



REPUBLIC OF KENYA



**Njoroge v Njoroge & 5 others (Environment & Land Case 36 of 2013)
[2023] KEELC 22235 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22235 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 36 OF 2013**

EO OBAGA, J

DECEMBER 7, 2023

BETWEEN

PAUL FRANCIS NJOROGE PLAINTIFF

AND

ANN NDUTA NJOROGE 1ST DEFENDANT

JOSEPH KINYUA MWANGI 2ND DEFENDANT

PAUL OCHIENG ODEK 3RD DEFENDANT

DAVID NGANGA KINYENI 4TH DEFENDANT

DANIEL WANYOIKE KIGUMI 5TH DEFENDANT

GICHUHI NJOROGE KAMAU 6TH DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated May 25, 2023 in which the plaintiff/applicant seeks the following orders:-
 1. Spent
 2. The certificate of costs or the taxation or assessment made on 28th April, 2023, be set aside.
 3. Costs of the application be provided for.
2. The Applicant contends that the taxing officer did not give reasons for taxation; that he did not apply the Advocate's Remuneration order of 2006 which was applicable when the suit was filed; that he awarded amounts which were way above what the Advocates Remuneration order provides; that he did not consider the Applicant's submissions; that the reasons he gave for taxing the bill of costs in the manner he did, did not amount to any reasons; that the taxing officer's taxation was unjust and that



- the taxing officer ought to have scrutinized whether there were receipts in respect of disbursements before allowing the same.
3. The Applicant's application was opposed by the Respondents based on a replying affidavit sworn on 21.6.2023. The Respondents contend that the Applicant's application is incompetent and is only meant to deceive the court for purposes of selfish gain; that the same lacks merit and is an abuse of the process of court; that the taxing officer considered the Applicant's submission and that the Applicant is out to unjustly delay the execution for cost thus unjustly enriching himself.
 4. The parties were directed to file written submissions. The Applicant was given 7 days from 4.10.2023 to file and serve his submissions. The Respondents were given 7 days to file theirs upon being served. The Respondents had already filed their submissions on 3.10.2023 even before the directions were given. The Applicant did not file any submissions and if any were filed, then they are not in the court file.
 5. I have carefully considered the Applicant's application, the opposition to the same by the Respondents as well as the submissions by the Respondents. The only issue for determination is whether there are grounds shown to warrant the setting aside of the certificate of taxation.
 6. The principles for setting aside a taxing officers' decision have been settled in a number of cases for instance in *Premchand Raichand Limited & another -vs- Quarry Services of East Africa Limited & another* (1972) EA 162, *First American Bank of Kenya -vs- Shah & others* (2002) EA 64 and *Joreth Limited -Vs- Kigano and Associates* (2002) I EA 92. The principles set out in the three cases are:-
 - a. An error of principle.
 - b. Where an award is manifestly excessive or is so high as to confine access to the court to the wealthy.
 - c. That successful litigants ought to be fairly reimbursed for the costs he has incurred.
 - d. That so far as practicable there should be consistency in the award.
 7. In the case of *First American Bank of Kenya Ltd -Vs- Shah & others* (2002) EALR 64 at 69, Justice Ringera (as he then was) held as follows:-

“This 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 so manifestly excessive as to justify an interference that it was based on an error of principle.... It would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors... some of the relevant factors include the nature and importance of the cause or matter, the amount or value of this subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial judge... not all the factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him...”
 8. I have gone through the ruling of the taxing officer and the reasons he gave for arriving at his decision. The taxing officer infact gave reasons for his decision in the ruling and when he was asked by the Applicant's counsel to give reasons, he went ahead to restate the same reasons contained in his ruling. There is therefore no basis for claiming that he did not give reasons and that the reasons he gave amounted to no reason.
 9. On the contention that the taxing officer awarded amounts far exceeding what the Advocates Remuneration order provided, I find that the taxing officer awarded amounts within the Advocates



Remuneration Order. I only observed that in items 20,21, 24, 33 and 39, the awards were slightly high considering that the hearings were taken out for one reason or the other. This slight adjustment are not excessive as to call for interfering the taxing officer's decision.

10. On the argument that the taxing officer did not scrutinize items on disbursements before awarding them, I notice that all the disbursements were in respect of court filing fees whose receipts are in the court file. The taxing officer confirmed that receipts were there. He was not under obligation to scrutinize each item and indicate when payment to court was made.
11. On the allegation that the taxing officer did not consider the Applicant's application, I have perused the Advocate's Remuneration order of 2014 which the Applicant relied on his submission. On page 292 under all other items not provided for fall, the minimum fee on instructions in defended matters is Kshs 75,000/= The taxing officer gave Kshs 100,000/= which is reasonable in the circumstances of this case.
12. From the above analysis, I find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 7TH day of DECEMBER, 2023

E. OBAGA

JUDGE

In the virtual presence of;

Mr. Wainaina for Mr. Momanyi for Applicant.

M/s Mutai for Mr. Chepkowny for Respondents.

Court Assistant -Albert

E. OBAGA

JUDGE

7TH DECEMBER, 2023

