Waitiki v Kenya Power & Lighting Company Ltd & another (Environment and Land Case Civil Suit 87 of 2012) [2024] KEELC 1669 (KLR) (4 April 2024) (Ruling)

Neutral citation: [2024] KEELC 1669 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT AND LAND CASE CIVIL SUIT 87 OF 2012

LL NAIKUNI, J

APRIL 4, 2024

BETWEEN

EVANSON JIDRAPH KAMAU WAITIKI ..... PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LTD ..... 1ST RESPONDENT

THE NATIONAL LAND COMMISSION ..... 2ND RESPONDENT

RULING

I. Introduction

1. Before this Honourable Court for its determination is the Chamber Summons application dated 3rd May, 2023 brought under Paragraph 11(2) of the Advocates Remuneration Order and sections 1A, 1B and 3of the *Civil Procedure Act*, Cap. 21. The application was brought by Evanson Jidraph Kamau Waitiki, the Plaintiff/Applicant herein.

2. Upon service of the Chamber Summons application, the Defendant/Respondent herein, the Kenya Power & Lighting Company Limited, while opposing the reference, filed the Grounds of Opposition dated 11th December, 2023.

II. The Plaintiff/Applicant's case

3. The Plaintiff/Applicant sought for the following orders:

    a. That this Honourable Court be pleased to deem the reasons for taxation to be in the typed ruling of the Taxing Officer dated 5th April, 2023 and to accordingly admit this reference.

    b. That this Honourable Court be pleased to vary or set aside the decision of the Taxing Officer on the Plaintiff bills of costs herein dated 29th November, 2022

contained, in his typed ruling dated 05/04/23, as it relates to the specific items subject of this reference.

c. That costs of this application/reference be provided for.

3. The Application was based on the grounds, testimonial facts and averments made out under the 12 Paragraphed Supporting Affidavit of PETER GACHERU NG'ANG'A, an advocate of the High Court of Kenya practicing as such in the name and style of Gacheru Ng'ang'a & Company Advocates who have the conduct of this matter on behalf of the Plaintiff, sworn on 3rd May, 2023. He averred that:

a. On 5th April, 2023, the taxing office delivered a ruling in which the Plaintiff/Applicant's party and party bills of costs herein dated 29th November, 2022, was taxed and allowed in the sum of Kenya Shillings Two Million Five Seventeen Thousand Six Fourty One Hundred (Kshs. 2,517,641/=). Annexed in the affidavit marked as "PGN – 1" and "PGN – 2" respectively were the true copies of the bill and the ruling.

b. By an objection dated 17th November, 2023 and filed in court on same day, the Plaintiff/ Applicant objected to the decision on taxation made on 05th April, 2023 and sought for the reasons of taxation to enable him file a reference. Annexed in the affidavit marked as "PGN – 3" was a true copy of the letter of objection.

c. The Taxing Officer, was yet to supply reasons of taxation as requested for on 17th April, 2023 in terms of Paragraph 11(2) of the Advocates Remuneration order.

d. However, a cursory look at the typed ruling showed that it contains sufficient reasons for taxation which the court could work with for purposes of this reference.

e. This court had held that where typed ruling contains reasons, the Plaintiff/Applicant never would have to wait for the reasons.

f. Therefore, he invited the court to deem reasons for taxation as to be in the said ruling, admit this reference and proceed to deal with it on merits.

g. The Taxing Officer erred in principle while taxing Plaintiff/Applicant's party and party bills of costs dated 29th November, 2022 and in particular:

On item 2a-Instruction fees

i. The Taxing Officer erred in taxing the instruction fees at Kshs. 810,000/- and taxing off Kshs.4,200,000/- for failing to apply the correct principles and factors for increasing the basic instruction fees under the schedule applicable in the High Court/ELC after finding that the value of the subject matter of suit could be determined from the pleadings at Kshs. 21,000,000.

ii. The taxing officer erred in taxing the instruction fees at Kshs. 810,000/- and taxing off Kshs.4,200,000/-for failing to refer to or analyze the principles stated by the plaintiff in his written submissions filed in court and before the taxing officer.

iii. The taxing officer erred in taxing the instruction fees at Kshs. 810,000/- and taxing off Kshs. 4,200,000/- for failing to show any logical basis for increasing the basic instruction fees of Kshs. 515,000 to magical figure of Kshs.810,000/-other than for giving a defined figure for the 1/3 getting up fees.

iv. Kshs. 810,000/-awarded as instruction fees is manifestly low in the circumstances of this case.

Court attendances-

i. The taxing officer erred in taxing items 57-93 of the said bill on court attendances when having accepted to award for a full day, he applied the wrong scale.

Court attendances by clerk to file

i. The taxing officer erred in taxing off items 98, 103, 106,108, 110,111(b), 113, 117, 120, 122, 124 and 126 - transport to court to file by the clerk, when he exercised his discretion wrongly and failing to find that the same were necessary and reasonable; despite there being no receipts.

Transport to Mombasa by advocate on road

i. The taxing officer erred in taxing off items 127-140,transport to court to by road by the advocate, when he exercised his discretion wrongly and failing to find that the same were necessary and reasonable, despite there being no receipts.

ii. The taxing officer erred in taxing off items 127-140,transport to court to by road by the advocate, when he failed to appreciate that the same were also chargeable in the alternative under Schedule V paragraph 7(journeys from home) as held by the court in the case of "Joel Lesale & Eight Others v Director General, Nema & Anor [2010] eKLR", which decision had been placed before him.

h. The Affidavit was in support of the application/ taxation reference.

III. Submissions

3. On 4th December, 2023 parties were directed By ELC Court No. 1 to appear before this Honourable Court for the disposition of the Chamber Summons dated 3rd May, 2023 through written submissions. Pursuant to that on 1st January, 2024, in the presence of all the parties in Court the Honourable Court reserved the ruling on 4th April, 2024.

