



Osalloys v Barclays Bank of Kenya & 2 others (Environment & Land Miscellaneous Case E066 of 2021) [2024] KEELC 6737 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E066 OF 2021
MN GICHERU, J
OCTOBER 9, 2024
(FORMELRY MACHAKOS ELC NO. 380 OF 2011)
IN THE PARTY AND PARTY BILL OF COSTS**

BETWEEN

CHARLES NAKULO OSALLO PLAINTIFF

AND

BARCLAYS BANK OF KENYA 1ST DEFENDANT

JULIUS CHUMBI WAITIKI 2ND DEFENDANT

LAND REGISTRAR, KAJIADO 3RD DEFENDANT

RULING

1. This ruling is on the amended chamber summons dated 23/5/2024. The summons which is by the 1st defendant/applicant seeks the following orders.
 1. Enlargement of time for filing this summons.
 2. Setting aside of the decision dated 13/9/2023 by the taxing master.
 3. In alternative a refund of Kshs. 142, 000/- from the plaintiff to the 1st defendant.
 4. Costs to be borne by the plaintiff.
2. The motion which is brought under Paragraph 11 (1) and (4) of the Advocates Remuneration Order, Sections 3A and 63 (e) of the *Civil Procedure Act* and all other enabling provisions of law is based on thirteen grounds and is supported by an affidavit dated 23/5/2024 sworn by Karen Muthee advocate which has three (3) annexures.



3. The gist of the summons is as follows. Firstly, the plaintiff's bill of costs was assessed at Kshs. 547,385/- in a ruling by the Deputy Registrar dated 13/9/2023. Secondly, the counsel for the 1st defendant was not aware that the ruling would be delivered on 13/9/2023 and only came to know about it on 6/12/2023 upon being served with a letter by the plaintiff's advocates. Thirdly, the 1st defendant's advocate had not been served with a notice that the ruling would be on 13/9/2023. Fourthly, the 1st defendant wishes to oppose the bill of costs and should not be condemned unheard. Fifthly, the mistake of counsel should not be visited upon her client. Sixthly, Kshs. 548,885/- has already been paid by the 1st defendant to the plaintiff. Seventhly, the Deputy Registrar erred by using the 2009 Remuneration Order instead of the one for 2006 since the instructions were given in the year 2011. The order of the year 2006 provided for Kshs. 206,550/- as the instruction fees instead of the Kshs. 348,500/- awarded. The difference of Kshs. 142,000/- between the two figures is what the 1st defendant seeks.

For the above and reasons, the 1st defendant prays for the orders.

4. The summons is opposed by the plaintiff for the following reasons. Firstly, the matter has been determined three times for the same reason for the 1st defendant not having had a chance to contest the bill of costs. Secondly, the counsel of the 1st defendant was duly served with the relevant notice and even stamped it. Thirdly, the reference has been filed prematurely because the applicant has not yet objected to the ruling on taxation as required by rule 11 of the advocates remuneration order. Fourthly, the application has been overtaken by events since execution has already taken place and costs paid to the plaintiff.
5. I have carefully considered the summons in its entirety including the affidavits, the annexures and the written submissions. I make the following findings. Firstly, on service, I find that the counsel for the 1st defendant was duly served with the relevant hearing notice and failed to attend court. This matter has gained notoriety for the number of times that it has come up for the setting aside the order of the taxing master. It came up again on 18/10/2022 for ruling.
6. Secondly, rule 11 of the advocates Remuneration Order provides the procedure to be followed in objecting to the decision on taxation by the taxing master. The first thing to do is give notice within 14 days to taxing master of the items objected to. The next step is for the taxing officer to record and forward to the objector the reasons for the decision on the objected items. The third step is for the objector, within 14 days of receipt of the reasons from the taxing officer, to file a chamber summons before the judge setting out the grounds of the objection.

The applicant has not shown that the above steps were complied with. This should have come out clearly in the affidavit in support of the chamber summons.

7. For the above stated reasons, I find no merit in the summons dated 23/5/2024 and I dismiss it with costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 9TH DAY OF OCTOBER 2024.

M.N. GICHERU

JUDGE

