



**Giriama Central Associates & Property Management Ltd v Baluchi & 2 others  
(Environment & Land Case 216 of 2012) [2024] KEELC 3662 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3662 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 216 OF 2012**

**SM KIBUNJA, J**

**MAY 8, 2024**

**BETWEEN**

**GIRIAMA CENTRAL ASSOCIATES & PROPERTY MANAGEMENT  
LTD ..... PLAINTIFF**

**AND**

**AYUB SHERO BALUCHI ..... 1<sup>ST</sup> DEFENDANT**

**OMAR MOHSEN AHMED MOHAMMED ..... 2<sup>ND</sup> DEFENDANT**

**MWAKASA LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff vide the chamber summons dated the 12<sup>th</sup> October 2023 seeks for several prayers touching on the party and party bills of costs filed by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants herein. The learned counsel for the plaintiff and the 1<sup>st</sup> & 2<sup>nd</sup> defendants informed the court on the 5<sup>th</sup> February 2024 that they had settled the 1<sup>st</sup> & 2<sup>nd</sup> defendants bill of costs and would be filing a consent to that effect. I will therefore set out the prayers in the chamber summons that relate to the 3<sup>rd</sup> defendant's party and party bill of costs which are inter alia that:
  - a. 3<sup>rd</sup> defendant's party and party bill of costs dated the 27<sup>th</sup> May 2022 that was taxed on 4<sup>th</sup> October 2023 at Kshs.1,335,435 set aside and or dismissed.
  - b. In the alternative, the taxation of items 1 & 139 at Kshs.712,500 & 400,000 respectively be set aside, and the 3<sup>rd</sup> defendant's bill of costs remitted for taxation.
  - c. Costs of this application be provided for.

The application is based on the twenty two (22) grounds on its face and supported by the affidavit of Paul Buti Advocate, sworn on the 12<sup>th</sup> October 2023. It is the plaintiff's case that the 3<sup>rd</sup> defendant's party to party bill of costs flouted Rule 62A of the Advocates Remuneration Order for failure to be



accompanied by a certificate setting out the dates the advocates acted for the party. That the plaintiff raised a preliminary objection to the bills of costs on the 22<sup>nd</sup> August 2022, and on the 5<sup>th</sup> September 2023, the taxing officer granted the parties leave to amend their bills of costs. That the 3<sup>rd</sup> defendant did not do so and their bill of costs is incompetent and a nullity. That the suit was filed in 2012 and the applicable Remuneration Order is the 2009 one and the taxing officer erred in principle in applying the 2014 [Advocates Remuneration Order](#) when taxing the 3<sup>rd</sup> defendant's party to party bill of costs. That the 3<sup>rd</sup> defendant party to party bill of costs indicated at item 1 that it was for defending a suit seeking for injunction orders in respect of plot numbers 5215/4 and 37064/1, and therefore the taxing officer erred in principle for applying schedule 6(1)(b) instead of schedule 6(1)(0)(vi) of [ARO](#). That the taxing officer erred in principle for awarding Kshs.400,000 for getting up fees at item 139, while instructions fees was determined at Kshs.712,500.