A. The Written Submissions of the Plaintiff/Applicant

4. The Plaintiff/Applicant through the Law firm of Messrs. Gacheru Ng'ang'a & Company Advocates filed his written submission dated 18th January, 2024. Mr. Gacheru Advocate commenced the submissions by stating that before the Court is the Plaintiff' s Chamber Summons dated 3rd May, 2023, (taxation reference),wherein the plaintiff is challenging the decision of the taxing officer made on 5th April, 2023 on his bill of costs dated 29th November, 2022. That decision was annexed in the application marked as "PGN – 2" and the Bill of Costs marked as "PGN - 1 in the application. The Plaintiff/Applicant challenged the taxation of the said bill. The objection was attached in the application marked as "PGN – 3". Specifically, the Plaintiff/Applicant challenged taxation of the following items of the bill:

i. Items - 2a and 2b - Instruction fees and fees for getting up.

ii. Items – 57 to 93 - court attendances.

iii. Items - 98, 103, 106, 108, 111(b),113, 117, 120, 122, 124 and 126 - transport to Mombasa by clerk to file documents.

iv. Items - 127-140-Transport to Mombasa by the Advocate by road and accommodation.

5. The Defendant/Respondent opposed the reference vide the Grounds of Opposition dated 11th December, 2023. In addition to these submissions, the Plaintiff/Applicant also relied on his submissions on the bill filed before the taxing officer and the authorities filed before him which were still in the court file. They shall not be filing the authorities again for purposes of a tidy court record. The principle and circumstances under which the Judge may interfere with the decision of a Taxing Officer in a taxation reference like this one were well settled. To support his argument, he cited the case of:- "First American Bank of Kenya v Shah and Others [2002] 1E.A. 64 at 69" by Ringera J (as he then was) he stated as follows:-

> " First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle".

6. In this case therefore, he they proceeded to demonstrate how the taxing officer erred in taxing various items of the plaintiff's bill of costs dated 29th November, 2022.

7. On Item 2 a – Instruction fees, the Learned Counsel submitted that for this item, which the Taxing Officer wrongly referred to as item 1 in his ruling, he taxed and allowed it at a sum of Kenya Shillings Eight Hundred and Ten Thousand (Kshs.810,000/-). He thus taxed off a sum of Kenya Shillings Four Million Two Hundred Thousand (Kshs.4,200,000/=) (though his math here was not accurate).- In doing so, he increased the basic instruction fees of a sum of Kenya Shillings Five Hundred and Fifteen Hundred (Kshs. 515,000/-) to Kenya Shillings Eight Hundred and Ten Thousand (Kshs. 810,000/-). He mentioned the nature of the suit and time taken as reasons for this increase. . In the said case of "First American Bank of Kenya v Shah & Others [Supra]", the High court stated the approach that the Taxing officer was to take in assessing the instruction fees. The Taxing Officer was to set out the basic instruction fees before venturing to increase or reduce it. This position was also confirmed in the case of"- "Sophie Chirchir v Africa Merchant Assurance Co. Ltd [2022] eKLR", where he court said the following at paragraph 20:

> " In my view the decision of the Taxing Master ought to expressly set out the Schedule under which the costs are being taxed and then the basic fees before considering whether that basic fee should be increased or reduced. He must give reasons for deciding that the basic fee should be increased or decreased."

8. They agreed with the taxing officer that the value of the subject matter could be determined from the Judgment of the court and with his calculations of the basic instructions fees. Their issue was that he did not consider ALL the relevant factors for increasing the basic instruction fees and thus ended in assessing it at a reasonably low and unreasonable figure. Further, he did not give a reasonable justification of increasing the basic instruction fees by the figure of 295,000. Why 295,000? Why not double or triple it? What was the magic with this figure?

9. They agreed that the Taxing Officer has discretion to increase or reduce the basic instruction fees. This was from paragraph 1 of Schedule 6 which states:

> The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it.

10. The Learned Counsel submitted that they also agreed with the Taxing officer, that this was a proper case for increase of the basic instruction fees. The factors that the taxing officer was to consider in

increasing or reducing the basic instruction fees were well settled and were provided in the proviso to Paragraph 1 which provides:

i. The taxing officer may take into consideration other fees due to the advocate (if any), in respect of the work to which any such allowance applies, the nature and importance of the cause or the matter, the amount involved, the interest of the parties, the amount involved, the general conduct of the proceedings, a direction of the trial judge and all other relevant factors.

11. Although the Taxing Officer, mentioned the nature of the suit, time taken to prosecute it and research undertaken, he did not elaborate or give particular elements thereof. He did not consider other factors like the amount involved, the interest of the parties and the general conduct of the matter among other factors.

12. According to the Learned Counsel, the matter was of immense importance to all the parties concerned in it. According to the pleadings (the original plaint), the Plaintiff, Evanson Kamau Waitiki, was seeking inter alia damages for trespass on his 4 parcels of land totaling to about 930 acres, a prime land in Likoni. This was after the plaintiff was evicted from the land by illegal squatters who entered into the land and later invited the defendant who also illegally entered the land laid power cables and equipment for supply of power to the squatters.

13. Other than damages for trespass, the plaintiff also sought for an order that the defendant be compelled to remove all its equipment, power lines, apparatus, installations, transformers, meters, wires, cables and any equipment on the land. The Plaintiff/Applicant had also sought for a permanent injunction restraining the Defendant/Respondent from entering the land and erecting any power lines, apparatus, transformers etc. The Defendant/Respondent stood to lose everything and therefore their interest was huge.

