



**Aladin Investment Limited v Ouma & 2 others (Miscellaneous Application
E029 of 2024) [2025] KEELC 3874 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3874 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
MISCELLANEOUS APPLICATION E029 OF 2024**

**YM ANGIMA, J
MAY 15, 2025**

BETWEEN

ALADIN INVESTMENT LIMITED APPLICANT

AND

DOMITILA OBALA OUMA 1ST RESPONDENT

DR BARITHU BUNDI 2ND RESPONDENT

THE LAND REGISTRAR, KWALE 3RD RESPONDENT

RULING

A. 2nd Respondent's application

1. By a chamber summons dated 31.05.2024 brought pursuant to Paragraph 11 (1) and (2), 79 of the Advocates (Remuneration) (Amendment) Order 2014, Section 51 (1) and (2) of the Advocates Act, Sections 1A, 1B, 3A, 63 and 89 of the Civil Procedure Act and Article 48 and 50 (1) of the Constitution of Kenya, the applicant sought the following orders:
 - a. Spent.
 - b. That the decision of the taxing officer as evidenced in the ruling delivered on 15th May 2024 with respect to items 3 to items 363 in the plaintiff's party-to-party bill of costs dated 27th November 2023, be set aside, reviewed and/or vacated.
 - c. In the alternative this honourable court be pleased to order that the plaintiff's party-to-party bill of costs dated 27th November 2023 with respect to items 3 to items 363 be taxed afresh by another taxing officer.
 - d. That costs of this application be borne by the respondents.



2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Farouk Lalji on 30.05.2024. The applicant contended that the taxing officer held that the 2nd respondent's party-to-party bill of costs was unopposed despite having their submissions within the timelines directed by the court. The applicant argued that the taxing officer failed to consider the scale of fees under Schedule VI of the Advocates (Remuneration) Order 2009 and Schedule 6 of the Advocates (Remuneration) (Amendment) Order 2009 in the award of court attendance, drafting, service, perusing of documents and making of copies. Further, it was deposed that there were numerous duplicate entries on the bill of costs and a lack of proof of expenses incurred. The taxing officer was accused of misapplying the law for failing to interrogate the tabulations and entries in the said bill of costs, and as a result, taxed it unreasonably high, hence the need to set it aside.

B. Applicant's response

3. The 2nd respondent filed a replying affidavit on 15.07.2024 and contended that the taxing officer considered all relevant factors and drew items 3 to 363 to scale. He further denied any duplications in the bill of costs and maintained that the award of the taxing master did not contain any error of principle nor was it excessive.

C. Directions on submissions

4. When the application was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the applicant filed submissions dated 04.10.2024 while the 2nd respondent filed submissions dated 18.10.2024.

D. Issues for determination

5. The court has perused the applicant's chamber summons, the 2nd respondent's replying affidavit in response thereto, as well as the material on record. The court is of the opinion that the following are the main issues for determination herein;
 - a. Whether there is merit in the applicant's reference.
 - b. Who shall bear the costs of the application.

E. Analysis and determination

a. Whether there is merit in the applicant's reference.

6. The court has considered the material and submissions on record on this issue. The taxing officer ruled on 15.05.2024 that the 2nd respondent's party-to-party bill of costs dated 27.11.2023 was unopposed. However, the applicant has demonstrated that on 03.06.2024, they filed submissions in opposition to the said bill of costs. Even though failing to take into consideration the submissions is not a valid ground to warrant setting aside the taxing master's decision, the said submissions were relevant in pointing out to the court the various issues that were raised that the taxing master ought to have considered. For that reason, this court will take into consideration these submissions.
7. The court has perused the said bill of costs and taken cognizance of the items that are on service. In particular, the 2nd respondent indicated in items 6, 25, 30, 27, 58, 64 and 76 just to name a few that they travelled to Nairobi to effect service. The court has taken the liberty of perusing the original file ELC 158 OF 2014, and noted that on several occasions the 2nd respondent served the applicant via post office as indicated in the various affidavits of service. For example, item 31 indicates that the 2nd



respondent drew an affidavit of service after effecting service to the defendants therein on 30.05.2013. However, the court file shows that the 2nd respondent served summons and plaint via post office on 05.06.2013. Another example is item 48, where the 2nd respondent claimed to have travelled to Nairobi to effect service while the affidavit of service dated 04.03.2014 indicated that service was effected via post office. These are some of the examples that demonstrate that the 2nd respondent's bill of costs was out of order and the taxing master ought to have noted such discrepancy and acted accordingly.

8. The second glaring issue is that of duplication of items in the bill of costs. For instance, the 2nd respondent has itemized court attendance on 04.11.2014 twice in items 273 and 281. The attendance of 25.6.2014, also has been itemized twice in items 271 and 282, while 14.02.2019 has also been itemized thrice in items 288, 299 and 301. Similarly, these are just a few of the illustrations where the 2nd respondent duplicated items on the bill of costs and the same were never noted by the taxing master.
9. It is clear to the court that the taxing officer failed to interrogate all the items in the bill of costs thereby arriving at a wrong decision. The taxing officer made serious errors in principle in taxing the said bill of costs thereby arriving at a wrong decision particularly in allowing duplicated and fictitious items. In *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] eKLR it was held, inter alia, that;

“First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle. (See *Steel & Petroleum (E.A) Ltd v Uganda Sugar Factory* (Supra). Of course. It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.”
10. The court is of the opinion that the taxing master misdirected himself on various items and exercised his discretion improperly. This resulted in an error of principle which would entitle the court to interfere with his decision. In the event, the court is inclined to remit the bill of costs for fresh taxation on all the disputed items except items 1, 2 and 306 on instruction fees, getting up fees and VAT respectively which were correctly taxed.

b. Who shall bear the costs of the application

11. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the applicant shall be awarded the costs of the application.

F. Conclusion and disposal order

12. The upshot of the foregoing is that the court finds that the taxing officer wrongly exercised his discretion when considering the 2nd respondent's party-to-party bill of costs dated 27th November 2023 and the award dated 15.05.2024 is hereby set aside. The court finds the application merited and consequently grants the following orders:
 - a. That the decision or award of the taxing officer dated 15.05.2024 on the bill of costs dated 27.11.2023 is hereby set aside.
 - b. The respondent's party-to-party bill of costs dated 27.11.2023 be taxed afresh except for items no. 1,2 and 306 which were correctly taxed.



c. The 2nd respondent to bear the cost of this application.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 15TH DAY OF MAY 2025.

.....

Y. M. ANGIMA

JUDGE

In the presence of:

Ms. Alividza for the applicant

N/A for the 1st respondent

Mr. Maundu for the 2nd respondent

N/A for the 3rd respondent.

Gillian Court assistant