2. The chamber summons is opposed by the 3<sup>rd</sup> defendant through the replying affidavit sworn by Valerie Takah Advocate on the 22<sup>nd</sup> November 2023 inter alia deposing that the plaintiff's suit was dismissed with costs to the defendants through the judgement delivered on the 13<sup>th</sup> April 2022; that the 3<sup>rd</sup> defendant filed their party and party bill of costs dated the 27<sup>th</sup> May 2022 for a sum of Kshs.1,672,935; that the bill of costs came up for taxation on the 31<sup>st</sup> August 2022 when the counsel for the plaintiff sought for time to pursue an out of court negotiations; that no settlement was reached and on the 24<sup>th</sup> May 2023, the taxing officer directed the parties to file submissions; that the plaintiff filed their submissions dated 27<sup>th</sup> July 2023 and the taxing officer delivered his ruling on the 4<sup>th</sup> October 2023, taxing the 3<sup>rd</sup> defendant's party and party bill of costs at Kshs.1,335,435; that the plaintiff never objected to the taxing officer's jurisdiction to tax the 3<sup>rd</sup> defendant's party and party bill of costs then, and is estopped to raise it in this reference; that the taxing officer's jurisdiction in taxation of party and party bill of costs is guided by the [Advocates Remuneration order](#) as amended from time to time, and the principles of taxation laid out in the various case law, and the plaintiff's objection on the ground of jurisdiction should be rejected; that the plaintiff has not met the threshold for setting aside the taxing master's ruling and the chamber summons application should be dismissed with costs.
3. The learned counsel for the 3<sup>rd</sup> defendant and the plaintiff filed their submissions dated the 22<sup>nd</sup> November 2023 and 5<sup>th</sup> February 2024 respectively, which the court has considered.
4. The issues for determinations in the plaintiff's reference dated the 12<sup>th</sup> October 2023 are as follows:
  - a. Whether the taxing officer had jurisdiction to tax the 3<sup>rd</sup> defendant's party and party bill of costs dated the 27<sup>th</sup> May 2022.
  - b. Whether the 3<sup>rd</sup> defendant's party and party bill of costs dated the 27<sup>th</sup> May 2022 contravened Rule 62A of the [Advocates Remuneration Rules](#).
  - c. Which was the applicable [Advocates \(Remuneration\)\(Amendment\) Order](#), 2009 or 2014?
  - d. Whether the taxing officer erred by relying on [Advocates \(Remuneration\)\(Amendment\) Order](#), 2014 in taxing items 1 and 139 of the 3<sup>rd</sup> defendant's party and party bill of costs.
5. The court has carefully considered the grounds on the chamber summons, affidavit evidence filed, submissions by the learned counsel, superior courts decisions cited thereon, and come to the following conclusions:
  - a. That it is necessary for the court to start this ruling by addressing the objection raised by the plaintiff on the taxing officer's jurisdiction in taxing the 3<sup>rd</sup> defendant's party and party bill of



costs. In their submissions, the learned counsel for the 3<sup>rd</sup> defendant, cited paragraph 10 of the [Advocates Remuneration Order](#) that provides that;

“The taxing officer for taxation of bills under this Order shall be the registrar or district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 1V the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.”

The counsel further referred to the case of [Nyachoti & Company Advocates versus Sayani Investment Limited](#) (2021) eKLR, where the court stated that;

“ 14. Taxation of costs is a discretionary jurisdiction vested in the taxing officer. In exercising that jurisdiction, the taxing officer is guided by the legal framework in the Advocates Remuneration Order as amended from time to time and by the principles laid down by Kenya’s superior courts.”

I have perused through the submissions filed by the plaintiff’s learned counsel dated the 5<sup>th</sup> February 2024 and noted that the counsel did not mention the jurisdiction ground in all the eight paragraphs. The whole submissions is about the 2<sup>nd</sup> defendant’s party and party bill of costs, which is not subject matter of this ruling. Under sections 106 to 109 of the [Evidence Act](#) chapter 80 of the Laws of Kenya, it was upon the plaintiff to convince the court by presenting or pointing out the relevant provisions under the Advocates Remuneration Order or any other law that supports their contention that the taxing officer/deputy registrar was without jurisdiction to tax the 3<sup>rd</sup> defendant’s party to party bill of costs dated the 27<sup>th</sup> May 2022. The plaintiff has failed to discharge that duty and their objection on the ground of jurisdiction fails.

- b. The plaintiff has also objected to the taxing officer’s ruling on the 3<sup>rd</sup> defendant’s party and party bill of costs on the ground that the said bill of costs contravened Rule 62A of the [Advocates Remuneration Order](#) as it was not accompanied by a certificate setting out inter alia the dates all advocates acted, agreements for remuneration made with them and the sums paid to them for costs. Again I have perused the submissions by the counsel for the plaintiff dated the 5<sup>th</sup> February 2024 and it is apparent it has not addressed itself to this ground. The counsel for the 3<sup>rd</sup> defendant has in their submissions dated the 22<sup>nd</sup> November 2023 pointed out that the plaintiff did not raise that ground before the taxing officer and as this court is exercising its appellate jurisdiction in this reference, only matters of fact that were presented before the taxing officer can be raised. The counsel referred to the case of [Otieno, Ragot & Company Advocates versus National Bank of Kenya Ltd](#) (2020) eKLR, where the court held that;

“ ..the judge in entertaining the reference was exercising an appellate jurisdiction. It had to deal with reference based only on what was placed before the taxing officer and therefore she could not be accused on a reference of having made an error on the basis of a document that was not placed before her.”



And in the case of *Mobamed & Samnakay Advocates versus Twiga Paints Ltd* [2011] eKLR, the court discussed Rule 62A of the *Advocates Remuneration Order* and held that;

“Being the latest advocate on record in the lower court they were then entitled to file the bill of costs under paragraph 62A(1). What they failed to do, and which the taxing master considered, is to attach the certificate required at subparagraph 3 aforementioned. The taxing master took into consideration that issue and in his view, although the section of that paragraph is couched in mandatory terms, it was a technicality that should not stand in the way of the taxation.

