



**Murrunka & another v Maki (Miscellaneous Application E005 of 2023)  
[2023] KEELC 22261 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 22261 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
MISCELLANEOUS APPLICATION E005 OF 2023  
EM WASHE, J  
NOVEMBER 30, 2023  
IN THE MATTER OF TAXATION OF PARTY AND PARTY BILL OF COSTS  
AND  
IN THE MATTER OF THE ADVOCATES ACT, CAP 12 LAWS OF KENYA  
AND  
IN THE MATTER OF THE ADVOCATES REMUNERATION AMENDMENT ORDER, 2014  
BETWEEN  
JOSEPH MBATIAN L MURRUNKA ..... 1<sup>ST</sup> APPLICANT  
JANET TUYUNI YIAMPOI ..... 2<sup>ND</sup> APPLICANT  
AND  
JOSEPH L K MAKI ..... RESPONDENT**

**JUDGMENT**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants (hereinafter referred to as “the Applicants”) have filed a Chamber Summons Application dated 23<sup>rd</sup> of April 2023 (hereinafter referred to as “the present Application”) against the Respondent seeking for the following orders:-
  - a) The Honourable Court be pleased to review, revise and/or rescind the amount of costs vide the decision of the Honourable Magistrate rendered and/or delivered on the 10<sup>th</sup> of September 2020.
  - b) The Honourable Court be pleased to review, revise and/or rescind the amount of costs vide decision of the assessment master and/or Honourable Magistrate delivered on the 10<sup>th</sup> day of September 2020.



- c) The Honourable Court be pleased to award onto the Respondent such costs as accords with the *Advocates (Remuneration) amendment order*.
  - d) Consequently, to prayer(s) hereinabove being granted, the Honourable Court be pleased to substitute the Certificate of costs issued pursuant to the decision of the Honourable Court taxing master with a new certificate of costs reflecting the correct costs payable unto the Respondent.
  - e) Costs of this Reference be borne by the Respondent.
2. The prayers have been premised on various grounds outlined in the body of the present application as well as the supporting affidavit sworn on the 25<sup>th</sup> of April 2023 which can be summarised as follows:-
- i) The Respondent filed a Bill of Costs dated 28<sup>th</sup> of July 2020 for taxation before the Taxing Master.
  - ii) However, the Taxing Master proceeded to assess the Bill of Costs dated 28<sup>th</sup> of July 2020 as drawn.
  - iii) The Applicants are of the view that the Taxing Master did not verify and/or scrutinise the said Bill of Costs dated 28<sup>th</sup> of July 2020.
  - iv) As a result of this omission, the figures and/or amounts allowed by the Taxing Master in the Bill of Costs dated 28<sup>th</sup> July 2020 are erroneous and excessive.
  - v) In essence therefore, the Applicants sought this Honourable Court to re-tax the said Bill of Costs dated 28<sup>th</sup> July 2020 and assess the figures therein in accordance to the *Advocates Remuneration (Amendment) Order* 2014.
  - vi) The Applicants further claimed that the Taxing Master did not apply the relevant principles in awarding the figures in the Bill of Costs dated 28<sup>th</sup> July 2020.
3. The present application was duly served on the Respondent who opposed the same by filing a Replying Affidavit dated 15<sup>th</sup> June 2023 on the following grounds:-
- i) Any aggrieved party of a decision emanating from a taxation can only file a Reference only on matters where the taxation is done by a taxing master.
  - ii) Consequently therefore, the Applicants actions to file an Appeal before this Honourable Court is alien and not founded in law.
  - iii) The Respondent was also of the view that once leave to appeal the determination of the taxing officer as relates to the Bill of Costs dated 28<sup>th</sup> July 2020, then it would only be proper that a Memorandum of Appeal is filed.
  - iv) The Respondent stated that the Applicants was well aware of the pending Bill of Costs dated 28<sup>th</sup> July 2020 when it came up for hearing but did not oppose the same.
  - v) According to the Respondent, the cause of action was for a sum of Kshs 6,400,000/- as contained in a Report of the Agricultural officer and the Plaint herein.
  - vi) Consequently therefore, the present application though alien does not raise any legal issue to be addressed by this Honourable Court.



