



**Isaboke v Nyakundi (Environment & Land Case 495 of 2013)  
[2023] KEELC 18386 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18386 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 495 OF 2013**

**M SILA, J  
JUNE 21, 2023**

**BETWEEN**

**JOSEPH OMB Aire ISABOKE ..... PLAINTIFF**

**AND**

**MARTHA MACHOKA NYAKUNDI ..... DEFENDANT**

**RULING**

1. The application before me is that dated December 7, 2022 though filed on February 27, 2023 by the plaintiff. The substantive prayer that the plaintiff seeks is to set aside the order of April 14, 2022, *vide* which the Deputy Registrar taxed the costs of the defendant at Kshs 344,890/=, and for the costs to be taxed inter partes. The application is based on the grounds that counsel for the applicant inadvertently did not diarize the date for taxation and the bill of costs was thus taxed without the submissions of the applicant. The application is supported by the affidavit of Jeremiah Onsare Soire, who is counsel for the applicant. He has deposed that he was aware of the date fixed for taxation but he inadvertently failed to diarize the same. He only came to know that the bill was taxed when his client came to him with a notice to show cause why execution should not issue on the taxed costs which notice was to be heard on December 8, 2022. It is then that he perused the file and ascertained that the bill of costs was taxed on April 14, 2022 in the sum of Kshs 344,390/=. He avers that it is in the interests of justice that the taxation order be set aside.
2. The defendant has opposed the application through grounds of opposition. It is averred that the application is overtaken by events since the notice to show cause was withdrawn and that the applicant's goods were proclaimed on February 14, 2023. It is also argued that the costs were taxed to scale.
3. I invited both Mr Soire, learned counsel for the applicant, and Mr Nyariki, learned counsel for the respondent, to file written submissions, which they did, and I have taken note of these before arriving at my decision.



4. Before I go too far, I need to state that when the application first came before me *ex parte*, the applicant sought orders of stay of execution of the taxed costs pending hearing of this application. I granted stay on condition that the sum of Kshs 150,000/= be deposited. I was made to understand that this money was duly deposited.
5. On the substance of the application, I have seen that *vide* a judgment delivered on May 12, 2017, the plaintiff's/applicant's suit was dismissed with costs. On March 4, 2022, the defendant/respondent filed his bill of costs. The matter was fixed for taxation on April 12, 2022 when only counsel holding brief for Mr Nyariki for the respondent, attended. There was no appearance on the part of Mr Soire. Ruling on the bill of costs was reserved for 14 April 2022 and the bill was taxed in the sum of Kshs 344,890/=. It will be recalled that the application herein is based on grounds that counsel failed to diarise the matter. In his submissions, Mr Nyariki argued that his client's bill was of Kshs 781,990/= but the taxing officer knocked it down to Kshs 344,890/= and he does not see any ground to warrant interference with the taxing officer's decision. I think this is a valid point. In as much as the plaintiff wishes to set aside the decision of the taxing officer, he has not said what problem he has with the decision. Is he simply seeking to set aside the decision of the taxing officer for the sake of it? I think one needs to place before court material to demonstrate that he/she has an arguable point, or case, when asking for the court's discretion to set aside *ex parte* proceedings, for if there is no prejudice suffered, despite being absent, there would be no point in setting aside proceedings that were otherwise properly conducted. In any event, if not satisfied by the decision of the taxing officer, the applicant also had avenue to file a reference before this court and point out what it is that he is aggrieved with.
6. It is for the above reasons that I am not persuaded to set aside the decision of the taxing officer. The result is that I find no merit in this application and it is hereby dismissed with costs.
7. For the avoidance of doubt, the amount of Kshs 150,000/= that had been deposited be released to the respondent and be deemed as part payment on the costs.
8. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 21 DAY OF JUNE 2023**

**JUSTICE MUNYAO SILA**

**\*\*JUDGE, ENVIRONMENT AND LAND COURT AT KISII**