In my view, it must not be forgotten that the *Advocates (Remuneration) Order* and paragraph 62A (1) are subsidiary legislation. They cannot stand in the way of a clear provision granting the court overriding objective or inherent jurisdiction to do justice found in section 3A of the *Civil Procedure Act*. This has become more clearer with the passage of sections 1A and 1B of the *Civil Procedure Act*. If there is further doubt, it is cleared by Article 159 of the *Constitution* that requires courts to administer justice without undue regard to technicalities. To that extent, I am in full agreement with the taxing master’s decision to disregard, in the interest of justice, the requirement of subparagraph 3 of paragraph 62A of the Order.”

Though in the instant matter the issue of the 3<sup>rd</sup> defendant’s party and party bill of costs dated the 27<sup>th</sup> May 2022 not complying with Rule 62A was not raised during the process of its taxation before the taxing officer, its highly probable that was it raised, the position in the above case would have guided the court in making its determination. That the above decision is of persuasive value to this court and I am in full agreement with the decision thereof. I however hasten to add that as advocates are undoubtedly well trained in law, the courts expects counsel to adhere to all provisions of the law in filing bills of costs. Therefore, the plaintiff’s objection to the 3<sup>rd</sup> defendant’s bill of costs for not complying with Rule 62A of *Advocates Remuneration Order* fails also.

- c. That it is not disputed that the plaintiff commenced its suit through the plaint filed in court on the 7<sup>th</sup> December 2012. Its reference as ELC Case No. 216 of 2012 confirms the year the suit was filed. The Advocates Remuneration Order applicable for taxation of the party to party bills of costs was the one in operation at the time the suit was filed, and that is the 2009 one. The Advocates Remuneration Order, 2014 came into operation years after the suit had been filed. There is no justification in the taxing officer’s ruling why he relied on the *Advocates Remuneration Order* 2014 in taxing the 3<sup>rd</sup> defendant’s bill of costs while he relied on the 2009 in taxing the 1<sup>st</sup> & 2<sup>nd</sup> defendants bills, that arose out of the same proceeding. This amounts to an error in principle and a misdirection on the applicable *Advocates Remuneration Order* and vitiates the ruling thereof. On that ground, the plaintiff objection succeeds, and the 3<sup>rd</sup> defendant’s party and party bill of costs dated the 27<sup>th</sup> May 2022 should be remitted back to the taxing officer for fresh taxation on items 1 and 139.
- d. On the issue of items 1 and 139, of the 3<sup>rd</sup> defendant’s party and party bill of costs dated the 27<sup>th</sup> May 2022, I wish to start by observing that there is no dispute on the value of the subject matter at Kshs.50 million. That was the value used by the taxing officer in the three different rulings delivered on 4<sup>th</sup> October 2023 over the three defendants party and party bills of costs. The



plaintiff's claim that the 3<sup>rd</sup> defendant's bill of costs indicated the instructions was to defend a suit seeking for injunction orders in respect of the plot numbers 5215/4 and 37064/1 do not amount to much, as that is what one gathers upon perusing prayer (a) of the plaint. Prayer (b) was for specific performance. In any case, what fears the plaintiff had will be cured or addressed in my view, by the application of the Advocates Remuneration Order, 2009 in taxing items 1 and 139. That will lead to just determination on what is to be awarded on those two items on taxation.

- e. That as the error leading to the fresh taxation on items 1 and 139 of the 3<sup>rd</sup> defendant's party and party bill of costs cannot be blamed on either of the parties herein, each party will bear their own costs notwithstanding the provision of section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya.
  1. That the upshot of the foregoing commends the issuance of the following orders:
    - a. That items 1 and 139 of the 3<sup>rd</sup> defendant's party and party bill of costs dated the 27<sup>th</sup> May 2022 as taxed on the 4<sup>th</sup> October 2023 is hereby set aside for reason set out in (c) above.
    - b. That the said bill of costs is hereby remitted to the taxing officer for fresh taxation of items 1 and 139 under the Advocates Remuneration Order, 2009.
    - c. That each party to bear their own costs in the reference.

It is so ordered.

**DATED AND VIRTUALLY DELIVERED ON THIS 8<sup>TH</sup> DAY OF MAY 2024.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the Presence of:

Plaintiff: Absent

Defendants : Mr. Kimani for 1<sup>st</sup> and Mr. Mutubia for 3<sup>rd</sup> Defendant.

**WILSON – COURT ASSISTANT.**

**S. M. KIBUNJA, J.**