- vii) The Respondent further notified the Honourable Court that the present application is Res Judicata to one filed on the 3<sup>rd</sup> of November 2023 and should be dismissed.
  - viii) Lastly, the Respondent sought to have the present Application to be dismissed with costs.
4. The parties were then directed to file their respective submissions which directions were complied with the Applicants filing their submissions on the 6<sup>th</sup> of July 2023 and the Respondents filed his on 8<sup>th</sup> September 2023.
  5. The Honourable Court has gone through the present Application, the Replying Affidavit thereof and the submissions by both parties and identifies the following issues for determination; -
    - Issue No. 1- Is The Present Application Res-judicata The Application Dated 30<sup>Th</sup> November 2022?
    - Issue No. 2- Is The Reference Filed On The 25<sup>Th</sup> April 2023 Properly Before This Honourable Court?
    - Issue No. 3- Did The Taxing Master Abide By The Taxation Principles While Considering The Bill Of Costs Dated 28<sup>Th</sup> July 2020?
    - Issue No. 4- Are The Applicants Entitled To The Prayers Sought In The Present Application?
    - Issue No.5- Who Bears The Costs Of The Present Application?
  6. The Honourable Court having identified the above issues for determination, then the same will now be discussed hereinbelow.

**Issue No. 1- Is The Present Application Res-judicata The Application Dated 30<sup>Th</sup> November 2022?**

7. The first issue for determination is whether the present Application is *Res-Judicata* to the previous Application dated 30<sup>th</sup> of November 2022.
8. The Respondent in his Replying Affidavit filed on the 15<sup>th</sup> June 2023 has attached a copy of the previous application dated 30<sup>th</sup> of November 2022.
9. The Honourable Court has perused the prayers sought therein and note that the prayers sought in the previous application dated 30<sup>th</sup> of November 2022 were seeking leave to extend time within which to refer a reference to this Honourable Court.
10. The Ruling pronounced on the 17<sup>th</sup> April 2023 granted leave to the Applicant 14 days to which they were allowed to prepare, file and serve their Reference which was complied with and it now the present application.
11. In essence therefore, this present Application can not be deemed to be *Res-Judicata* to the previous application dated 30<sup>th</sup> November 2022 in terms of the issues for determination before this Honourable Court.

**Issue No. 2- Is The Reference Filed On The 25<sup>Th</sup> April 2023 Properly Before This Honourable Court?**

12. The second issue is whether or not the Reference before this Honourable Court is proper.



13. The Applicant based on the Ruling pronounced on the 17<sup>th</sup> of April 2023 in the proceedings known as Kilgoris ELC Appeal NO.E004 OF 2022 sought for leave to file a Reference outline the prescribed time provided under rule 11 of the *Advocates (Remuneration) Order*, 2014.
14. This Honourable Court on the basis of the provisions of rule 11 (4) of the *Advocates (Remuneration) Order*, 2014 enlarged time to which the Applicants would file their Reference to challenge the decision of the Taxing Master dated 30<sup>th</sup> of September 2020.
15. The Respondent did not file any appeal against the Ruling of this Honourable Court dated 17<sup>th</sup> of April 2023 that gave leave for the Applicants to file the present Reference.
16. What the Applicants have simply done in the present Application to comply with the Ruling dated 17<sup>th</sup> of April 2023 which allowed them to file their Reference within 14 days from the date of pronouncement.
17. In other words, the present Application which is in the form of a reference is properly before the Honourable Court.

**Issue No. 3- Did The Taxing Master Abide By The Taxation Principles While Considering The Bill Of Costs Dated 28<sup>th</sup> July 2020?**

18. The next issue for determination is whether or not the taxing master and/or magistrate applied the correct principles during the evaluation of the figures in the Bill of costs under consideration.
19. The Applicants are of the view that the taxing master or the magistrate evaluating the figures in the Bill of Costs is required to provide the reasons and/or consideration in arriving at the taxed amounts.
20. Unfortunately, during the evaluation of the Bill of costs dated 30<sup>th</sup> of September 2020, the magistrate and/or taxing master evaluating it did not provide any reasons that were considered to arrive at the figures awarded therein.
21. According to the Applicants, the Bill of Costs dated 30<sup>th</sup> of September 2020 was simply approved as drawn for an amount of Kshs 714,870/-.
22. While this Honourable Court would ideally not interfere with the assessment of the Taxing Master/Magistrate, the grounds upon which such assessments are done must be clearly provided.
23. The failure and/or omission by the Taxing Master/Magistrate in providing reasonable grounds and/or grounds upon which any assessment of a Bill of Costs is evaluated is devoid of any legal principles and unlawful.
24. In essence, such an assessment cannot be deemed to be reasonable and in line with both the Advocates Remuneration (Amendment) Order, 2014 and should not stand.