14. As a matter of fact, the record would indicate that on 18th December, 2012, the court made far reaching orders restraining the Defendant/Respondent from entering the suit land and erecting power lines, transformers etc. This precipitated the Defendant/Respondent to move the court immediately under certificate of urgency to set aside those orders culminating to the consent orders of 26th February, 2013 maintaining with regard to power connections on the land by court ordering that there would be no new connection of power on the suit land. The interest of the matter to parties was further evidenced by the fact that at the trial, the Defendant/Respondent engaged the services of two (2) counsels. The record would indicate that at the hearing up to the Judgment, the Defendant/Respondent was represented by Mr. Chacha Odera, a Senior Advocate of more than 30 years standing and Mr. Munyithya, another Senior Advocate of over 20 years standing. The Taxing Officer did not consider the above elements of the nature and importance of the matter to the parties.

15. On the complexity of the matter, the Learned Counsel submitted that this matter though a claim for trespass and breach of statutory duty was very complex one and required great deal of care and research from Counsel. As evidenced in the bulky submissions and authorities filed by the parties, it raised serious and complex issues of Land law, ingredients of the Tort of trespass, defences of the Tort of trespass; whether sale of land affected the actionability of the tort of trespass, the scope of the tort of breach of statutory duty an and assessment of damages. The court also recognized these novel and difficult issues of law that had been raised by the parties. At Paragraph 82 of its 83 paged Judgment, the Honourable Court said:

> Ultimately, upon conducting such an intensive, robust and thorough analysis of all the framed issues hereof....

16. The Learned Counsel submitted that the Taxing Officer never considered this factor in increasing the basic instruction fees. On the issue of the amount or value of the subject matter, the Learned Counsel submitted that although the value of the subject matter had been stated in terms of the general 4 parcels of prime land in Likoni land whose total acreage measured approximately at 930 acres. According to the Judgment, the value of the land according to the purchase price of the land as sold to the Government of Kenya was a sum of Kenya Shillings One Billion Two Fifty Million (Kshs. 1, 250,000, 000.00/=). In a related matter, Mombasa High Court JR No.40 of 2000, Evanson Kamau Waitiki v AG & Others, which was an application for Judicial Review, involving the same land, the taxing officer of this court allowed instruction fees for a sum of Kenya Shillings Fifty Million (Kshs.50,000,000/-). This was so in spite of the fact that the applicable scale for judicial review allowed minimum fees of a sum of Kenya Shillings Eight Thousand Four Hundred (Kshs.8,400/-). The Learned counsel invited the court to peruse this file.

17. According to the Learned Counsel, in that ruling, in allowing the instruction fees of a sum of Kenya Shillings Fifty Million (Kshs.50,000,000/-) the Taxing Officer, in increasing the minimum fees, considered the estimated value of the land as it was in the year 2000. See page 3 of the ruling attached to the submissions filed before the Taxing Officer. In a related matter of:- "Msa Misc. Appl. No. 10 of 2023; Gikandi & Company Advocates v Evanson Jidraph Kamau & Anor", which was an Advocate - Client bill of costs arising from Msa HCCC Mis.40 of 2000, the taxing officer of this court awarded instruction fees of Kenya Shillings Thirty Two Million (Kshs.32,000,000/-). That ruling was attached to these submissions. The Taxing Officer did not consider this factor in increasing the instruction fees.

18. On interest of the parties, the Learned Counsel averred that above, they had extensively demonstrated that the importance of the matter to the parties was immense. The Learned Counsel also submitted that the matter was of great interest to the parties, based on what they would lose, including the over 11 thousand residents/interested parties who were enjoined in the suit.

19. On the conduct of the proceedings, the Learned Counsel stated that as stated above, his matter was commenced in in the year 2012. It was only determined on 12th October, 2022, after a lapse of 10 years. The Learned Counsel referred Court to the case of:- "Nolly K. Musango v Peter Odanga & Anor [2021] eKLR", the Court held that the time it took to conclude a matter was a relevant consideration in assessing the instruction fees. At paragraph 11 of the ruling, the court said:

> "11. The applicant argues that the Taxing Officer ought not to have taken into consideration the duration of time. I disagree. I think the time taken in litigation is one critical factor that the taxing officer can take into account when assessing instruction fees, unless it can be demonstrated that the successful litigant ought not to benefit from this time, because he/she is the very party who led to the delay of the matter, and cannot therefore use the element of delay to his/her benefit. It has not been alleged that the delay herein was caused by the 1st respondent, and in fact, my assessment is that the delay was indeed caused by the applicant, who appears not to have been keen to take hearing dates and the matter only proceeded upon being listed for service week (a programme for disposal of old cases that contribute to case backlog). It cannot also be argued that the taxing officer erred in taking into consideration the level of work done, the volume of the pleadings, and the issues litigated. Those are proper considerations to take into account. I am not therefore persuaded that the taxing officer applied any erroneous principle when taxing the bill of costs."

20. In that case, the case had taken 7 years. Whilst this case took 10 years.Immediately the matter was filed in the year 2012, interlocutory applications were filed. These application were filed by both parties including the third parties. Eventually, the suit was dismissed on 13th July, 2016, allegedly for being an abuse of court process after the Plaintiff had sold the land to the Government of Kenya. The Plaintiff then filed an appeal against the dismissal, being Court of Appeal at Mombasa Civil Appeal No.73 of 2016. The appeal was eventually heard and allowed and the suit was reinstated for hearing in the year 2017. Even after the suit was reinstated, applications continued to be filed and determined. The court record would show that about 10 interlocutory applications were filed in the matter.

21. The many pleadings, applications and documents filed in this matter showed the level of work done and explained the bulky and voluminous file before the Taxing Officer. In the case of:- "Nolly K.Musango (supra)", the court accepted at Paragraph 11 that the level of work done and the volume of pleadings was one of the considerations in increasing the instruction fees. They therefore submitted that the nature and conduct of the matter and proceedings was another factor that the Taxing Officer should consider in increasing the basic instruction fees.

