



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Munga v Munga & 9 others (Environment & Land Case  
73 of 2018) [2025] KEELC 3197 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3197 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 73 OF 2018**

**TW MURIGI, J**

**APRIL 4, 2025**

**BETWEEN**

**GEOFRREY NJUGUNA MUNGA ..... APPLICANT**

**AND**

**GEOFFREY KARONGO MUNGA & 9 OTHERS & 9 OTHERS & 9  
OTHERS ..... RESPONDENT**

**RULING**

1. By a Chamber Summons application dated 27<sup>th</sup> January, 2025 the Applicant herein seeks the following orders;
  1. Spent.
  2. Spent.
  3. Spent.
  4. That the decision of the taxing master dated 2<sup>nd</sup> day of May 2024 be set aside.
  5. That the Honourable Court be pleased to remit the Respondents' Bill of costs dated 10<sup>th</sup> July 2023 for fresh taxation on items No.1,2,12,13 and 15.
  6. That the Honourable court be pleased to strike out items No.2-12 of the Respondents' Bill of costs dated 10<sup>th</sup> July 2023 taxed by the Deputy Registrar that pre-dates the application filed by the Respondent dated 27<sup>th</sup> March 2019.
  7. That the Honourable Court be pleased to make a determination whether it was proper and or lawful for the Taxing master to award costs that pre-dates the Applicant's application dated 27<sup>th</sup> March 2019 and dismissed on 5<sup>th</sup> May 2020 without a court order by way of a ruling



or a judgement explicitly awarding costs to the Respondents that were taxed by the Deputy Registrar.

8. The Honourable Court be pleased to give directions on the court's own orders issued and dated 10<sup>th</sup> March 2015 in Milimani HCCA 608 of 2023 which are the same orders adopted when the matter was transferred to the ELC Court after its creation as regards clause No.3 of the Court order prohibiting both parties from claiming for costs both in the lower court and the High Court.
  9. That the Honourable Court be pleased and makes a determination on when Milimani Elc Appeal 73 of 2018 (Formerly HCCA 608 of 2023) concluded and which costs were awarded in the in the Respondents' Appeal and in the Applicant's application dated 27<sup>th</sup> March 2019.
  10. That the Honourable court be pleased and makes a determination on item No.1 on the award of ksh.30, 000/= as instruction fees to an advocate who was already on record in an appeal that had not concluded yet the Advocates Remuneration order Schedule 6 at page 293(viii) provides for ksh.5, 000/= to respond to an application that is opposed.
  11. That the Honourable Court be pleased and makes a determination on award of ksh.5, 000/= on item No.6 in the Respondent's bill of costs for non-attendance at the High Court by the them on 31<sup>st</sup> July 2019 which the taxing master awarded without any explanation and or reasons for such an award.
  12. That the Honourable Court be pleased and makes a determination on award of ksh.5, 000 on item No.8 in the Applicant's bill of costs dated while the record indicates non-attendance at the High court by the Applicants on 27<sup>th</sup> September 2018 awarded by the Deputy Registrar without any explanation and or reason for such an award.
  13. That the Hon. Deputy Registrar disregarded the provisions of the Civil Procedure Rules and also the Remuneration Order as regards costs in a suit or any application.
  14. That the Honourable court issues orders for costs.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Geoffrey Njuguna Munga sworn on even date.

### **The Applicant's Case**

3. The Applicant is aggrieved by ruling of the Taxing Master delivered on 2<sup>nd</sup> May 2024 on the grounds that the Taxing Master failed to peruse the record to discern which costs were to be taxed by the Respondents.
4. He deposed that Item 1 of the Bill of Costs is not justified as the Respondents' appeal did not proceed to full trail, since it was determined vide a consent letter dated 2<sup>nd</sup> February 2015 which was adopted as an order of the court on 10<sup>th</sup> March 2015. He deposed that clause 3 of the consent order provided that each party was to bear its own costs in the High Court and the Court below. That as per clause 5(k) of the said consent, parties were given leeway to approach the court if dissatisfied in the manner in which the orders were being implemented.
5. That being dissatisfied, he filed an application dated 27<sup>th</sup> March 2019 which was dismissed on 5<sup>th</sup> May 2020 with costs to the Respondents and which is the subject of the reference herein. He argued that the costs only relate to the Notice of Motion dated 27<sup>th</sup> March 2019.



6. The Applicant contended that the costs awarded in Item No.2-12 of the Respondents bill of costs dated 10<sup>th</sup> July 2023 are clearly outside the application dated 27<sup>th</sup> March 2019 and are not covered by the ruling of 5<sup>th</sup> May 2020. He further contended that the costs awarded on item No.2,3,6 ,8,13 and 15 were excessive and not supported by any cogent reason.
7. The Applicant deposed that the Deputy Registrar failed to justify any item in the Bill of costs in his entire ruling. He further deposed that the Taxing officer failed to indicate the sections of the law that informed his decision.

### **The Respondent's Case**

8. The Respondents opposed the application vide their grounds of opposition dated 25<sup>th</sup> June 2024 raising the following grounds:-
  - a. That this court lacks jurisdiction to entertain the reference as the Applicant failed to comply with rule 11 of the Advocates Remuneration Order.
  - b. That the award of the taxing master is legally sound and consistent with the law.
  - c) That the Applicant has not demonstrated that the awarded sums were exorbitantly high / excessive as to amount to an error in principle.
  - d) That there is no legal provision that prevents the taxing master from awarding costs that are incidental to the application in which costs were ordered.
9. The Reference was canvassed by way of written submissions.

