



**Masiar & 143 others v District Land Surveyor, Narok North/South Districts & another; District Land Registrar & 19 others (Interested Party) (Environment & Land Case 32 of 2020) [2023] KEELC 20002 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20002 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE 32 OF 2020  
CG MBOGO, J  
SEPTEMBER 26, 2023**

**BETWEEN**

**KIMAISA OLE MASIAR & 143 OTHERS ..... APPLICANT**

**AND**

**DISTRICT LAND SURVEYOR, NAROK NORTH/SOUTH DISTRICTS .... 1<sup>ST</sup>  
RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DISTRICT LAND REGISTRAR & 19 OTHERS ..... INTERESTED PARTY**

**RULING**

1. Being dissatisfied with the ruling of the honourable taxing master delivered on February 15, 2023, the applicants filed a chamber summons application dated February 27, 2023 which is expressed to be brought under paragraph 11 (2) & (4) of the [Advocates \(Remuneration\) Order 2014](#) seeking the following orders: -
  1. That the decision of the taxing master Hon. Daniel Ngayo delivered on February 15, 2023 on the bill of costs dated October 19, 2022 with respect to items nos. 1,2 and 5 be set aside, reviewed or otherwise varied.
  2. That this honourable court be pleased to find that the taxing master erred in law and in principle in failing to find that instruction fees in this matter was plucked from thin air with no legal basis or justification at all.
  3. That this honourable court be pleased to find that the taxing master erred in law and in principle in completely taxing item No 2 at Kshs 500,000/- being the instruction fees.



4. That this honourable court be please to find that the taxing master erred in law and in principle in failing to find that no statement of defence was filed.
  5. That cost of this application be provided for.
2. The application is premised on the grounds that the Interested Parties Bill of Costs was taxed in the sum of Kshs 613,600/= on February 15, 2023 and the ruling was delivered in court on the same date.
  3. The application is supported by the affidavit of Koome Gitonga, the counsel for the applicant sworn on even date. The counsel deposed that a party and party bill of costs dated October 19, 2022 was filed on behalf of the respondents and taxed at the sum of Kshs 613,000/- vide a ruling delivered on February 15, 2023. Further, that the taxing officer erred in law and in principle in arriving at his decision specifically on item 2 at Kshs 500,000/- as instructions fees. The applicant further deposed that once the sum awarded on instruction fees is interfered with, the award under the head VAT @ 16% must be adjusted accordingly.
  4. The application was opposed by the replying affidavit of Wilson Nkunja Kaberia, the counsel on behalf of the 2<sup>nd</sup> to the 5<sup>th</sup> interested parties sworn on March 28, 2023. The counsel deposed that on October 14, 2020, 144 applicants sued the interested parties for several prayers and the 2<sup>nd</sup> to the 5<sup>th</sup> interested parties filed their defence on October 2, 2020. Thereafter, the applicants later withdrew their suit which prompted the respondents to file their bill of costs which was taxed at Kshs 613,600/-. The counsel further deposed that the taxing officer properly applied himself to the provisions of Schedule 6 of the [\*Advocates \(Remuneration\) Order 2014\*](#) and for this reason, the applicants have not demonstrated any error of principle by the taxing officer in arriving at his decision.
  5. On July 4, 2023, this court gave directions as to the disposal of the chamber summons by way of written submissions. As at the time of writing this ruling, none of the parties had filed their submissions. Be that as it may, I have considered the application and the replying affidavit and the issue for determination is whether the taxing officer erred in awarding the instructions fees in the manner he did.
  6. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case of [\*Premchand Raichand Ltd another v Quarry services of East Africa Ltd and Another No 3\*](#) (1972) EA 162. The principles laid out are: -
    - i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.
    - ii. The taxing master was expected to tax each bill on its merits;
    - iii. The value of the subject matter had to be taken into account;
    - iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;
    - v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy.
    - vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected



himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference.”

7. Also, in the South African case of *Visser vs Gubb* 1981 (3) SA 753 (C) 754H – 755C, the court stated as follows:

“The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

8. I have carefully analysed the pleadings and it appears the contention by the applicants is that the taxing officer erred in principle in awarding the sum of Kshs 500,000/- as instruction fees. However, it is not clear whether the said figure was in their view high or low save to state that no statement of defence was filed. I have perused the pleadings and I see that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> interested parties filed their statement of defence on December 2, 2020. Also, looking at the plaint, the value of the subject matter was not pleaded and neither was a valuation report filed.

9. In the case of *Republic v Ministry of Agriculture and 2 Others; Ex-parte Muchiri W’Njuguna & others* NRB HC Misc Civil Appl No 621 of 2000 [2006] eKLR, the court held as follows:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award is somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other.... The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.”

10. In my view, there is nothing that I find to be unjust to interfere with the discretion of the taxing master. The chamber summons dated February 27, 2023 is hereby dismissed. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**HON. MBOGO C.G.**

**JUDGE**

