



Patel (Suing on behalf of the Estate of her father Vishnubhai Ghanshyambhai Patel - Deceased) v Patel (Being sued in her capacity as the Administrator of the Estate of Surendrababu Babubhai Patel) (Environment & Land Case 19 of 2021) [2023] KEELC 16383 (KLR) (14 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16383 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 19 OF 2021**

**AK BOR, J
MARCH 14, 2023**

BETWEEN

ALPANA KUMARI VISHNUBHAI PATEL (SUING ON BEHALF OF THE ESTATE OF HER FATHER VISHNUBHAI GHANSHYAMBHAI PATEL - DECEASED) PLAINTIFF

AND

PURVI PATEL (BEING SUED IN HER CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF SURENDRABABU BABUBHAI PATEL) DEFENDANT

RULING

1. The Defendant filed the reference dated 3/10/2022 objecting to the decision of the Deputy Registrar delivered on 26/9/2022 regarding the party and party bill of costs. On item 1, she contended that the taxing master misdirected herself and misapprehended the claim in the suit by relying on a valuation report which the Plaintiff filed in the suit while pointing out that there was no suit land in the claim as such.
2. Secondly, that the taxing master misconstrued paragraph 9 of Schedule 6 of *Advocates (Remuneration) Order* (ARO) which provides a minimum of Kshs 1,400 for service and an additional sum of Kshs 35 for every kilometer beyond three from the registry.
3. On items 19, 20, 24 and 6, the Defendant contended that the taxing master was wrong to tax off Kshs 800 from each of those items while urging that paragraph 7 (d) categorised attendances on both scales and that the minimum remuneration under that order was Kshs 1900.
4. Lastly, the Defendant faulted the taxing master for taxing off Kshs 300 on the basis that the number of folios was 8 yet the record showed that they were 10.



5. John Otieno Abwuor swore the replying affidavit opposing the Defendant's reference. Regarding item 1 on instruction fees, he contended that the purported accumulated rents for the suit property did not apply because the rent was shared and the Defendant received her share. That awarding costs based on the accrued rent would amount to the unjust enrichment of the Defendant to the detriment of the Plaintiff.
6. On item 8 relating to service, the Plaintiff argued that it was properly taxed because filing at the registry in Nyeri was done electronically. As for items 19, 20, 24 and 26, he maintained that they were properly taxed because the *ARO* pegged the amount chargeable on time and not whether the matter was defended or not and that all virtual sessions took less than 30 minutes each.
7. The Plaintiff contended that the suit did not proceed to full hearing and was withdrawn after the Defendant signed the lease; and that the value of the subject property does not apply because the suit was not for a liquidated sum or general or special damages. The Plaintiff reiterated that the taxing master erred and misdirected herself when she relied on the valuation report instead of the prayers sought in the pleadings and that she misdirected herself by adopting the value of the land in determining the instruction fees yet the suit was to compel the Defendant to sign the lease agreement.
8. Parties filed submissions on the reference which the court considered. The Defendant gave the chronology of what happened after the withdrawal of the suit by the Plaintiff. The costs were taxed by the Hon L Nyaga, Deputy Registrar on 26/9/2022 at Kshs 445, 495. The Defendant pointed out that the orders sought in the plaint were a declaration that Sidian Bank's occupation of the suit land was lawful and an order to compel the Defendant to execute the lease with Sidian Bank with respect to the ground floor of the building erected on land reference no 2787/12/1X or in the alternative that she be compelled to sell her share in the property to the Plaintiff in accordance with the valuation report dated 26/8/2020. A permanent injunction to restrain interference with operations of Sidian Bank and its business in the suit property was also sought.
9. The Defendant urged that her submission before the taxing master was to find the value of the subject matter in the intended outcome which was the rent and the income which would accrue to her by having the Defendant compelled to accept a lease by Sidian Bank over a period of 10 years which then would amount to Kshs 24,420,000. Further, that in her submissions she gave two other alternative methods of assessment yet the taxing master went by the valuation report. She faulted the taxing master for relying on the valuation report to avoid calculations which would have enabled her arrive at the real value of the subject matter. She urged that in their submissions before the Deputy Registrar, they argued that the court must go deeper and find the real interest of the party and if the same can be expressed in monetary terms, it should form the basis of finding the value of the subject matter. The Defendant argued that the court should have found the value of the subject matter to be the Plaintiff's interest in the matter which was a monetary gain from the lease of the subject premises. She pointed out that she had restricted her calculations on the 2/3 share of the rent expected to accrue to the Plaintiff and that the calculations expressly excluded the share of rent which would accrue to her.
10. The Defendant urged this court to give directions to the taxing master to re-tax the bill of costs by determining the value of the subject matter as either the sum of Kshs 24,420,000 or Kshs 26,862,000 or uphold the hypothesis laid down in *Joreth Limited V Kigano & Associates* [2002] eKLR. The Defendant concluded her submissions by urging this court to re-tax the bill of costs itself.
11. The Plaintiff submitted that the main contention related to item 1 and that the taxing master misdirected herself by relying on the valuation report. She went further to urge that the pleadings did not expressly or by implication show the value of the subject matter in the prayers which she sought. She contended that the purported accumulated rent did not apply because that rent is shared with the