22. Taking the above factors, which the Taxing Officer never took fully into consideration, the Learned Counsel submitted that an amount of Kenya Shillings Five Million (Kshs.5,000,000/-) which had been charged was reasonable as instruction fees in this matter. The Learned Counsel urged the Honourable Court to find and hold that in allowing a sum of Kenya Shillings Eight Fifteen Thousand (Kshs. 815,000/=) for this item, the Taxing Officer erred in law and principle. Item 2b-getting up fees is related to instruction fees and should be allowed at 1/3 of the instruction fees. The Taxing Officer allowed items 57 to 67 at a sum of Kenya Shillings Five Thousand and Fouty (Kshs. 5,040/-) each under schedule 6 of the year 2006 Advocate Remuneration Order and Kenya Shillings Seven Thousand One Hundred (Kshs.7,100/-) each under the 2014 ARO for items 68-93. The Taxing Officer was obviously wrong.

23. The Learned Counsel contended that the Taxing Officer erred in taxing the attendances on half-day basis on the higher scale instead of charging them on a whole day basis, including the hearings. The court attendances as charged in the bill were drawn to scale according to the ARO scale of 2009 (Kshs.6, 720) and 2014 (Kshs.10,000). This was on a whole day, lower scale basis.

24. In so submitting, they invited the court to consider that the Advocate for the Plaintiff/Applicant was based in Nairobi. He would be traveling from Nairobi to attend Court at Mombasa. Hence even if the proceedings were not taking the whole day, the Counsel would not travel back to Nairobi the same day to deal with other matters. Therefore, he invited the Taxing Officer to allow all the attendances on full day basis as drawn. Further, this Court, that heard the suit would consider that not once did the Counsel wait from morning until afternoon when they were heard, sometimes going past 4.00 pm. The Taxing Officer was therefore wrong in taxing these items on half day basis.

25 Further, the Learned Counsel invited the Judge on this reference to consider that even the Judge had on three occasions allowed and assessed court attendances at a sum of Kenya Shillings Ten Thousand (Kshs.10,000/=) for a full day when adjournment was allowed. Court record would indicate that on 29th October, 2012, Plaintiff/Applicant was awarded costs of Kenya Shillings Thirty Thousand (Kshs.30,000.00/=). On 25th September, 2014, the Plaintiff/Applicant was allowed a sum of Kenya Shillings Ten Thousand (Kshs.10,000.00/=) for attendance according to Schedule 6 Paragraph 7(d) for whole day and further a sum of Kenya Shillings Twenty One Thousand and Eighty (Kshs. 21,080/=) being air fare for the Counsel and the Plaintiff/Applicant. Then on 9th December, 2015, the Plaintiff/Applicant was allowed costs of Kenya Shillings Fourty Five Thousand Eight Twenty (Kshs. 45,820/

=) that included Court attendance of a sum of Kenya Shillings Ten Thousand (Kshs. 10,000/-) for attendance and the other was for airfare. What now changed?

26. They therefore submitted that the sum of Kenya Shillings Six Kshs 6,720 and 10,000/-charged for items 57-93prayed for the attendances has actually been awarded before, is reasonable and the same should have been allowed. The Honourable Court was therefore invited to find and hold that the taxing officererred in taxing the court attendances.

27. On Items 98, 103, 106, 108, 111(b), 113,117,120,122,124 and 126-transport to Mombasa by clerk to file documents, the Learned Counsel averred that the Taxing Officer disallowed these items in entirety allegedly since they ought to be evidenced by receipts. They submitted that on these items, the Taxing Officer erred in principle. With due respect to the Taxing Officer, the above items related to transport to court by the Court Clerk who travelled from Nairobi to Mombasa. First and foremost, there was no doubt that the documents were filed by the said Court Clerk sent by the Plaintiff's advocates who was domiciled in Nairobi. Secondly, the court would take judicial notice of the fact that most public transport buses never issued receipts to travelers. In any case, where these were issued, one would hardly keep them; especially for many years like in this case where some charges related to many years back. Therefore, they submitted that a sum of Kenya Shillings Five Thousand (Kshs. 5000/-) charged for transport to court to file documents by the Court Clerk, though no receipts/vouchers/requisitions were produced, was necessary and reasonable. The Taxing officer thus erred in not allowing the same. In any event, the Taxing Officer has power to dispense with production of receipts and vouchers. Paragraph 74 of the ARO provide as follows:

> " Subject to paragraph 74A receipts or vouchers for all disbursements charged in a bill of costs shall be produced on taxation if required by the taxing officer.

28. This was a proper case where the Taxing Officer ought to dispense with production of receipts and allow the costs as reasonable. In this case the Learned Counsel prayed that the Taxing Officer ought to dispense with production of the receipts with respect for the sum of Kenya Shillings Five Thousand (Kshs. 5,000/-) for travel to Mombasa to file and serve documents.

29. On items 127 - 140- Transport to Mombasa by the Advocate by road and accommodation, the Learned Counsel submitted that the Taxing Officer again disallowed all these items in their entirety for want of evidence by receipts. On this one, once more, the Taxing Officer erred. These were instances where the Advocate traveled by road to attend court. Firstly it was not disputed that there were court attendances by the advocate on the dates when the advocate travelled (by road). Secondly, the court would take note of the fact that when a Counsel was to attend court in Mombasa and was travelling by road, he had to do it a day before and hence accommodation was necessary. An advocate had to secure accommodation in a decent hotel. The amount of Kenya Shillings Fifteen Thousand (Kshs.15,000.00/=) charged for every attendance/travel was thus reasonable and ought to have been allowed. It consisted an element of travel and accommodation.

30. Thirdly, it was interesting to note that the Taxing Officer allowed all the other attendances where the Advocate traveled by air and evidence was provided. Did it then mean that when an advocate travelled by road he never spend money on transport? The attendances and travels were necessary, properly incurred and he prayed that the same be allowed. In any event, the Taxing Officer has power to dispense with production of receipts and vouchers.

