



Ndunda v Independent Electoral & Boundaries Commission & 2 others (Miscellaneous Reference Application E059 of 2023) [2024] KEHC 14201 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
MISCELLANEOUS REFERENCE APPLICATION E059 OF 2023**

RK LIMO, J

NOVEMBER 14, 2024

BETWEEN

NDIMA PAUL NDUNDA APPLICANT

AND

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 1ST
RESPONDENT**

JENNIFER MUGAMBI (RETURNING OFFICER) 2ND RESPONDENT

MBITE JOSEPH MUSYOKA 3RD RESPONDENT

RULING

1. Before this Court is a reference dated 6th October 2023 seeking to set aside the assessment of respondents' costs dated 14th March 2023 at Kshs. 400,000/= and 3rd respondent's bill of costs dated 15th April 2023 at Kshs. 400,000/=.
2. The applicant contends that he was aggrieved by the decision of the taxing officer and filed objection.
3. That he requested for reasons for the taxation but no reasons were forthcoming.
4. That the bills of costs were not accompanied by documents contrary to the provisions of Order 21 Rule 9A and as such there were no documentation to support the award.
5. That the costs awarded were excessive and arbitrary.
6. In his written submission the applicant prays that the amount deposited (Kshs. 100,000/=) as security of costs be paid to the respondents and considered deducted from the taxed costs.
7. He faults the taxing master for awarding Kshs. 400,000/= without giving reasons. He submits that the taxing master ought to have given reasons for her exercise of discretion. He relies on a decision in *Danson Mutuku Muema –vs- Julius Muthoka Muema & Others (Machakos HCCA No. 6 of 1991)*



8. He further submits that there were no documents to support claims of disbursements and award on the same. He relies on the case of Mumia Sugar Co. Ltd –vs- Tom Ojienda & Associates [2019] eKLR to buttress that position.
9. The 3rd respondent has filed ground of opposition dated 14th February 2024 and written submissions dated 24th September 2024 to oppose this reference.
10. The 3rd respondent faults the applicant for bad faith and bringing this reference out of time.
11. He contends that the ruling was delivered on 8th June 2023 by Hon. Mayova and the reference filed on 27th October 2023 which was over 4 months. That objection however, has now been overtaken by events in light of the applicant’s application dated 19th February 2024 and ruling of this court dated 6th November 2024 enlarging time for the applicant to file this reference.
12. The 1st and 2nd respondents in their written submissions dated 26th September 2024 has opposed this application and faults the applicant for undue delay.
13. They contend that they filed an affidavit before the taxing master showing receipts or expenditure amounting to Kshs. 137,350/=.
14. They submit that the applicant subjected them and the court to numerous adjournments.
15. They pointed out the applicant filed his response to the bill of costs which was considered by the taxing master.
16. They claim that the taxing officer followed the provisions of the law on taxation and was guided by the provisions Order 21 Rule 9A of the Civil Procedure Rules.
17. This court has considered this reference and the response made.
18. This court has perused through the decisions of the taxing master dated 8th June 2023 and it is apparent that the decisions of the taxing officer was based on the bills of costs presented by 1st and 2nd respondents herein and the 3rd respondent. The applicant herein never opposed the bills of costs and only came in to file notice of objection when the decision was made. The respondent’s opposition to the items presented for assessment was received on 20th June 2023 which was 12 days after the decision of the taxing master.
19. The applicant has not exhibited a copy of proceedings from the lower court to demonstrate the reasons for non-attendance in court when assessment of costs was taking place.
20. He has not given any explanation in this reference why he opted not to challenge the bills of costs presented by respondents if he had any issues with them. That failure coupled with the time he took to file this reference shows that the respondents are justified to fault him for bad faith and indolence. He should have specified which items were assessed at unreasonably high figures.
21. Assessment of costs is a discretionary matter by the taxing master who however, must be guided by Advocates Remuneration Order. I have seen Notice of Objection dated 19th June 2023 filed by the applicant and it appears to have objected to all the items which appears odd but because the copies of bills of costs have not been exhibited in this reference this court is unable to determine if the assessment by the taxing master was excessive or unsupported by documents as provided under Order 21 Rule 9A of the Civil Procedure Rules.



22. The taxing officer would have given reasons for his decision/taxation but because the bills were unopposed he appears to have exercised his discretion by assessing costs of both the 1st and 2nd respondent at Kshs. 400,000/= and that of the 3rd respondent at Kshs. 400,000/=.

Looking at the total amount awarded on costs even if the court were to give a lumpsum award without looking at individual items, this court would still have not found basis to intervene because, the assessment of costs at Kshs. 400,000/= for 1st and 2nd respondent & Kshs. 400,000/= for 3rd respondent was fair and far from being viewed as excessive.

This court therefore, finds no merit in the reference dated 6th October 2023 and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT KITUI THIS 14TH DAY OF NOVEMBER, 2024

Hon. Justice R. K. Limo

JUDGE

