



**Fwamba v Musungu (Environment and Land Appeal
E026 of 2022) [2024] KEELC 5327 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E026 OF 2022**

EC CHERONO, J

JULY 11, 2024

BETWEEN

PAUL KUTO FWAMBA APPELLANT

AND

**KEVIN KITUYI MUSUNGU ALIAS GODWIN KITUYI
MUSUNGU RESPONDENT**

RULING

1. The application before me for determination is the Notice of Motion dated 23rd January, 2024 seeking the following orders;
 - a. Spent.
 - b. That the Hon. Court be pleased to review orders made on 20/12/2023 in respect to the appellants bill of costs dated 13th October, 2023
 - c. Costs of the appeal be provided for.
2. The application is premised on the grounds on the face of the said application and the supporting affidavit of the Applicant-Paul Kuto Fwamba.
3. The background of this application is that the Appellant herein preferred an appeal against the ruling of the Trial magistrate in Kimilili PM-ELC No. E004 of 2020 delivered on 12/10/2022 in respect of an interlocutory application dated 22/08/2022. This court rendered itself vide a judgment delivered on 26/09/2023 by allowing the appeal with costs and the costs of the former suit.
4. Upon determination, the Appellant herein prepared a bill of costs dated 13/10/2023 totaling to Kshs. 94,750/=. Upon determination, the Taxed off Kshs.92,700 and awarded the Appellant an all-inclusive costs of Kshs. 2,050/=. Being aggrieved by the said outcome, the appellant has now filed the current application seeking a review of the orders of the taxing master.



5. It is noteworthy that the Appellant seeks for review of the orders of the taxing master under Order 10 Rule 11, Order 12 Rule 7 and Order 51 of the Civil Procedure Rules, 2010 as read with Section 1A, 1B, 3A and 63E of the Civil Procedure Act. The provisions invoked by the Applicant in my view are totally unrelated to the orders sought and further, the orders sought for review are ideally intended to be brought before the same Judge/Officer who issued the impugned orders being challenged. However, there is no provision under the law for review of bill of costs. Where a party is aggrieved by the outcome of a Taxing master, his remedy lies in filing a Reference before the High Court and Courts of equal status(in this cae, ELC) for consideration. This court however notes that the Appellant is acting in person and therefore, a layman who may not be conversant with the rules of procedure. For the above reasons, this court is inclined to invoke the provisions of Article 159(2)(d) of the Constitution, 2010 for the sake of considering substantive justice as opposed to procedural technicalities noting that the application by Appellant is one that is conceivable.
6. From the materials placed before me, it can be noted that the taxing master taxed off Kshs. 92,700/= and taxed the bill at Kshs. 2,050/= stating that the Appellant did not justify the items in his bill of costs save for the receipts in respect of filing fees. In First American Bank of Kenya vs Shah and Others [2002] 1 E.A. 64 at 69 Ringera J. (as he then was) 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”.
7. I have considered the items on the bill of costs and note that the bill of costs was not accompanied with any documents as outlined under Order 21 Rule 9A of the Civil Procedure (Amendment) Rules, 2020 which provides;

A party claiming costs at a Magistrates Court shall file a written request, statement of costs and supporting documents with the Court and serve it on the other parties with a breakdown of the costs sought.
8. Looking at the Appellants Bill of costs, it is apparent that there is absolutely no basis or documentation in support of the amounts sought. In the case of KANU NATIONAL ELECTIONS BOARD & 2 OTHERS VS SALAH YAKUB FARAH (2018) eKLR, the Court held;

“The discretion vested in the Taxing Master is to allow costs, charges and expenses as appear to him to have been necessary or proper; not those which may objectively attain such qualities, and that such opinion must relate to all costs reasonably incurred by the litigant, which also imports a value judgement as to what is reasonable. The discretion to decide what costs have been necessary or properly incurred is given to the Taxing Master; and not to the Court.”
9. From the foregoing, it is not sufficient for the Appellant to allege that the claim for expenses were objectively reasonable. He has to demonstrate that the Taxing Master did not exercise her discretion judiciously.
10. For items 1 to 5, the Appellant sought for costs of drafting various documents. It should be noted that the Appellant was not represented by counsel throughout the suit. Additionally, the amounts sought are not substantiated by typing or printing receipts indicating the charges incurred. As for disbursements listed in the Appellant’s bill of costs as filing, service and court proceedings expenses, these have also not been supported by receipts, except for the payments for the memorandum of appeal



and the bill of costs. Regarding attendances, given that the Appellant acted in person, he should have attached receipts for the costs incurred for travel on the dates he attended court. Failure to provide such receipts leaves the court at a loss as it cannot accurately assess the expenses incurred. It is this court's finding that the taxing master was right in taxing the bill of costs dated 13th October, 2023 at Kshs. 2,050/=.

11. The application dated 23rd January, 2024 is therefore without merit and the same is hereby dismissed. Ordinarily the Court would have awarded costs to the Respondent but the Respondent did not take part in the application and the proceedings.
12. Consequently, I order each party to bear their own costs of the reference.
13. Orders accordingly.

DATED AND SIGNED AT BUNGOMA THIS 11TH DAY OF JULY, 2024.

.....

HON.E.C CHERONO

JUDGE

In the presence of;

1. Applicant-present
2. Respondent/Advocate-absent
3. Bett C/A