31. It was submitted before the Taxing Officer that these were transport costs from Nairobi to Mombasa and back and accommodation. They took place when the Advocate and the Plaintiff would travel by car by road and spend a night in Mombasa (Seen from the affidavit of Evanson Jidraph Kamau Waitiki

filed together with and in support of the bill).The Judge on this reference would note that these were incurred long time ago and the receipts may not be available. However, the court would take judicial notice of the amount of money one would spend on fuel for a car from Nairobi to Mombasa and back as well as decent accommodation in Mombasa. The Learned Counsel submitted that the amount of Kenya Shillings Fifteen Thousand (Kshs.15000/-) was more than reasonable and should have been allowed.

32. The court on taxation reference in the case of "Joel Lesale & Eight Others v Director General, NEMA & Another [2010] eKLR", recognized and awarded travel costs/expenses of an advocate who travelled from Nairobi to Mombasa. In that case the Taxing Officer had disallowed travel expenses noting as follows:-

> "I do not find any provision for traveling expenses that have been included in the disbursement. Those items are taxed off....."

33. The Judge accepted that traveling expenses for an Advocates were allowable albeit under Schedule V para 7 (journeys from home). The Judge allowed a sum of Kenya Shillings Twenty Thousand (Kshs. 20,000/-). In this case he submitted that in the alternative to the said items, the Advocate was entitled to a sum of Kenya Shillings Twenty Thousand (Kshs. 20,000/-) each for the journey from home to Court. In the event therefore it was found that these items could not be allowed under Schedule 6, he urged the Court to allow them under the said Schedule V paragraph 7 as the court did in "Joel Lesale case (Supra)". The Taxing Officer erred in disallowing these charges in their entirety. He ought to have allowed them.

34. In conclusion, the Learned Counsel asserted that the Taxing Officer erred in taxing the specific items of the Plaintiff's party and party bill of costs dated 29th November, 2022. The course was for the Judge to re-tax the specified items as submitted in these submissions rather than returning it back for Taxing Officer for taxation afresh. This would save the precious judicial time.

B. The Written Submissions by the Defendant/ Respondent

35. The Defendant/Respondent through the Law firm of Messrs. Munyithya, Mutugi, Umara & Muzna Co. Advocate filed its written submissions dated 29th January, 2024. Mr. Mkomba Advocate informed the Honourable Court that this were the submissions by the Defendant/Respondent in opposition of the Reference vide the Chamber Summons dated 3rd May, 2023. The Learned Counsel stated that the Defendant/Respondent relied on the Record and its submissions dated 22nd March, 2023 before the Taxing Officer.

36. On the instruction fees, the Learned Counsel submitted that as the Court noted in the Applicant's citation of the decision of "First American Bank of Kenya (Supra)", that the Court in a Reference would not disturb the decision of a Taxing Officer where there was no error on the basis of principle. In taxing instruction fees, the Taxing Officer herein correctly identified that the same was pegged on the value of the subject matter in regard to the Award and thus provided his assessment on the scale and eventual taxed amount. Fees per Sch 6.A (1) (b) ARO 2014 to scale stood at a sum of Kenya Shillings Five Twenty Thousand (Kshs. 520,000/-) and the same were rightly increased with even ourselves submitting that a sum of Kenya Shillings Seven Fifty Thousand (Kshs. 750,000/-) was reasonable with the Taxing Officer coming to his own figure giving reasons.

37. On the nature, importance and complexity of the subject matter, the Learned Counsel reiterated thesubmissions before the Taxing Officer and the Judgment of the trial court itself that was solely on the issue of trespass and damages therefrom.

38. On the value of subject matter, the Learned Counsel argued that as submitted above, the same was pegged on the award in the Judgment and not on the value of the suit property. The Learned Counsel relied on the finding of the Court of Appeal in "Kenya Ports Authority Pension Scheme & others v Kinyua Kamundi & Ano [2022]eKLR" where the Court held:

> 81. "In my view, the Taxing Officer went beyond the parameters set in Schedule VI by taking into account other matters extraneous to "the pleadings, judgment or settlement" in concluding that the value of the subject matter over Kshs. 2 billion when in fact the value of the subject matter was ascertainable from the Judgment in the primary suit....
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> 84. Based on the foregoing, I take the view that the failure by the taxing officer to compute the instruction fee and the getting up fee as provided in the Schedule was an error of principle. The Learned Judge of the ELRC erred in upholding the same. It was on the basis of that error that the taxing officer arrived at the patently and manifestly excessive award that is almost half of the decreed amount. I would therefore set aside the awards under items I and 2 of the Bill of Costs."

39. The Learned Counsel contended that the use of previous taxations as precedents was tacked by the Court in the case of:- "Conrad Maloba and Associates v Music Copyright Society of Kenya (MCSK) [2021]eKLR" where the Court held:

> " 19. Notably, the decision therein did not automatically apply to the instant case as the sum entered as Judgment therein was solely in relation to Mauwa & Company Advocates' Advocate - Client Bill of Costs which had already been taxed and a certificate of costs issued and not any other Advocate - Client Bill of Costs. In addition, it was evident from the decision of the Learned Judge that the application by the said advocates was not opposed as the client therein neither attended court nor filed a response in opposition to the said application. There was also no indication if the client therein opposed the said Bill of Costs at the time of taxation.
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> 20. The fact that both the act that both the Advocate herein and Mauwa & Co Advocates represented the Client in the matter did not mean that a decision on one Advocate - Client Bill of Costs would apply to the other. Both taxing officer if taxed by different taxing officers were of equal and competent jurisdiction and neither decision was binding on the other. The Advocates here ding on the other. The Advocates herein were thus estopped from claiming that the decision therein was applicable to its case pursuant to the doctrine of precedents. Therefore, it was not correct that the Advocates fees in this matter had already been determined by the impugned case."

