



**Kemboi v Muzee (Environment & Land Miscellaneous Case
E002 of 2022) [2023] KEELC 17240 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17240 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2022**

MN MWANYALE, J

MAY 4, 2023

BETWEEN

CHARLES KIBET KEMBOI PLAINTIFF

AND

KIPKERING ARAP MUZEE DEFENDANT

RULING

1. This ruling relates to a reference dated January 20, 2023 against the decision of the taxing master (Hon I. Kabuteh the Deputy Registrar Environment and Land Court Kapsabet) in relation to a ruling dated January 12, 2023 of a party and party bill of costs dated October 14, 2022 wrongly indicated as November 15, 2022 following the ruling of this court dated October 12, 2022 where the respondent was awarded costs of the application.
2. The ruling dated October 12, 2022 giving rise to the party and party bill of costs whose ruling is subject of the reference aforementioned related to an miscellaneous civil application which sought to transfer a suit to wit, Kapsabet Chief Magistrates Environment and Land Court case No 6 of 2019 for hearing and determination before the Environment and Land Court at Kapsabet.
3. The said application was dismissed with costs, paving way for a party and party bill of costs that was taxed before the taxing master.
4. The grounds in support of the reference were *interalia*, that;-
 - i. The Deputy Registrar/taxing master taxed a bill which was not before her.
 - ii. The applicants submission were totally ignored.
 - iii. There are no reasons why the applicants submission on the bill were rejected.



- iv. The Deputy Registrar proceeded on the mistaken view or wrong premise that there was a suit seeking damages which was the subject of the taxation of the bill of costs.
- v. The bill was taxed at a figure which is grossly high for a miscellaneous application seeking transfer of a suit to this honorable court.
5. The reference is supported by the affidavit of Charles Kibet Kemboi, which affidavit annexes a party and party bill of costs dated October 14, 2022 and response to the bill of costs.
6. The main issue for determination from the reference is whether item 1 the instructions fees was properly taxed.
7. In the impugned ruling, the learned taxing master allowed instructions fees “to defend the suit for recovery of damages” and allowed the same as drawn to scale.
8. As observed in paragraph 2 of this ruling the application which was dismissed sought to transfer a suit from the Chief Magistrate’s Court at Kapsabet to the Environment and Land Court at Kapsabet. There was no suit to defend for recovery of damages as was found by the learned taxing master.
9. It follows therefore that item was taxed on the wrong principle that there was suit for recovery of damages whereas the application before court was for transfer of a suit.
10. The applicant submits that the proper scale for miscellaneous application is at page 292 of the *Advocates Remuneration Order* paragraph (viii), thereof.
11. The respondent has not filed any submission but in his replying affidavit at paragraph 6 depones that the applicant has not indicated how the bill is exaggerated, but did not address the court on the applicable scale.
12. In the response before the taxing master, the applicant had indicated that the applicable scale was schedule 6(15) (e) of the ARO and submitted for Kshs 4,000/= as instruction fees.
13. The court finds the proper scale for a miscellaneous application such as the one before the taxing master was not the one for defending general damages as was found by the taxing master, but was paragraph (viii) at page 292 which provides for presentation of other application not “provided for” and the maximum scale is Kshs 5,000/=. hence item 1 is taxed at Kshs 5,000/=. As there is no contention on the other items taxed on the bill of costs, the same remain as taxed.
14. The upshot is that the ruling in respect of the bill of costs dated October 14, 2022 is set aside in respect of item 1, which is taxed at Kshs 5000/= but upheld in respect of all the other items as taxed.
15. The party and party bill of costs dated October 14, 2022 is in the result taxed at Kshs 12,500/=.

DELIVERED AND DATED AT KAPSABET THIS 4TH DAY OF MAY 2023.

HON. M. N. MWANYALE

JUDGE

In the presence of;

Mr. Songok for the Respondent/Defendant

No appearance for Mr. Momanyi for Applicant.

