



REPUBLIC OF KENYA



KENYA LAW
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Mwangi & another v Gathoni & 2 others (Environment and Land Case 386 of 2014) [2025] KEELC 6086 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6086 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE 386 OF 2014
JO OLOLA, J
SEPTEMBER 19, 2025

BETWEEN

AGNES MUTHONI MWANGI 1ST PLAINTIFF

PETER NDEGWA MWANGI 2ND PLAINTIFF

AND

PRISCILLAH WANJERI GATHONI 1ST DEFENDANT

PRIMO THUKU GATHONI 2ND DEFENDANT

SERAH WANGARI MBUGUA 3RD DEFENDANT

RULING

1. By the Notice of Motion dated 30th July, 2024, Peter Ndegwa Mwangi (the 2nd Plaintiff) prays for the following orders: -
 - a. Spent
 - b. That this Honorable Court be pleased to set aside the Taxing Officer's/Master's Ruling delivered on 19th June, 2024 as it is irregular;
 - c. That this Honorable Court be pleased to grant Orders (of) status quo to the Notice to show cause why execution should not issue dated 29th July, 2024;
 - d. That this Honorable Court be pleased to avail to the Applicants cogent reason and explanation for the decision leading to the taxed sum of Kshs. 309,913/- in the Certificate of Costs dated 5th July 2024; and
 - e. That the costs of this application be provided for.



2. The application which is supported by an affidavit sworn by the 2nd Plaintiff is based inter alia, on the grounds.
 - a. That the Deputy Registrar taxed the Defendant's Bill of Costs on 19th June, 2024 Ex-Parte;
 - b. That the Plaintiffs had been in Court on the date of the taxation but were told to check on the verdict the following day;
 - c. That the Plaintiffs' rights to a fair trial and to appeal by way of reference were violated;
 - d. That the Defendants have applied for the Plaintiffs' committal to civil jail in a Notice to Show Cause set for hearing on 29th July 2024;
 - e. That the Plaintiffs are apprehensive that the Defendants' Advocate is hell-bent to subvert the Appeal pending in the Court of Appeal; and
 - f. That the adjudged amount of Kshs. 309,913/= contained in the Certificate of Costs is unsubstantiated and untenable and the same ought to be set aside.
3. The Defendants are opposed to the application. By their Grounds of Opposition dated 20th September, 2024, the Defendants state that:
 1. The application is misconceived and incompetent;
 2. The application is bad in law, a gross abuse of the process of the court and untenable;
 3. The application is fatally and incurably defective;
 4. The application is frivolous and vexatious; and
 5. The application is otherwise without merit and should be dismissed with costs.
4. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before me by the Plaintiff in person and those filed by the Learned Advocate for the Defendants.
5. By their application before me the Plaintiffs/Judgment Debtors pray for an order that this court be pleased to set aside the Taxing Master's Ruling delivered on 19th June, 2024 on account that the same was irregular. In addition, the Plaintiffs have asked the court to be pleased to avail to them cogent reasons and explanation for the decision leading to the taxed sum of Kshs. 309,913/=.
6. It is the Plaintiffs' case that the Bill of Costs was taxed ex-parte on 19th June, 2024 without their input and that the taxed amount of Kshs. 309,913/= is unsubstantiated and untenable.
7. The Plaintiffs' application is expressed to be brought pursuant to Rule 11 (2) of the Advocates Remuneration Order which provides the process of referring taxation before a judge as follows:
 - " 11. Should any party object to the decision of the taxing officer, he may within
 - (1) fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.



(3) ...

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step and an application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

8. In the matter before me, it was evident from prayer No. 4 of the Plaintiffs' application that they had not given any notice in writing to the tax master on the items they were objecting to. While they assert that the Ruling on the taxation was delivered in their absence, they have not sought an order for enlargement of time as envisaged under Sub-rule (4) of Paragraph 11 of the Advocates Remuneration Order to enable them seek for the reasons and to thereafter proceed to file a reference.
9. For this court to be persuaded to set aside an order of taxation, one must demonstrate that the taxing officer committed an error of principle or that the awarded costs were manifestly excessive or so low as to be unjust. In the matter herein, the Plaintiffs have not stated which item of the taxed bill they object to and the reasons for such objection.
10. In the premises, I am in agreement with the Defendants that the Motion dated 30th July 2024 is misconceived and incompetent. I dismiss the same with costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025.

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Plaintiff/Applicant
- c. Ms. Njuguna holding brief for W. Gikonyo Advocate for the Defendants/Respondents