40. On the issue of the conduct of proceedings, the Learned Counsel asserted that the Court would note that the same items were billed in attendances, mentions, applications et al. The Record would attest that both parties prosecuted applications including the Plaintiff on dismissal of the suit and thus the pendency could not be used as a criterion on taxation. Thus, he submitted that for every attendance & application the same as captured in the bill was rightly taxed and awarded by the Taxing Officer.

41. According to Learned Counsel, on item 57 – 93 on Attendances, the same were taxed to scale and no full day award was proven and the amounts submitted were for travel and allowances per Schedule 5 and matter of proof that the Applicant failed to properly place before the Taxing Officer.

42. On the transport to court by the Court Clerks and Advocates, the Learned Counsel averred that as submitted before the Taxing Officer, these expenses by the provision of Section 5 were not proven nor did the Plaintiff/Applicant address the Taxing Officer under Rule 13A Advocates Remuneration Order 2009, the Plaintiff/Applicant could therefore not plead that the same were obvious expenses, they never discharged the burden of proof under the provision of Section 108 of the *Evidence Act*, Cap. 80 of the Laws of Kenya. The Affidavit in Support was never admitted before the Taxing Officer and the Plaintiff/Applicant could not just file document and leave them languishing in the Court file and expect the Court to admit the same. The Defendant/Respondent was opposed to the admission of the same and the Court would note that on appearance on 29th March, 2023 the Plaintiff/Applicant was absent before the Deputy Registrar and such Replying Affidavit and documents were not admitted.

43. In conclusion, the Learned Counsel submitted that the bill was properly and soberly taxed by the Taxing Officer in his ruling dated 5th April, 2023. Thus, they urged the Court in absence of an error in principle, they submitted should not be disturbed.

IV. Analysis and Determination

44. I have keenly considered the filed pleadings, the trial court records, the written submissions and the cited authorities by parties herein. It is my view that the issues for determination are two – fold. These are:-

    i. Whether the Chamber summons application dated 3rd May, 2023 is merited.

    ii. Who will bear the costs of the application

Issue No. a). Whether the Chamber summons application dated 3rd May, 2023 is merited

45. Under this Sub heading, the main substrata is a reference (not an appeal though assumes that nature) emanating from the Taxing Officer over the subject matter and his ruling rendered on 5th April, 2023. First and foremost, it is settled law that any grievance emanating from a Ruling on Taxation can only be ventilated through Paragraph 11 of the Advocates Remuneration Order. To adnce on this front, I am compelled to make reference to a few cases on the same. For instance, the case of:- "Machira & Co. Advocates v Magugu [2002]2 E.A", where Ringera J (as he then was) held as follows:

> "As I understand the practice relating to Taxation of Bills of Costs, any complaint about any decision of the Taxing officer whether it relates to a point of law taken with regard to Taxation or to a grievance about the Taxation of any item in the Bill of Costs is ventilated by way of a Reference to a Judge in accordance with Paragraph 11 of the Advocates Remuneration Order."

46. Similarly, the other case is of:- "Gacau Kariuki & Co. Advocates v Allan Mbugua Ng'ang'a [2012] eKLR" it was held thus: -

> "I am also of the same school of thought as the Learned Judges' as expressed above. A reference is not an appeal although it may be in the nature of one. In a reference, the court is more concerned with whether or not the taxing master has misdirected himself on a matter of principle. If the same is found to have been the case the usual course is to remit the matter

back to the taxing master with the necessary directions. The decision whether or not to proceed with taxation is an exercise of discretion and if he proceeds ex parte in circumstances in which he should not have so proceeded, in my view, that would amount to an error of principle and the Judge may remit the matter back with directions that the bill be re-tax in the presence of the parties. It is therefore my view, and I so hold, that the only recourse available to the client herein was to come by way of a reference."

47. The provision of Paragraph 11 of the Advocates Remuneration Order provides for the procedure an aggrieved party must follow in challenging taxation or assessment of costs. It provides that:

> "(1) Should any party object to the decision of the Taxing Officer, he may within 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) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under sub - section (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.
>
> (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; 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."

48. The procedure contemplated above is that:

a. The aggrieved party issues a notice within 14 days on the items objected

b. The Taxing Officer shall forthwith give reasons for his decision

c. Upon receipt of the reason, the objector shall within 14 days file an application to the High Court setting out grounds for objection

d. If dissatisfied with the High Court, the objector shall with leave of court appeal to the Court of Appeal.

49. Clearly, I reiterate, from the above provision that the only avenue available to a party who wishes to object to a decision following a Taxation would be to approach the Court under Paragraph 11 of the Advocates Remuneration Order. I believe that is what the Plaintiff/Applicant has done in the instant case. The Plaintiff/Applicant is seeking an order that the ruling delivered on 5th April, 2023 for the bill of costs application dated 29th November, 2022, be set aside.

50. The principles for setting aside the decisions of Taxing Master were well established by the Court of Appeal in the case of "Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR" that:

> " 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."

51. The proper exercise of discretion by the Taxing Officers was restated in the case of "Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] Civil Appeal 206 of 2006", where it was held that:-

> " .....Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside."

52. The Supreme Court of Uganda (Odoki, JSC) in the case of:- "Rukidi v Iguru and Another [1995-1998] 2 EA 318" however, expressed itself as hereunder:

> " Any party is free to pursue his rights irrespective of whatever intervening events have taken place since the court is entitled to pronounce on the rights of the parties."

53. Therefore, it is my view that the fact that the Plaintiff/Applicant received the amount taxed does not bar him from pursuing the reference if, in his view, the amount taxed was inordinately low.As a way of laying out emphasis, the circumstances under which a Judge of the High Court of the Environment and Land Court interferes with the Taxing Officer's exercise of discretion are now well known. These principles are set out as follows:-

    1. that the Court cannot interfere with the Taxing Officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle;

    2. it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge;

    3. if the Court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the Court is not entitled to upset a taxation because in its opinion, the amount awarded was high;

    4. it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;

5. the Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;

6. the full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;

7. the mere fact that the Defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary. These principles were stated in the case of "First American Bank of Kenya v Shah (Supra)".

