filed within the substantive suit but was filed as a miscellaneous application; this court is satisfied that the Taxing Officer applied the wrong principles of law in taxing a matter as an Advocate /Client Bill of Costs whereas the Applicant therein being a layperson was only entitled to disbursements;
20. From the material placed before the court it is satisfied that the Applicant has established that the Taxing Officer misdirected herself and committed an error in well settled principles of law by



proceeding to taxation of costs in a matter in an erroneous file and used the wrong Schedule thereby arrived at the wrong decision; the taxed costs are found to be manifestly high and excessive and there are sufficient reasons to warrant interference with the taxing masters decision;

21. This Court is satisfied that it is in the interest of justice and fairness that the Court grants the orders sought as there are good reasons for setting aside the Ruling delivered on 10/07/2024.

Findings and Determination

22. In the light of the foregoing this court makes the following findings and determinations;
- i. The application is found to have merit and it is hereby allowed; the taxing master is found to have applied the wrong principles of law in taxing the Bill of Costs;
 - ii. The decision of the taxing master made on 10/07/2024 is hereby set aside; The Applicant is at liberty to have his costs and disbursements taxed/or assessed within the substantive suit under the correct Schedule.
 - iii. There shall be no order as to costs on this application.

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 22ND DAY OF NOVEMBER, 2024.

HON. A. MSHILA

JUDGE

In the presence of:

Sanja – Court Assistant

Gachara – for Applicant

Lawrence Munga Njuguna – for Respondent.

