



Tuitoek & another v Mulalit & 5 others (Environment and Land Civil Miscellaneous Application E042 of 2022) [2023] KEELC 17243 (KLR) (9 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17243 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E042 OF 2022**

JM ONYANGO, J

MAY 9, 2023

BETWEEN

JEREMIAH TUITOEK 1ST PLAINTIFF

NICKSON TUITOEK 2ND PLAINTIFF

AND

KIPRONO MULALIT 1ST DEFENDANT

KIBIWOT KIPTOO 2ND DEFENDANT

KIPKOECH MULALIT 3RD DEFENDANT

TOROITICH KIPTOO 4TH DEFENDANT

KIPRUTO KIPTOO 5TH DEFENDANT

KIPCHIRCHIR KIPTOO 6TH DEFENDANT

RULING

1. The Applicants moved the court by way of Chamber Summons dated September 26, 2022 seeking the following orders:
 - a. Spent
 - b. That this Honourable court be pleased to stay the execution of the Certificate of Costs issued in the ruling dated September 16, 2022 pending the hearing and determination of this application .
 - c. That this Honourable court be pleased to stay the execution of the Certificate of Costs issued in the ruling dated September 16, 2022 pending he hearing and determination of this reference .



- d. That this honourable Court be pleased to review and/or set aside the Party and Party Bill of Costs dated September 16, 2022.
 - e. That this Honourable court be pleased to review item 1 in the ruling of the taxing officer.
 - f. That the costs of this reference be awarded to the Applicants.
2. The application is based on the grounds that the award of item 1 is excessive in comparison to the subject matter as the subject matter is the 6 acres in contention as stated in the Respondents' Bill of costs. The application is also supported by the affidavit of Nickson Tuitoek, the 2nd Applicant sworn on his own behalf and on behalf of the 2nd Applicant on the September 26, 2022.
 3. In the said affidavit, the 2nd Applicant depones that he is dissatisfied with the costs as taxed by the taxing master in ELC Case No 426 of 2015 as he is of the view that item 1 of the Bill of costs is excessive. He avers that the current price of land in the area is Kshs 400,000 per acre and therefore the total cost for six acres ought to be 2,400,000. Consequently, the highest possible cost chargeable under this head should be Kshs 148,000.
 4. Although the application was not opposed, I found it necessary to examine the merits of the same.
 5. The issues for determination are :
 - a. Whether the taxing officer erred in principle in assessing the party and party costs
 - b. Whether the decision of the taxing officer ought to be set aside.
 6. The principles that guide the court is dealing with a reference are well settled. A judge sitting on a Reference will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer erred in principle in assessing the costs. See the case of *Joreth v Kigumo & Another EA 92*.
 7. The taxation of a Party and Party Bill of costs is governed by Schedule V1 A of the [Advocates Remuneration Order](#) which provides that the fees shall be as prescribed in schedule V1B. Schedule V1 paragraph 1(b) stipulates that instruction fees are to be calculated on the basis of the value of the subject matter which is determined from the pleadings, judgment or settlement between the parties.
 8. In his ruling, the Taxing officer noted that the value of the subject matter was not expressly stated in the pleadings. He then proceeded to tax the bill in accordance with schedule V1 1 (j) which relates to 'Other matters' The said provision states as follows:

' To sue or defend in any case not provided for, such sum as may be reasonable but not less than

 - i. If undefended Kshs 45,000
 - ii. Defended Kshs 75,000
 9. The said provision grants the taxing officer the discretion to award a reasonable sum taking into account the nature and importance of the matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the trial judge and all relevant circumstances. He then proceeded to tax the instruction fees at Kshs 200,000 down from the figure of Kshs 575,000 presented in the Bill of Costs.
 10. Considering that the Applicants have not produced any valuation report to prove the actual value of the land in dispute and noting that the taxing officer took into account the factors mentioned in Schedule 6(1) (j), I find no reason to interfere with the exercise of the taxing officer's discretion.



11. The upshot is that the application lacks merit and I hereby dismiss it. Since the reference was not defended, I make no order as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 9TH DAY OF MAY, 2023.

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J.M ONYANGO

JUDGE

In the presence of:

Mr. Martim for the Applicant

No appearance for the Respondent

Court Assistant: Antony Oniala