54. Fundamentally, before turning to whether the Taxing Officer did or did not make an error of principle in the instant case, I note that the Plaintiff/Applicant's bill of costs dated the 29th November, 2022 and was duly served upon the Defendant/Respondent. It will be noted that the Court enjoys wide discretionary and inherent powers under the provision of Section 3 and 13 of the Environment & Land Court Act, No. 19 of 2011, the provisions of Sections Section 1(A), 1(B), 3, 3(A) and Section 79 (G) of the *Civil Procedure Act*, Cap. 21 and the Civil Procedure Rules, 2010 on overriding objective, the inherent jurisdiction and on account of sufficient cause to exercise jurisdiction in matters of this nature for the interest of justice and should not be exercised capriciously nor without judicious conscience. It is noted that the provision of Paragraph 11 (1) (2) of the Advocates Remuneration Order do not speak to the relevant factors that the Court should consider when exercising its discretion on whether or not an extension of time should be granted. Guidance must therefore be solved from case law in "Paul Wanjohi Mathenge – v Duncan Gichane Mathenge[2013]eKLR" the Court of Appeal while referring to other authorities observed;-

> " The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In Henry Mukora Mwangi v Charles Gichina Mwangi – Civil Application No. Nai 26 of 2004, this Court held; -
>
> "It has been stated time and again that in an application under rule 4 of the Rules the Learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in Mwangi v Kenya Airways Limited [2003] KLR 486 in which this Court stated;-Over the years, the Court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in Leo Sila Mutiso v Rose Hellen Wangari Mwangi – Civil Application No Nai 255 of 1997 (unreported), the Court expressed itself thus; -
>
> "It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reasons for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted."

55. In my opinion, I will not fault the process by the Taxing Master that led to the delivery of the ruling on 14th June, 2023. The next question for consideration is whether sufficient grounds have been laid out to warrant the setting aside of the decision of the Taxing Officer.

56. There are two aspects to this Reference namely, whether the applicant wrote to the Taxing Master asking for reasons for taxation on specific items that the Plaintiff/Applicant was opposed to, as required by Paragraph 11 of the Advocates Remuneration Order. The other aspect is whether the now objected to items were properly assessed and awarded to the Plaintiff/Applicant.

57. The court being satisfied that there was compliance with the provisions of Paragraph 11(1) above, the other question is whether the award of Items 2a and 2b - Instruction fees and fees for getting up, 57-93-on Court attendances, 98, 103, 106, 108, 111(b), 113, 117, 120, 122, 124 and 126 - transport from Nairobi to Mombasa by the Court Clerk to file documents and 127-140-Transport to Mombasa by the Advocate by road and accommodation were justified.

58. In all fairness, I will examine the items one by one. The bill had been for a sum of Kenya Shillings Eight Million Two Twenty Three Thousand Six hundred and Seven (Kshs. 8,223,607/-) for a suit that was instituted in the year 2012 on the item on instruction fees. However, before answering the above questions, it must be emphasized on issues of law that matters of quantum of taxation are matters purely within the province, competence and judicial discretion of the Taxing Officer. This Court will not lightly interfere with an award of quantum by the Taxing Officer, unless there was an error in principle or the discretion was improperly exercised, resulting in an injustice.

59. On this legal point, I will refer to the case of "Joreth Limited v Kigano & Associates Civil Appeal No. 66 of 1999 [2002] eKLR" where the Court stated that:

> We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a Bill of costs ought to be determined from the pleadings, judgement or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.

60. In this particular case as per the amount awarded by this Honourable Court on 12th October, 2022 for an award of a sum of Kenya Shillings Twenty One Million (Kshs 21,000,000/-) for unconditional acts of trespass by the Defendant, the Plaintiff was only entitled to a sum of Kenya Shillings Five Fifteen Thousand (Kshs. 515,000/-) after tabulation which I believe the Taxing Master has the discretion to award the amount as he sees fit. Indeed, the Plaintiff was lucky that the Taxing Master deemed it fit to increase the amount to a sum of Kenya Shillings Eight Hundred and ten Thousand (Kshs. 810,000/-) from the sum of Kenya Shillings Five Fifteen Thousand (Kshs. 515,000/-) regardless of the number of years the matter has been conducted. I underscore that a party should not use costs to extort another party. Therefore it is my own opinion that the Taxing Master never erred in awarding the sum of Kenya Shillings Eight Hundred and ten Thousand (Kshs. 810,000/-). As for the amount taxed off, I will correct the amount stated to a sum of Kenya Shillings Four Million One Hundred and Ninety Thousand (Kshs. 4,190,000/-). On item 2 on getting up fees, I discern that the same was correctly calculated. Thus, I shall not upset it.

61. On the items on the court attendance. I have gone through the items objected to under ground d(v) of the Chamber Summons application dated 3rd May, 2023 as well as the court records and bill of costs dated 29th November, 2022 and reasons given by the Taxing Officer under items numbers 57, 58, 59,

60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92 and 93, in all fairness, intent and purposes, I find no error at all on part of the Taxing Officer as he taxed the items. The only short coming on the face of the record, he failed to indicate under what Schedule he caused the taxation. Authoritatively, I have been in conduct of this matter from its inception to its logical conclusion. There was no point a party had had to stay in for a hearing the whole day as I would conduct virtual proceedings in the morning (9.00am to 11.30am) and around three or four hearing from12.00 noon to 4.00pm (sometimes spilling over to 5.00pm). Therefore there is no way a matter was conducted from 9.00 am to 5.00 pm.

