



**Patel (Suing on Behalf of the Estate of Vishnubhai Ghanshyambhai Patel - Deceased) v Patel (Sued in her Capacity as the Administrator of the Estate of Surendrababu Babubhai Patel) (Environment & Land Case 19 of 2021) [2023] KEELC 17685 (KLR) (15 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17685 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND CASE 19 OF 2021**

**AK BOR, J**

**MAY 15, 2023**

**BETWEEN**

**ALPANA KUMARI VISHNUBHAI PATEL (SUING ON BEHALF OF THE ESTATE OF VISHNUBHAI GHANSHYAMBHAI PATEL - DECEASED) ..... PLAINTIFF**

**AND**

**PURVI PATEL (SUED IN HER CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF SURENDRABABU BABUBHAI PATEL) ..... DEFENDANT**

**RULING**

1. What falls for determination is the Defendant's application dated 22/03/2023 seeking leave to appeal against the ruling of this court delivered on 14/03/2023 on the reference objecting to the taxing officer's decision of 26/9/2022. The court referred the bill back to the Taxing Officer for re-taxation. The Defendant is aggrieved by the portion of the ruling stating that the applicable scale for taxation of the instructions was Schedule 6 of the *Advocates Remuneration Order* (ARO) on the category applicable to other matters appearing after paragraph (j). The application was made under paragraph 11(3) of the *ARO*.
2. The Defendant contended that jurisprudence would be made richer upon a decision of a more superior court as to the circumstances under which it is deemed that the value of the subject matter of a suit is determinable or not from the pleadings in terms of paragraph 1 (a) of Schedule 6 of the *ARO* and where the subparagraph headed "other matters" can be invoked.
3. She urged that her intended appeal was arguable and relied on the proposed appeal. The Defendant's main contention is that the taxation of the instructions fees in the bill of costs should have been based on the value of the suit land which is Kshs. 24,420,000/= in accordance with the *ARO*.



4. This court found that the Taxing Master erred when she based the value of the subject matter on the valuation report, while holding that the report would only have been put into use had the Defendant failed to execute the lease and been compelled to sell her share in the suit property to the Plaintiff. The court noted that the suit was to compel the Defendant to execute the lease and the applicable scale therefore was Schedule 6 of the ARO on the category applicable to other matters appearing after paragraph (j).
5. The Defendant's counsel urged that the intended appeal would enrich the jurisprudence on what constitutes a determinable value of the subject matter or where the value of the subject matter could be determined from the pleadings.
6. The application was opposed by the Plaintiff through the replying affidavit sworn by Mr. John Abwuor, on 14/04/2023, in which he deponed that the application was misconceived, lacked merit and that there was nothing to be appealed against. He contended that there was no reasonable cause of action disclosed because the re-taxation of the matter by the Deputy Registrar was yet to take place and that there is no ruling to be challenged on appeal.
7. The application was argued orally on 27/04/2023. Mr. Mwangi Kariuki for the Defendant relied on Joreth Limited v Kigano & Associates [2002] eKLR. He argued that the decision in the Joreth case required some refinement which can only come from the Court of Appeal. He added that in Ambwere T.S & Associates v Frank Nyambu Wafukwa & Others [2020] eKLR and Shiva Enterprises v Mwangi Njenga & Company Advocates [2020] eKLR, Judge Munyao liberally interpreted the Joreth case and expanded the parameters upon which a determination on the value of the subject matter in a suit can be made from the pleadings. That even where a figure cannot be ascribed from the pleadings, his interpretation was liberal rather than restrictive.
8. The Defendant urged that the value of the subject matter was determinable from the pleadings which position this court disagreed with. He contended that the intended appeal would take care of a situation where another reference may be made to this court after re-taxation by the Taxing Master.
9. On his part, Mr. Abwuor, counsel for the Plaintiff argued that there was no reasonable cause of action to be appealed against because the court guided the Taxing Master on the correct schedule of the ARO to be applied. Further, he urged that the Rules Committee came up with the ARO and that if a party was dissatisfied it could make recommendations to the Rules Committee rather than appeal to the Court of Appeal which would increase costs. He pointed out that Justice Munyao Sila was of concurrent jurisdiction with this court and that this court's decision is more valued because it considered all the circumstances of the matter.
10. He contended that the application was merely an academic exercise meant to increase costs and not to enrich jurisprudence as the Defendant's counsel alleged since the application does not state that the court erred in the law or in applying schedule 6. He urged the court to dismiss the application so that the matter can proceed for re-taxation.
11. Mr. Mwangi Kariuki rebutted the submissions by submitting that the relief they seek is in the law, the ARO and not from the Rules Committee. He urged that in light of differing opinions from two courts of concurrent jurisdiction, it was necessary to get a decision from a superior court.
12. The court has considered the rival arguments by the parties. The issue for determination is whether the Defendant should be granted leave to appeal against the court's decision on the reference relating to the taxation of a bill of costs.



13. Paragraph 11(3) of the *ARO* states that 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 appeal to the Court of Appeal. The Defendant has satisfied this court that it is just for leave to be granted for the Court of Appeal to clarify the position regarding determining the value of the subject matter in disputes such as this one, for purposes of taxing the instruction fees payable to an advocate.
14. The court grants the Defendant leave to appeal against its ruling delivered on 14/03/2023. The Plaintiff is awarded the costs of that application.

**DELIVERED VIRTUALLY AT NANYUKI THIS 15<sup>TH</sup> DAY OF MAY 2023.**

**K. BOR**

**JUDGE**

**In the presence of:**

Mr. John Abwuor for the Plaintiff

Mr. Mwangi Kariuki for the Defendant

Ms. Stella Gakii – Court Assistant

