



Ruai Central 54 Association (Suing Through Julius Ntorono Kubai -Chairman , Erastus Nyambutu Migosi - Secretary,Beatrice Mumbi Njoroje - Treasurer) v Ng'ang'a & another (Miscellaneous Cause 694 of 2014) [2024] KEELC 4292 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4292 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CAUSE 694 OF 2014**

**J OMANGE, J
MAY 9, 2024**

BETWEEN

**RUAI CENTRAL 54 ASSOCIATION PLAINTIFF
SUING THROUGH JULIUS NTORONO KUBAI -CHAIRMAN , ERASTUS
NYAMBUTU MIGOSI - SECRETARY, BEATRICE MUMBI NJOROGE -
TREASURER**

AND

**PADDY KAMAU NG'ANG'A 1ST DEFENDANT
GEORGE WANYUTU BORO 2ND DEFENDANT**

RULING

1. Following a Judgement delivered on 17th December, 2020, the plaintiff herein filed a party and party bill of costs dated 30th April 2021. In a ruling that was delivered on the 4th July 2022 the bill was taxed at Ksh.643,470 /=-.
2. The applicant has *vide* Chamber Summons application dated 18th July 2022 sought a review /setting aside of the ruling dated 4th July 2022 on the grounds that
 - a. The taxing master erred in law and principle by failing to appreciate the finding by the judge in his judgement that he is not liable as he had good title to pass the same to the plaintiff and there had been no evidence to show that he had intended to defraud the plaintiff.
 - b. That the taxing master erred in failing to consider that the nature of prayers as in the plaint as there was no value of the subject matter to warrant the value of instruction fees awarded.
3. The application is premised on grounds on the face of the application and on the applicant's supporting affidavit sworn on the 18th July 2022 and further submissions dated 5th February 2024



which reiterated the contents in his application that the court in rendering its Judgement exempted him from any liability being that he had good title when transferring the suit property to the plaintiff hence no proof of fraud from his side to defraud the plaintiff. He therefore argued that he should be exempted from condemnation of settling the plaintiff's costs.

4. He cited the case of *Cecilia Karuru Nganyu v Barclays Bank of Kenya 7 Another* (2026) eKLR in which the court held that the 2nd defendant was not guilty of any misconduct and had been wrongfully sued hence should not be subjected to pay costs.
5. The plaintiff filed submissions dated 24th April 2024 in opposition to the application. It was their argument that the taxing master had erred in exercising her discretion to award Ksh. 600,000/= as instruction fees contrary to the principles of taxation as set out in the Case of *Ochieng, Onyango, Kibet & Ohago Advocates v Adopt a light Limited* (2007) eKLR and as per Schedule VI paragraph 1(b) of the *Advocates Remuneration Order* 2014. The Plaintiff therefore urged the court to upscale the taxed amount to Ksh. 1,175,000/= as in their bill of costs.
6. Counsel submitted that the applicant cannot be exempted from paying costs on grounds that the Judgement exempted him from liability.
The Judgement of the court it was argued, was clear that “judgement had been entered as against all defendants jointly and severally” hence he was bound by the ruling of the taxing master.
7. Having looked at the application and submissions the issue for determination is whether the taxing officer erred in principle as to justify interference with the decision of Taxing officer's ruling dated 4th July 2022.
8. It is trite law that Courts would not generally interfere with the decision of a Taxing master unless the taxing master erred in principle. In *Republic v Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others* [2006] eKLR; the Court stated,

“The taxation of costs is not a mathematical exercise;

it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.... 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 interference that it was based on an error of principle. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.

And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case 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.”

9. The applicant's contention is that the taxing master failed to appreciate the contents of paragraph 25 of the Judgement that exempted him from liability as he had passed good title to the Plaintiff and as such



the Taxing Master erred in taxing the bill at Kshs. 643,470/= an amount that is excessive considering the circumstances. A perusal of the Judgement paragraph 25 reads as follows;

“There is no evidence that the said suit property was registered in the name of the 1st defendant irregular and unprocedurally. At the time he had good title to pass title.”

10. The clear interpretation of this is that the 1st Defendant had good title to pass to the Plaintiff. The 1st Defendant argue that the Deputy Registrar failed to consider this in taxing the bill of costs. The applicants argue that the Deputy Registrar failed to address this issue in the Ruling.

The role of the Taxing Master once the court has awarded costs is simply to tax the bill. The Taxing master cannot venture into whether the award of costs was correct or not. In the instant Judgement was entered for against both Defendants jointly and severally. The Plaintiffs was granted costs to be paid by both. The Taxing Master quite correctly did not attempt to find out whether this award was justified or not any challenge on this issue should have been taken up before this court.

11. In a related issue, the Taxing Master was faulted for failing to take the fact that the 1st Defendant was found not be at fault in exercising discretion on instruction fees. In *Nyangito & Co. Advocates v Donyo Lessos Cremaries Ltd* [2014] eKLR the court held;

“It would be an error of Principle to take into account irrelevant factors or to omit to consider relevant factors and according to the Advocates Remuneration Order itself, some of the relevant factors to be taken into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of Proceedings and any other direction by the trial Judge”

The same is echoed in the case of *Joreth Limited v Kiganjo Associates* (2002) eKLR held as follows “We would at this stage point out that the value of the subject matter for purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable the Taxing officer is entitled to use his discretion to assess such instruction fees as he considers just taking into account amongst other matters, the nature and the importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

12. As can be seen from the foregoing and as is also evident from the Advocates Remuneration Order, the principles that should guide a Taxing Master are fairly settled.

In her ruling the taxing master states;

“in this matter the value of the subject matter is unascertainable from the judgement and the pleadings in the court record and as such I will use my discretion and grant instruction fees of Ksh 600,000/=.

In granting this amount, I have considered the importance of the matter to the parties and the length of time the matter has been in court.”

13. The Taxing Master considered the importance of the matters to the parties and also the length of time the matter had been in court.
14. The length of time the matter has been in court is clear and as such it is evident the principle which the Taxing Master considered.



15. The Plaintiff on their part urge the Court to award a higher instruction fees. The Supreme Court of Uganda in the case in the case of *Bank of Uganda v Banco Arabe Espanol* SC Civil Application No. 23 of 1999, where the court stated;

“Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently, a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount. Secondly, an exceptional case is where it is shown expressly or by inference in assessing or arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. In this regard, application of a wrong principle is capable of being inferred of an award of an amount which is manifestly excessive or manifestly low”

16. Having found that the Taxing Master did not err in principle or consider any irrelevant factors, I find that there are no grounds to interfere with the award on instruction fees. Consequently, the application has no merit and are hereby dismissed.

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS ON 9TH OF MAY, 2024.

JUDY OMANGE

JUDGE

In the Presence of: -

-Ms. Njoroge for the Plaintiff/Respondent

-Mr. Ondoyo for Defendant/Applicant

-Court Clerk: Steve