### **THE APPLICANT'S SUBMISSIONS**

10. The Applicant filed his submissions dated 21<sup>st</sup> February 2025. The Applicant submitted that the Respondents' Advocate received instructions in the course of the appeal thus the instruction fees of Kshs. 30,000/= as taxed on item 1 of the Bill of costs was grossly exaggerated.
11. He further submitted that any costs falling outside the costs awarded by the court should be taxed off. He asserted that Item 2 to 12 of the Bill of costs dated 10<sup>th</sup> July 2023 contradicts clause 3 of the consent order regarding the issue of costs since they are outside the application dated 27<sup>th</sup> March 2019.
12. The Applicant further submitted that this court cannot interfere with the terms of the consent recorded on 2<sup>nd</sup> March 2015 as both parties had agreed in principle to forego costs.

### **The Respondents Submissions**

13. The Respondents filed their submissions dated 25<sup>th</sup> February 2024. On their behalf, Counsel submitted that the reference ought to be struck out / dismissed as the Applicant failed to give a Notice of Objection stating the items which he objects and seeking reasons thereof pursuant to Rule 11 of the Advocates Remuneration Order.
14. Counsel contended that the Applicant is asking this court to go back to the appeal and make certain determinations on costs that were awarded.
15. On instruction fees, Counsel urged the Court to consider the importance and complexity of the issues in contention, the bulk of the application, response filed and the ruling issued by Justice Okong'o on 5<sup>th</sup> May 2020 in arriving at the instruction fees payable.



16. It was submitted that the appeal was concluded when the consent orders were adopted, thus instructions to respond to the application dated 27<sup>th</sup> March 2019 were not received in the course of the appeal.
17. On the issue of attendance, Counsel submitted that attendances before the application were part of the process leading to the ruling of 5<sup>th</sup> May 2020 and it is only fair that they are compensated as they attended court at the behest of the Applicant's objections. Counsel conceded to the sum of Kshs.1100/= per attendance on the undisputed attendances and added that Kshs.5, 000/= is reasonable and justifiable for attendance before the judge.

### **Analysis And Determination**

18. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Taxing Officer erred in the manner that he taxed the bill of costs.
19. The Principles of taxation were aptly stated in *Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others* (1972) EA 162 where the court held that:
  - “(a) a) successful litigant ought to be fairly reimbursed for costs he has had to incur
  - (b) That costs be, not allowed to rise to such level as to confine access to justice to the wealthy.
  - (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and
  - (d) that as far as practicable there should be consistency in the awards made.
  - (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances
  - (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically
  - (g) the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”
20. In the case of *Kipkorir Titoo & Kiari Advocates vs Deposit Protection Fund Board* (2005) 1 KLR 528 the court of Appeal held that:-

“On a 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- an example of an error of principle is where the costs allowed are so manifestly excessive s to justify an inference that the taxing officer acted on erroneous principles.”
21. In the case of *Joreth vs Kigano Associates* (2002) EA 92 the Court of Appeal set out the various factors to be considered in determining instruction fees which include the importance of the matter, general conduct of the case, the nature of the case, time taken for dispatch and the impact of the case on parties.



22. The Applicant has demonstrated that the appeal herein was not determined in the traditional sense as a settlement was reached between the parties vide a consent recorded on 10<sup>th</sup> March 2015. He also demonstrated that some proceedings were in fact before the Subordinate court (Kiambu CMCC 92 OF 2010) for supervision of implementation of the said consent orders. The court has also considered that the said consent settled the issue of costs in the appeal and in the Lower Court.
23. Clause 5(k) of the Consent order allowed the parties to approach the court to confirm compliance of the orders. In its ruling of 20<sup>th</sup> May 2020, the Applicant's application dated 27<sup>th</sup> March 2020 was dismissed with costs to the Respondents. I opine that the same were only costs as the rest of the costs were covered in the consent order between the parties.
24. In the circumstances, I opine that Items 4-10 of the bill of costs predates the application dated 27<sup>th</sup> March 2020 whose bill of costs is the subject of this reference. From the foregoing, the taxing master erred in principle in allowing items that did not form part of costs awarded.
25. Further, on item 1, Schedule 6 of the Advocates Remuneration order provides that to oppose an application which is opposed in an appeal, fees applicable is Kshs.5,000/= .In my view, the award of Kshs. 30, 000/= was excessive in the circumstances of the case. It is not in dispute that Respondents have conceded to the sum of Kshs. 1,100/= per attendance on the undisputed attendances.
26. In the end, I find that the application dated 27<sup>th</sup> January 2025 is merited and the same is hereby allowed in the following terms:-
  - a. The decision of the Taxing Master dated the 2<sup>nd</sup> May, 2024 is hereby set aside.
  - b. The bill of costs dated 10<sup>th</sup> July, 2023 shall be taxed afresh before another taxing officer.
  - c) Each party to bear its own costs.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 4<sup>TH</sup> DAY OF APRIL, 2025.**

.....

**T. MURIGI**

**JUDGE**

In The Presence Of:

Gachara for the Respondents.

Hilda – Court assistant

