



REPUBLIC OF KENYA



**Waiguru v Kimani (Environment and Land Appeal E188 of 2024)
[2025] KEELC 1373 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1373 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E188 OF 2024**

TW MURIGI, J

MARCH 13, 2025

FORMERLY MILIMANI HCCA/E824/2023

BETWEEN

JAMES M WAIGURU APPELLANT

AND

JOHN KIRAGU KIMANI RESPONDENT

RULING

1. By a Memorandum of Appeal dated 18th August 2023 the Appellant appealed against the ruling delivered on 21st July 2023 by Hon. A. Muma (Vice Chair) of the Business Premises Rent Tribunal in BPRT Case No.26 of 2017 (Murang'a) and set out 7 grounds of appeal.
2. The ruling of the Business Premises Rent Tribunal in regards to Tenant's Bill of costs dated 3rd March 2023 was delivered in the following terms:-

- a) The Tenant's Bill of costs is taxed at Kshs.274, 000/=.
- b) The Landlord shall pay the costs within 60 days from the date of being served.

Being aggrieved the Appellant appealed to this court on the following grounds:-

1. That the learned Vice Chair erred in law and in fact by awarding the law firm of Simon Kiragu & Co. Advocates (S.K Advocates) instruction fees of Kshs.50,000/= and getting up fees of Kshs.25,000/= without any legal basis or justification.
2. That the learned Vice Chair erred in law and in fact by failing to find that the law firm of Simon Kiragu & Co. Advocates (S.K Advocates) which came on record for the Tenant on 16th January, 2020 did not offer the legal services claimed in items numbers



3 to 50 of the Tenant's statement of costs dated 3rd March 2023 and thus it not entitles to the said costs.

3. That the learned Vice Chair erred in law and in fact by holding that the firm of Chege Kibathi & Co Advocates represents the Landlord while the firm of Lee Maina & Associates represents the Tenant contrary to the court record.
4. That the learned Vice Chair erred in law and in fact in failing to consider the Notice to vacate was withdrawn before the reference was heard and as such there was nothing complex about the matter nor was there novel points of law raised to justify awarding the Tenant excessive costs of Kshs.274,000/=.
5. That the learned Vice Chair erred in law and in fact in failing to consider the value of the business premises when awarding the excessive costs whose monthly rental income in only Kshs. 8,000/=.
6. That the learned Vice Chair further erred in law and fact by failing to properly analyse, interrogate and make a finding on each and every item claimed on the Tenant's statement of costs dated 3rd March 2023 thereby arriving at the wrong decision.
7. That the learned vice chair erred in law and fact by totally ignoring the written submissions filed on behalf of the Landlord with respect to the Tenant's statement of costs dated 3rd March 2023 and thus arrived at a wrong decision.

3. The Appellant prays for the following orders:-

- a) The Ruling/Order of the Business Premises Rent Tribunal delivered on 21st July 2023 in BPRT Case No. 26 of 2017 assessing the Tenants costs at Kshs 274,000/= be set aside and the said costs be assessed at ksh.40, 700/= all inclusive.
- b) The Appeal be allowed with costs.

4. The appeal was canvassed by way of written submissions.

The Appellant's Submissions

5. The Appellant filed his submissions dated 11th June 2024.

On his behalf, Counsel relied on the case of Jared Ltd v Kigano & Associates Civil Appeal No.66/1999(2002)1 EA 92 as well as the case of Premchand Raichand Ltd and another v Quarry Services of East African Ltd & another (1972) EA 162 to submit that the Vice Chair failed to adhere to the principles of taxation in an awarding instruction fees.

6. Counsel submitted that the Tribunal ought to have considered the nature and importance of the subject matter, the responsibility placed on Counsel and the general conduct of proceedings, time spent, research done and skills deployed by Counsel.
7. Counsel further submitted that instructions to represent the Respondent were initially given to the firm of Lee Maina and Associates on 15th November 2017. That the said firm prepared and filed all the pleadings at the tribunal and attended to the matter up to 16th January 2020 when the law firm of Simon Kiragu & Co.Advocates filed a Notice of change of Advocates. Counsel argued that the firm of S. Kiragu & Co. Advocates did not do much work as the notice to vacate which formed the basis of the reference before the Tribunal was withdrawn by the Appellant vide a Notice of withdrawal dated 16th February 2023.



