



Hatimy alias Rukiya Nurein Hatimy & another v Hatimy & another (Environment & Land Case 45 of 2014) [2024] KEELC 7364 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7364 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 45 OF 2014
SM KIBUNJA, J
NOVEMBER 6, 2024**

BETWEEN

**RUKIYA ABDULRAHMAN HATIMY ALIAS RUKIYA NUREIN
HATIMY 1ST PLAINTIFF**

**ZULFATABDULRAHMAN HATIMY ALIAS ZULFAT NUREIN
HATIMY 2ND PLAINTIFF**

AND

MOHIDEEN ABDULRAHMAN MOHAMED HATIMY 1ST DEFENDANT

AHMED ABDULREHMAN HATIMY 2ND DEFENDANT

RULING

1. The defendants filed the chamber summons dated the 27th April 2024 seeking for the taxing masters ruling of 13th March 2024 on party and party bill of costs to be set aside and the same be re-taxed. The application is based on the nine (9) grounds on its face and supported by the affidavit of Mohideen Abdulrahman Mohamed Hatimy sworn on the 27th April 2024, inter alia that the taxing master erred in holding the bill of costs was not opposed when the defendants had filed submissions in opposition thereto. That it follows that the defendants had a right under Article 50(1) of the Constitution to be heard, and the ruling should be set aside and the bill of costs be taxed re-taxed.
2. The application is opposed by the plaintiffs through the seven (7) grounds of opposition dated the 22nd May 2024, inter alia that application is misconceived, that the allegation that the defendants' submissions were not considered is not a ground for setting aside the decision by the taxing master.
3. The learned counsel for the defendants and plaintiffs filed their submissions dated the 10th June 2024 and 14th June 2024 respectively, which the court has considered.



4. The court has carefully considered the grounds on the chamber summons, the affidavit evidence, grounds of opposition, submissions by the learned counsel, the record and come to the following determinations:

- a. That the party to party bill of costs subject matter of the taxing master's ruling of 13th March 2024 is the one dated the 21st June 2023. In the said ruling, at paragraph 1, the learned taxing master's inter alia observed that it was not opposed, and proceeded to tax it at Kshs.300,691.67. The defendants have exhibited a copy of their submissions dated the 14th December 2023 on the plaintiff's bill of costs dated 21st June 2023. Going by the notes on the right margin, the submissions were filed through the e-filing on the 14th December 2023 at 18:04:35.
- b. That in view of the above, it follows that the taxing master misdirected himself by holding that the bill of costs was unopposed and proceeding to tax it without giving due considerations to the defendants' input through the said submissions. The defendants had a right to be heard in the bill of costs and having filed submissions, it was a misdirection on the part of the taxing master to hold that the bill of costs was unopposed.
- c. That so as to accord the defendants an opportunity to be heard in the bill of costs, it is only fair and just that the ruling of 13th March 2024 be set aside and the bill of costs dated the 21st June 2023 be remitted back to the taxing master for re-taxation.
- d. That under section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya, costs follow the events unless where otherwise ordered for good reasons. In this matter, I find it just to order that each party bear their own costs.

5. Flowing from the above conclusions, the court finds and orders as follows:

- a. That the taxing officer's ruling of 13th March 2024 on the party and party bill of costs dated 21st June 2023, is hereby set aside.
- b. The Party and Party bill of costs filed by the plaintiffs dated the 21st June 2023 is hereby remitted back to the taxing officer for re-taxing.
- c. Each party to bear their own costs in this application.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 6TH DAY OF NOVEMBER 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiff : M/s Juma

Defendant : Mr. Sydney for Gikandi.

Leakey – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

