



**Apollo Muinde & Partners Advocates v National Land Commission (Environment and Land Miscellaneous Application 14 of 2021) [2022] KEELC 2184 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2184 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 14 OF 2021**

**JO OLOLA, J**

**JUNE 9, 2022**

**BETWEEN**

**APOLLO MUINDE & PARTNERS ADVOCATES ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... RESPONDENT**

**RULING**

1. By the Chamber Summons application dated 16<sup>th</sup> September 2021, Apollo Muinde & Partners Advocates (the Applicant) prays for orders:
  1. That the decision of the Taxing Master delivered on 17<sup>th</sup> August, 2021 in so far as the same relates to the reasoning and determination pertaining to the Taxation of Item 1, 2 & 3 of the Bill of Costs dated 12<sup>th</sup> April, 2021 be set aside;
  2. That the Honourable Court be pleased to refer the matter back for re-taxation of Item 1, 2 & 3 of the Bill of costs dated 12<sup>th</sup> April, 2021 with proper directions to the taxing master;
  3. That in the alternative to Prayer 2, the Honourable Court exercises its inherent jurisdiction and be pleased to re-tax the Bill of Costs dated 12<sup>th</sup> April, 2021 afresh and/or issue directions as to a fresh taxation; and
  4. That the Costs of this application be provided for.
2. The application is supported by an affidavit sworn by Apollo Muinde Advocate and is premised on the grounds:
  - (i) That the Applicant's Bill of Costs dated 12<sup>th</sup> April, 2021 was taxed on 17<sup>th</sup> August, 2021 at Kshs.120,900/-;



- (ii) That the Applicant is aggrieved by Part of the taxing Master’s Ruling;
  - (iii) That the Applicant filed a Notice of Objection to taxation on 30<sup>th</sup> August 2021 citing her objection on the taxation of items number 1, 2 and 3 of the Bill of Costs and the Taxing Master gave reasons for her decision on 7<sup>th</sup> September, 2021;
  - (iv) That from the Taxing master’s Ruling, it is clear that Item No. 1 was not correctly taxed as it was not taxed as per the provisions of the Advocates Remuneration (Amendment) Order, 2014;
  - (v) That the Learned Taxing Master misdirected herself when she ruled that the value of the subject matter could not be determined from the pleadings, proceedings or the various Rulings on the file yet there was a valuation report annexed to the Petitioner’s affidavit in support of the Petition dated 8<sup>th</sup> June 2015;
  - (vi) That it is on that premise that the Applicant has filed the present application for reference to challenge the taxation of the said item; and
  - (vii) That it is in the interest of justice that the application be allowed and the taxation be reviewed and/or re-taxed.
3. Despite service the National Land Commission (the Respondent) did not make any response to the application.
4. I have carefully perused and considered the Reference herein, the affidavit in support thereof and the annexures thereto. The Applicant Law Firm is aggrieved by the decision of the taxing master delivered on 17<sup>th</sup> August, 2021 in so far as the same relates to the reasoning and determination pertaining to the taxation of Items 1, 2 and 3 of their Bill of Costs dated 12<sup>th</sup> April, 2021.
5. As the Court of Appeal observed in *Kipkorir Tito & Kiara Advocates v Deposit Protection Fund Board* (2005) eKLR:
- “On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the Costs.”
6. Commenting on the exercise of the taxing Master’s discretion in *Vipul Premchand Haria v Kilonzo and Company Advocates* (2020) eKLR, the Court of Appeal had this to say:
- “...Such taxation, much as it lies in the taxing officer’s discretion, is governed by clear principles. In other words, the discretion is a judicial one to be judicially and judiciously exercised. It is not to be exercised whimsically or capriciously in accordance with personal inclination. And the matters the taxing officer takes into consideration should be apparent from the reasons that she gives for her decision. It is those reasons that give an indication whether or not the discretion reposed in the taxing officer was properly exercised.”
7. In the matter before me, the Learned Taxing Master the Hon. M. N. Lubia did in her decision tax the instruction fee on Item No. 1 at Kshs.56,250/-. Aggrieved by that decision and the taxation of Item Nos 2 and 3 of their Bill of Costs, the Applicant objected to the same and sought the reasons for the said determination.



8. In her Ruling dated 17<sup>th</sup> August 2021, the Learned Taxing Master gives her reasons for the determination at Paragraph 2 of the Ruling

as follows:

“On Item 1 note that the value of the subject matter could not be determined from the pleadings, proceedings or the various Rulings on the file. I further note that by consent dated 7<sup>th</sup> November, 2017 the parties abandoned this suit and referred the matter to the National Land Commission where the same was heard and determined. Item 1 is therefore allowed at 75% of Kshs.75,000/- per scale (56,250).”

9. That position did not appear to me to be entirely supported by the facts. From a perusal of a copy of the Petition filed by the Applicants in Nyeri High Court Petition No. 12 of 2015, it was apparent that the Petitioners were claiming from the Government a parcel of land said to be measuring 108 acres. In their prayers before the Court, the Petitioners had sought the following:

- (a) A declaration do issue that the alienation of the Petitioners land Aguthi/Gaki/865 measuring 108 acres is a violation of the Petitioners Constitutional and Fundamental Rights to property under article 40 of *the Constitution* of Kenya;
- (b) A declaration do issue that the Petitioners are accordingly entitled to prompt, full fair and just compensation from the respondents for the respondents for the said unconstitutional deprivation of property as follows:
  - (i) Current open market value of the land Aguthi/Gaki/865  
Kshs.535,000,000.00
  - (ii) Add 15% of the above by way of statutory addition Kshs.  
80,250,000.00
  - (iii) Loss of use Kshs.1,047,000,000.00 Kshs.1,662,250,000.00
- (c) An order do issue directing the respondents to pay the Petitioners a further sum of Kshs.15,000,000/= by way of punitive and/or aggravated damages;
- (d) Interest on (b) and (c) above at Court rates from the date of filing of this Petition until payment in full; and
- (e) Costs of this Petition.

10. That being the case and while indeed some of the figures above may have been exaggerated and while the suit may have been settled elsewhere, it was not easy to agree with the Learned Taxing Master's conclusion that the value of the subject matter could not be ascertained from the pleadings. Indeed a perusal of the Supporting Affidavit to the Petition further reveals that the Petitioners had annexed a copy of a Valuation Report prepared by M/S Camp Valuers dated 1<sup>st</sup> December, 2014. That Report places the current open market values of the subject land at Kshs.535,000,000/- as stated in the prayers in the Petition.

11. In the circumstances I am persuaded that there is merit in the Reference dated 16<sup>th</sup> September, 2021. I allow the same and hereby set aside the taxation of the said Item Nos 1, 2 and 3 of the Applicant's Bill of Costs dated 12<sup>th</sup> April, 2021.



12. This matter is hereby referred back for re-taxation of the said items by a Taxing Master other than the Honourable M. N. Lubia, Deputy Registrar.

13. I make no order as to Costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 9<sup>TH</sup> DAY OF JUNE, 2022.**

In the presence of:

Ms. Namulala holding brief for Apollo Muinde for the Applicant

No appearance for the Respondent

Court assistant - Kendi

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**J. O. Olola**

**JUDGE**