62. On items numbers 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139 & 140, the items provide for transport and are specific in nature and need to be evidenced by receipts quoting the exact amount spent. I refer to the case of "Elijah Ireri t/a Ireri & Company Advocates v County Government of Embu [2021] eKLR" where the court was of the opinion that:

> 25. As for the disbursements, it is my view that the Taxing Officer applied the correct legal principles. It is trite that disbursements must be proved by evidence. The Applicant herein did not annex any evidence as to the said disbursements. In other words, the Applicant herein did not show as to how the decision by the Taxing Officer in relation to disbursements was based on an error of principle, or the fees awarded was manifestly excessive as to justify interference by this court. The applicant in my view did not tender sufficient reasons explaining how the Taxing Officer erred in principle or to show how the award was manifestly excessive."

63. Evidently, the Plaintiff/ Applicant provided for the Safaricom Mobile cash transaction services (MPESA) Ref numbers for the flight tickets but not for the accommodation and transport. It should be noted that if the person was travelling from Mombasa to Nairobi and the vice versa, by road, as stated out by the Plaintiff/Applicant, it is common practise that all transportation services be they buses, mini buses (matatus) or trains, or taxies do provide official receipt to every commuter and if the advocate was claiming they drove to Mombasa then they should have brought fuel at a petrol station and the same should have been evidence with a receipt. The Plaintiff/Applicant has claimed that the Taxing Master could not have approved the court attendance and not approve and allow the costs for the transport and the accommodation. In the worse case scenario and in particular where the evidence is misplaced or defaced due to passage of time, the said companies would always be ready to furnish the commuter with replacement so long as there was prove of having utilised their services confirmed from their records. Thus, it is this Court believe that even then, there was need for prove of these expenses. The Court reiterates the finding of the Court in Elijah Ireri t/a Ireri & Company Advocates (Supra)" and proceed to hold that the Taxing Master did not err in disallowing the items for want of evidence by receipt. Certainly, he can never be caused to assume an expense on verbal claim. Far from it. Hence, I uphold the Honourable Taxing Master's decision on those items.

64. On Items numbers 98, 103, 106, 108, 110, 111 (b), 113, 117, 120, 122, 124 and 126, the Learned Counsel for the advocate claimed that these items were instances where the Court clerk travelled from Nairobi to Mombasa to file documents. According to the Plaintiff/ Applicant in any event, the Taxing Officer has power to dispense with production of receipts and vouchers. Paragraph 74 of the ARO provide as follows:

> " Subject to paragraph 74A receipts or vouchers for all disbursements charged in a bill of costs shall be produced on taxation if required by the taxing officer.

65. I make reference to Schedule 6 Paragraph 7 (b) which provides for attendance at the offices of the court or the registry on routine matters which provides for a standard fee on filling of documents in registries.

66. On the issue of the transport. This Honourable Court is alive to the fact that the Plaintiff/Applicant provided transactional codes for the flights. The Court wonders why he never provided the same for the transport and accommodation for the Court Clerk. Therefore, the Honourable Court finds that the Taxing Master never erred in his finding that the Plaintiff/Applicant should have produced official receipts to back up the claim for transport and accommodation.

67 The sum effect of the above is that I find no error on the part of the Taxing Master in assessing the Plaintiff/ Applicant's bill of costs dated 29th November, 2022, which was strictly drawn to scale without any exaggeration whatsoever save for the taxing off of item 1 which should indicate a sum of Kenya Shillings Four Million One Hundred and Ninety Thousand (Kshs. 4,190,000/-) which was either just a mathematical or clerical error on the part of the Taxing Master. Based on the provision of Sections 99 and 100 of the *Civil procedure Act*, Cap. 21 proceed to make the necessary amendment according in the interest of natural Justice, Equity and Conscience to all parties herein.

68. Thus, this Honourable Court finds that there was absolutely no basis upon which the Reference herein, which does not even adhere to the procedure established under Paragraph 11 of the Advocates Remuneration Order was filed. For these reasons, I discern that this application was frivolous and vexatious and intended to delay the settlement of costs of the suit as properly assessed by the Taxing master, Hon. Nyariki J, ELC Deputy Registrar. It cannot succeed whatsoever.

Issue No. b). Who will bear the costs of the application

69. It is trite law that the issue of Costs is at the discretion of the Court. Costs means the award that a party is granted at the conclusion of a legal action or proceedings. The proviso of Section 27 (1) of the *Civil Procedure Act*, cap. 21 holds that costs follow the event. By the event it means the result or outcome of the legal action.

70. In the instant case, although the Chamber Summons application dated 3rd May, 2023 by the Plaintiff/ Applicant has not been successful, from the surrounding facts of the matter, it is just reasonable and fair to all parties herein that each one bears their own costs.

V. Conclusion and Disposition

71. Ultimately in view of the foregoing detailed and expansive analysis to the crafted issues herein, the Court arrives at the following decision and make below orders:-

    a. That the Chamber Summons application dated 3rd May, 2023 be and is hereby found to lack merit hence dismissed in its entirety save for the sum total of the amount the bill was taxed at.

    b. That the Honourable Taxing Master only erred in awarding the sum of Kenya Shillings Two Million Five Seventy Two Thousand Six Fourty Two Hundred (Kshs. 2,572,642.00/=) as the costs due to the Plaintiff instead of awarding the sum of Kenya Shillings Two Million Five Eighty Two Thousand Six Fourty Two Hundred (Kshs.2,582,642.00/=) on 5th April, 2023 which was caused from either a mathematical or clerical error that this Honourable Court has proceeded to amend pursuant to the provision of Sections 99 and 100 of the *Civil Procedure Act*, Cap. 21.

    c. That there shall be no orders as to costs.

    It is so Ordered Accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 4TH DAY OF APRIL 2024.

.....

HON. JUSTICE L. L. NAIKUNI,

ENVIRONMENT AND LAND COURT AT

MOMBASA

Ruling delivered in the presence of:

a. M/s. Firdaus Mbula, the Court Assistant.

b. Mr. Gacheru Advocate for the Plaintiff/Applicant.

c. Mr. Mkomba Advocate for the Defendant/Respondent.