**Issue No. 4- Are The Applicants Entitled To The Prayers Sought In The Present Application?**

25. The Applicants have sought a number of prayers in the present Application.
26. The prayers basically seek for a review, revision and/or rescission of the decision of the Taxing Master/Magistrate pronounced on the 10<sup>th</sup> of September 2020.
27. The Applicants are seeking for this Honourable Court to re-assess the said Bill of Costs dated 28<sup>th</sup> of July 2020 and re-issue the Certificate of Costs in favour of the Respondent.



28. The Honourable Court having decided that the decision of the Taxing Master/Magistrate dated 10<sup>th</sup> September 2020 was unjustified for lack of reasons in awarding the figures contained therein, it is only just that the said Bill of Costs be re-assessed by this Honourable Court to ensure a determination of this long pending issue between the parties.
29. The basis of assessing the Bill of Costs dated 28<sup>th</sup> of July 2020 will be the [Advocates \(Remuneration\) \(Amendment\) Order](#), 2014.
30. Every item in the Bill of Costs dated 28<sup>th</sup> July 2020 must be verified from the Trial Figure and costed against the said [Advocates \(Remuneration\) \(Amendment\) Order](#), 2014.
31. The applicable part of the [Advocates \(Remuneration\) \(Amendment\) Order](#), 2014 is Schedule 7 which deals with Costs of proceedings in Sub-Ordinate Courts-Party to Party Costs.
32. To this end, the items will be re-assessed as follows; -

Item 1- Instructions Fees- On this item, the Respondent quoted a sum of Kshs 500,000/-.

This Amended Complaint dated 24<sup>th</sup> July 2018 sought for compensation for loss of earnings for the leased period of Five (5) harvesting seasons.

However, the particulars of the said compensation for loss of earnings were never tabulated in the Amended Complaint and/or the prayers sought.

The Amended Defence filed on the 25<sup>th</sup> of April 2019 similarly did not make any reference to the value of compensation sought by the Applicants.

In the judgement, the Trial Court correctly observed that there were no special damages particularised in the Amended Complaint and/or figures provided and therefore declined to grant any compensation.

Clearly therefore, this was an Amended Complaint which had no pleaded pecuniary value.

The Respondent has stated in their Replying Affidavit that the subject matter of the proceedings was Kshs 6,400,000/- as contained in the Agricultural Officer's Report adduced during the hearing.

However, in assessment of costs, the pleadings are what forms the basis of taxation and not the evidence produced during the trial.

In essence therefore, this Honourable Court in its considered view and the manner of times the matter was listed for hearing, a sum of KShs 200,000/- will be sufficient as instruction fees.

ITEM 2- Assessed at KShs 1,400/-

ITEM 3- Assessed at KShs 1,400/-

ITEM 4- Assessed at KShs 1,400/-

ITEM 5- Assessed at KShs 1,400/-

ITEM 6- This figure is not granted as the Defence Counsel did not attend.

ITEM 7- This figure is not granted as the Defence Counsel did not attend.

ITEM 8- Assessed at Kshs 5,000/-



ITEM 9- Assessed at KShs 2,100/-

ITEM 10- This figure is not granted as the Defence Counsel did not attend.

ITEM 11- Assessed at KShs 2,100/-

ITEM 12- Assessed at KShs 2,100/-

ITEM 13- Assessed at KShs 2,100/-

ITEM 14- Assessed at KShs 1,400/-

ITEM 15- This figure is not granted as it is not provided for in the Order for Sub-Ordinate Courts.

ITEM 16- Assessed at KShs 1,400/-

ITEM 17- Assessed at KShs 1,400/-

ITEM 18- Assessed at KShs 1,400/-

ITEM 19- This figure is not granted as it is not provided for in the Order for Sub-Ordinate Courts.

Based on the above assessments, the total amount is KShs 224,600/-

V.AT @ 16 %.....KShs 35,936/-

Disbursements provided as drawn.....KShs 1,470/-

Total KShs 262,006/-

33. In conclusion therefore, this Honourable Court assesses the Bill of Costs dated 18<sup>th</sup> July 2020 at KShs .....

### **Conclusion.**

34. In conclusion therefore, this Honourable Court hereby makes the following Orders as appertains the Chamber Summons dated 25<sup>th</sup> of April 2023;-

- A. The bill of costs dated 28<sup>th</sup> July 2020 be and is hereby reviewed and/or re-assessed at a sum of kshs. 262,006/=
- B. The certificate of costs dated 30<sup>th</sup> of September 2022 be and is hereby reviewed to as sum of kshs. 262,006/= in accordance to the determination herein.
- C. Each party will bear its own costs.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 30<sup>TH</sup> NOVEMBER 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Mr. Ngeno

Advocate For The Applicant: Mr. Ochwangi

Advocate For The Respondents: Mr. Okemwa H/b For Mr. Nyambati

