



Syano & another v Syano (Environment & Land Miscellaneous Case E007 of 2023) [2025] KEELC 3082 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3082 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND MISCELLANEOUS CASE E007 OF 2023**

EO OBAGA, J

APRIL 3, 2025

BETWEEN

LAZARUS MUVUVA SYANO 1ST PLAINTIFF

SUSAN KIUMENZE SYANO 2ND PLAINTIFF

AND

BONIFACE NZIOKA SYANO DEFENDANT

RULING

1. The Applicant filed a reference to this court in which he sought the following orders:
 - a. That the decision of the Taxing Officer as evidenced in the ruling delivered on 17th April, 2023 with respect to items 1, 3, 5 and 9 over the bill of costs dated 27th January, 2023 on the application dated 15th February, 2022 and with respect to items 1, 2, 3, and 7 over the bill of costs dated 27th January, 2023 on the application dated 26th January, 2022 be set aside and taxed afresh by this court.
 - b. That the costs in the application be provided for.
2. The Applicant states that he was the Defendant in Makueni ELC No. 80 of 2017 Lazarus Muvuva Syano and Susan Kiumenze Syano v Boniface Nzyoka Syano. The Plaintiffs' suit was dismissed with costs. The Applicant applied for eviction orders vide Notice of Motion dated 26th January, 2022. The application was dismissed with costs.
3. The Respondents subsequently filed a bills of costs in respect of application dated 26th January, 2022 and that of 15th February, 2021. In a ruling dated 17th April, 2023, the taxing officer taxed the two bill in the sum of Kshs.59,950/= and Kshs.60,645/= respectively. The Applicant opposed the taxing officer's taxation in items 1, 2, 3 and 7 for application dated 26th January, 2022 and items 1, 3, 5 and 9 for application dated 15th February, 2021.



4. The Applicant contends that the bill of costs was excessive and not as per the scale. It is on this basis that the Applicant wants the taxing officer's ruling set aside on the aforesaid items.
5. The Respondents opposed the reference through a replying affidavit sworn on 11th December, 2024. The Respondents contend that the application is brought in bad faith, is frivolous and is an abuse of the process of the court. They contend that the application has been overtaken by events in that the taxed amount has already been paid and that in any case, the taxation was in accordance with the law and that litigation must come to an end.
6. The Applicant filed his submissions dated 29th January, 2025. The Respondents filed their submissions dated 13th December, 2024. The Applicant submitted that he had made the application which was dismissed in his bid to execute the decree of the court. He therefore submitted that the proper schedule of the Advocates Remuneration Order which ought to have been applied was schedule 6 Rule 13 (a) of the Advocates Remuneration Order of 2014.
7. The Applicant submitted that the taxing officer based her taxation on schedule 6(1) under other matters when she was supposed to rely on schedule 6 (1) Rule 13 (a) of the Advocates Remuneration Order. By applying the wrong schedule and Rule, she ended committing an error of principle.
8. The Respondents submitted that the Applicant had not met the threshold required for this court to interfere with the taxing officer's discretion. The Respondent relied on the case of *First American Bank of Kenya v Shah and others* [2002] EALR 64 where it 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 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 of matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial judge.....not all above 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.”
9. The Respondents also relied on the case of *Republic v Minister of Agriculture & 2 others Ex parte Muchiri W. Njuguna & 6 others* [2006] EKLK where it was held as follows:

“A court will not interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat was too high or low; it will only interfere if it thinks the award somewhat was so high or low as to amount to an injustice to one party or the other.”
10. I have considered the Applicant's application, the opposition thereto by the Respondents, the submissions by the parties as well as the authorities cited. There is only one issue which emerges for determination. This is whether the taxing officer committed an error of principle to warrant interference with her discretion.
11. In the instant case, the Respondents had sued the Applicant whereby they were seeking a declaration that the Applicant was holding LR No. Nzai/Mumbuni/677 in trust for the Respondents. The Respondents were residing on the suit property. The Respondents were seeking to be registered as joint owners of the suit property with the Applicant. This suit was dismissed.



12. Based on the dismissed suit, the Applicant filed an application for eviction of the Respondents but the application was dismissed with costs. The application by the Applicant was therefore in an attempt to execute the order of court which had dismissed the Respondents' suit. The application for eviction was not a suit being filed but was a misguided attempt at eviction based on the outcome of the suit which the Respondents had filed. The taxing officer was therefore wrong in basing the taxation on schedule 6 Rule 1 under other suits not provided for. The taxing officer should have based her instruction fee on schedule 6 Rule 13 (a) where instruction fees should have been Kshs.10,000/=. I therefore set aside the ruling of the taxing officer dated 17th April, 2023. The bill of costs is remitted back for taxation by a taxing officer other than Hon. E. Kemei in accordance with the proper schedule as pointed out hereinabove.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 3RD DAY OF APRIL, 2025.

In the presence of:

Mr. Muthiani for Respondent.

Mr. Tamata for Mutuku for Applicant.

Court assistant - Steve Musyoki

