



Osallo v Barclays Bank of Kenya & 2 others (Environment & Land Miscellaneous Case E066 of 2021) [2022] KEELC 13550 (KLR) (18 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13550 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E066 OF 2021
MN GICHERU, J
OCTOBER 18, 2022
IN ELC 717 OF 2017
(FORMERLY MACHAKOS ELC NO. 380 OF 2011)
IN THE MATTER OF PARTY AND PARTY BILL OF COSTS**

BETWEEN

CHARLES NAKULO OSALLO PLAINTIFF

AND

BARCLAYS BANK OF KENYA 1ST DEFENDANT

JULIUS CHUMBI WAITIKI 2ND DEFENDANT

LAND REGISTRAR, KAJIADO 3RD DEFENDANT

RULING

1. This ruling is on the chamber summons dated 15th March, 2022. It is by the first Defendant Barclays Bank of Kenya and is brought under paragraph 11 (1) and (4) of the Advocates Remuneration Order, Sections 3A and 63 (e) of [Civil Procedure Act](#) and all other enabling provisions of law.

The summons seeks the setting aside of the taxing master's decision delivered on 6th December, 2021 on items 1 – 103, 115, 116, 146, 150, 169, 188 and 222 of the Plaintiff's bill of costs.

2. The grounds for seeking to set aside the taxing master's decision can be summarized as follows.

Firstly, the ruling was delivered without the knowledge of the Applicant because on the date it was scheduled for hearing, that is to say, 8th November, 2021, the matter was not listed on the daily cause list. As a result, the Applicant was not heard in opposition to the bill of costs.

Secondly, on 8th November, the matter was fixed for 15th November, 2021 and the Applicant was not served with that date.



Thirdly, the taxing master erred in law and principle by ignoring a valuation report, applying the 2014, instead of 2009 Advocates Remuneration Order, taxing some mentions as hearings, using the higher scale instead of the ordinary one, taxing item 188 at Kshs. 6,000/= instead of Kshs. 500/= among others.

3. The application is opposed by the respondent Charles Nakullo Osallo who has sworn a replying affidavit dated 4th April, 2022 in which he deposes that the application is time barred, that the first Defendant was duly served with the bill of costs on 3rd November, 2021, as per the affidavit of Daniel Gatutha dated 4th November, 2021.
4. I have carefully considered the summons in its entirety including the affidavits, annexures and grounds. Though the parties were to file and serve submissions by 20th August, 2022, none had been received from either of them by that date.

I find that the following issues arise.

- (i) Whether the Applicant was served with a hearing notice for 8th November, 2021 when the taxation took place?
- (ii) Whether the Applicant was condemned unheard?
- (iii) Whether the remuneration order used was for 2009 or 2014?

On the first issue, I find that there is no evidence that the Applicant was served with the hearing notice of 8th November, 2021 or 15th November, 2021 when taxation took place. Neither is there evidence that it was served with the ruling notice.

The Applicant was entitled to be served with all the above dates.

On the second issue, I find that the Applicant was condemned unheard contrary to the rules of natural justice and Article 50 (1) of *the Constitution*.

On the third and final issue, I find that whether the remuneration order applied was the 2009 or 2014 one will be part of the decision of the taxing master.

5. For the above stated reasons, I allow the summons dated 15th March, 2022 in terms of prayers 4 and 5. The bill of costs dated 29th October, 2021 to be taxed afresh by Hon. Jane Kamau, Deputy Registrar. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

