Kariuki & 2 others (Suing as the chairman, secretary and treasurer as representatives of the members of Komarock Spine Road Association) v Muthithi Investments Limited (Environment & Land Case 548 of 2018) [2022] KEELC 3558 (KLR) (12 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3558 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 548 OF 2018

LN MBUGUA, J

MAY 12, 2022

BETWEEN

PETER KARIUKI ..... 1ST PLAINTIFF

NYAGAKA NYACHIRO ..... 2ND PLAINTIFF

JOSEPH IRUNGU ..... 3RD PLAINTIFF

SUING AS THE CHAIRMAN, SECRETARY AND TREASURER AS REPRESENTATIVES OF THE MEMBERS OF KOMAROCK SPINE ROAD ASSOCIATION

AND

MUTHITHI INVESTMENTS LIMITED ..... DEFENDANT

RULING

1. This suit was marked as withdrawn on September 24, 2019. A ruling on Defendants party and party bill of costs was delivered on August 10, 2021 in which the taxed costs amounted to Kshs 13,034,255.

2. The 1st Plaintiff has filed an application dated September 7, 2021 seeking the following orders:

    1. That the decision of the Taxing Master Hon I N Barasa delivered on 10th August, 2021 on the Bill of Costs dated October 17, 2019 with respect to the item No 1 and being instructions fees be set aside and or reviewed for being excessive.

    2. That the Defendants Bill of costs dated October 17, 2019, be taxed afresh by this Honourable court or by a different taxing master.

    3. That the costs of this application be provided for.

3. The Applicant contends that the amount taxed particularly the instruction fee is excessive. He avers that he never issued instructions for the filing of the suit against the Defendant and that the case never went to pre-trial. It is further averred that the suit was a representative suit for and on behalf of hundreds of residents in occupation of the suit property and it is hence unfair to condemn only 3 parties.

4. In response, the Defendant filed a Replying Affidavit averring that Applicants have not shown that there was an error of principle in the decision of the taxing master. They aver that the taxing master has discretion on matters of taxation and that the Defendant had duty availed a valuation report while, the Applicant did not come up with a different valuation report.

5. In the case of *Peter Muthoka & Another v Ochieng & 3 Others* (2019)eKLR the Court of Appeal held that:

> "It is not lost to us, as we address that single issue, that matters of quontum of taxation properly being in the province and competence of taxing masters, they fall within their discretion and so the High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles."

6. Also see the case of *Joreth Limited v Kigano of Associate* (2002) eKLR.

7. In the ruling of the taxing master, the court stated thus:

> "The court record shows that the plaintiffs filed suit on December 19, 2018 claiming title of LR No 23917 registered as IR No 87206/1 situated in Embakasi area, Nairobi by adverse possession. The demolitions of the permanent and other structures on the property prompted the filing of the suit. The court record shows that the property measures 8.143 hectares or thereabouts, divided into 543 plots. The Plaintiffs' sought to be registered as the proprietors of the property and have the court issue a permanent injunction against the Defendant and any person acting under its authority from interfering with the Plaintiffs quiet and peaceful possession of the property. Upon service of the suit papers, the Defendant filed an affidavit in reply to the Plaintiffs' application and a preliminary objection. Shortly thereafter, the Plaintiff filed a notice to withdraw the suit which was adopted by the court and the costs of the suit awarded to the Defendant."

8. This court takes cognizance of the many factors that the taxing master considered including the location of the suit property. Save a general denial that the 1st Plaintiff had not given instructions to their advocates, there is no tangible evidence from 1st Plaintiff to confirm his claim. In any event, the 1st Applicant would be at liberty to follow up such on issue with the relevant disciplinary bodies of the advocates.

9. I find that there is no compelling reasons to warrant the disturbance of the award of the taxing master.

   The application dated September 7, 2021 is dismissed with costs to the Defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Gachuhi for the 1st Plaintiff

Okeyo for the Defendant/Respondent

Court Assistant: June Nafula