- Defendant and so awarding her costs on the basis of accrued rent would amount to unjust enrichment. She also relied on the finding in *Joreth Limited V Kigano & Associates* where the court stated that the value of the subject matter of a suit for purposes of taxing of a bill of costs ought to be determined from the pleadings, judgment or settlements and if it cannot be ascertained, such instruction fee is to be accessed at the discretion of the taxing officer taking into account matters such as the nature and importance of the matter, the interest of the matter, the general conduct of the proceedings, the directions by the trial Judge and all other relevant circumstances.
12. The Plaintiff submitted that in taxing item no 1, schedule 6 paragraph 1 of the *Advocates (remuneration) Order, 2014* relating to other matters if defended is the applicable scale. She reiterated that the matter did not go to full hearing and she withdrew it after the Defendant signed the lease. She maintained that the suit was not for a liquidated sum and that the taxing officer misdirected herself by relying on the valuation report and not the reliefs sought in the plaint. The Plaintiff contended that the Defendant could only be compensated for the cost of filing, pleadings, instructions and for minimal attendance. She maintained that on item no 8 it was unreasonable for the Defendant to peg the cost of service at Kshs 3,395/= considering the fact that the documents were filed electronically.
 13. The issue for determination is whether the court should allow the reference disputing the decision of the taxing master on the Defendant's party and party bill of costs. Looking at the plaint filed in court on October 12, 2022, the Plaintiff pleaded at paragraph 3 that she and her late father Vishnubhai
 14. Ghansyambhai Patel together with the Defendant's late father Surendrababu Babubhai Patel were registered as tenants in common in equal shares of parcel no 2787(12) IX situated in Nanyuki Township on which stood the building rented out to Sidian Bank Limited. The Plaintiff entered into a lease with the bank but the Defendant declined to sign the lease claiming that she was not consulted and that the rent should be higher than what the bank was willing to pay. She sought a declaration that the bank's occupation of the building was lawful; a permanent injunction to restrain the Defendant from interfering with the bank's operations and business in the suit property. She also sought an order compelling the Defendant to execute the lease with Sidian Bank failing which the lease would be registered without the Defendant's signature or that she would be compelled to sell her share in the property to the Plaintiff in accordance with the valuation report dated 26/8/2020.
 15. The court agrees with the contention by both parties that the taxing master erred when she based the value of the subject matter on the valuation. That valuation report would only have been put into use if the Defendant failed to execute the lease and the Defendant was compelled to sell her share in the property to the Plaintiff. The Plaintiff's claim in the suit was to compel the Defendant to execute the lease. The applicable scale for the taxation is Schedule 6 of the *ARO* on the category applicable to other matters appearing after paragraph (j). The other items which the Defendant disputes ought to be taxed in accordance with the *ARO*. What has to be taken into consideration in the taxation of item number 1 are the factors enumerated in *Joreth Limited v Kigano & Associates*.
 16. The bill of costs is referred back to the Taxing Officer for re-taxation. Each party will bear its costs for the reference.

DELIVERED VIRTUALLY AT NANYUKI THIS 14TH DAY OF MARCH 2023.

K. BOR

JUDGE

In the presence of: -

Mr. John Abwuor for the Plaintiff



Ms. Stella Gakii - Court Assistant

No appearance for the Defendant