8. Counsel further submitted that the suit was not complex adding that the subject matter was Kshs. 96,000/= being the annual rent payable for the suit premises. It was submitted that the instructions fees payable should have been assessed at Kshs.22,500/=. Counsel contended that getting up fees of Kshs. 25,000/= should be set aside as the firm of Simon Kiragu & Co. Advocates did not prepare any pleadings with respect of the suit.

The Respondent's Submissions

9. The Respondent filed his submissions dated 16th July 2024.
10. On his behalf, Counsel submitted that the bill in question was a party's bill of costs as provided under Order 21 Rule 9A of the Civil Procedure Rules and not a Client/Advocate bill of costs. Counsel contended that the issue that the firm of Simon Kiragu Advocates replaced the firm of Lee Maina Advocates on 16th January 2020 and therefore had not done a lot of work to be entitled to instruction fees does not arise.
11. Counsel further submitted that paragraph 4 of Schedule 8 of the Advocates Remuneration Order, 2014 provides that costs shall be awarded to the party who substantially succeeds in proceedings. It was submitted that the Respondent being the successful party, was entitled to costs. Counsel submitted that Rule 62(a) of the Advocates Remuneration Order provides that where there has been a change of Advocates, the Advocate finally on record draws a single bill for the whole matter.
12. On the award of Kshs. 50, 000/= as instruction fees when the subject matter of the suit was a sum of Kshs.96, 000/=, Counsel admitted that instruction fees applicable in that regard is Kshs.22,500/=. It was submitted that the court awarded Kshs.50,000/= after correctly applying the principles governing taxation and assessment of costs adding that increase of instruction fees is matter of discretion of the taxing master. To buttress this point, Counsel relied on the case of First American Bank of Kenya Ltd v Gulab P. Shah & 2 others (2002) IEA 64.
13. Counsel cited the case of Kiambu Murutani Co. Ltd v Kimindi Self Fridges Supermarket [2021] eKLR to submit that getting up fees were not excessive as they flow directly from instruction fees.
14. Relying on the case of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR Counsel urged the court not to interfere with the discretion of the taxing officer

Analysis And Determination

15. Having considered the Appeal and the rival submissions, the only issue that arises for determination is whether the taxing officer erred in taxing the bill of costs dated 3/03/2023 in the manner he did. The Appellant contended that the instruction fees and getting up fees awarded were manifestly excessive in the circumstances of the case.
16. He further contended that the firm of Simon Kiragu & Co. Advocates (S.K Advocates) which came on record for the Tenant on 16th January, 2020 did not offer the legal services claimed in items numbers 3 to 50 of the Respondent's statement of costs.
17. In Republic v Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others [2006] eKLR, the court held that;

“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 interference 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”

18. It is not in dispute that the value of the subject matter herein is Kshs. 96,000/=. The tribunal awarded the Respondent instruction fees of Kshs.50, 000/=. Instruction fees payable under Schedule 8 paragraph 7(2)(a) of the Advocates Remuneration Order 2014 is Kshs.22, 500/= on the higher scale.
19. I opine that the Vice Chair of the Business Premises Rent Tribunal fell into error, by failing to take into account the value of the subject matter in assessing the instruction fee payable.
20. Schedule 8 paragraph 2 of the Advocates Remuneration order 2014 provides that;

“In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation.”
21. In my view, the Tribunal also erred in principle in assessing the getting up fees at Kshs. 25,000/= being half of the instruction fees. Getting up fees flows directly from instruction fees and ought not to be less than one third of the instruction fees.
22. From the foregoing, this court finds and holds that the Respondent is entitled to instruction fees of Kshs.22, 500/= and getting up fees at 1/3* Kshs. 22,500/= which would amount to Kshs.7,500
23. The Appellant alleged that the law firm of Simon Kiragu & Co. Advocates (S.K Advocates) was not entitled to fees claimed in items numbers 3 to 50 of the subject bill because they came on record for the Respondent herein on 16th January 2020. Costs are awarded to the party and not to the Advocate therefore only one bill is drawn for the whole suit.
24. The upshot of the foregoing is that the Appeal partial succeeds in the following terms:-
 - a) Instruction fees assessed at Kshs 22,500/=
 - b) Getting up fees Kshs. 7,500/=
 - c) total costs are assessed at Kshs. 229,000/=.
25. Each party to bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF MARCH, 2025.

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T. MURIGI

JUDGE

In The Presence Of:-

Kiragu for the Respondent

Ahmed – Court Assistant

