



**Bolo v Asaka & 2 others (Environment and Land Case 11 of 2016)
[2025] KEELC 6948 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6948 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 11 OF 2016
SM KIBUNJA, J
OCTOBER 15, 2025**

BETWEEN

CLERKSON ONYANGO BOLO PLAINTIFF

AND

JAMES ASAKA 1ST DEFENDANT

JACK OOKO 2ND DEFENDANT

PRISCAH ASAKA 3RD DEFENDANT

RULING

1. The Plaintiff filed the chamber summons dated 7th October 2024 seeking inter alia to set aside the ruling of taxation dated 21st August 2024 appertaining to his bill of costs dated 15th April 2024. The application is supported by the affidavit of Samuel Odhiambo Eleakim, advocate, deposing among others that in the judgment, the court stated that the defendants were to remove all their developments and structures that were encroaching onto his land within 60 days, failure to which the plaintiff was at liberty to remove the same at the defendants' costs. That the Kshs.600,000 spent by the plaintiff in executing the judgement ought to have been allowed as costs, and hence this application.
2. The chamber summons is opposed by the defendants through the replying affidavit of Gloria Nduku, advocate, sworn on 12th May 2025 inter alia deposing that the plaintiff's application is an abuse of the court process as he is seeking compensation for the same expenses of executing the decree in MCELC 122 OF 2024.
3. The learned counsel for the plaintiff and the defendants filed their submissions dated 3rd July 2025 and 15th July 2025 respectively, which the court has considered.
4. The issues for determinations by the court are as follows:



- a. Whether the plaintiff has shown the Deputy Registrar erred in declining to allow the sum of Kshs.600,000 as costs.
 - b. Who bears the costs of this application?
5. The court considered the prayer sought in the application, affidavit evidence filed, submissions by the learned counsel, the record and come to the following findings:

- a. The record confirms that the court heard the suit and delivered its judgement on 16th June 2021, inter alia ordering that:
 - i. The defendants to remove all their developments and structures that encroached into the plaintiff's land in 60 days, and in default the plaintiff be at liberty to remove the same at the defendants' costs.
 - ii. Permanent injunction restraining defendants from entering, being upon, encroaching or developing on the plaintiff's land.
 - iii. The plaintiff to have the costs of the suit.

The defendant subsequently filed the application dated 3rd December 2021 seeking for inter alia an order that they had complied with the terms of the judgement. The application was heard and dismissed through the ruling delivered on 28th November 2023. The plaintiff then filed his bill of costs dated 15th April 2024 that was taxed and allowed as drawn through the ruling of 10th July 2024. The defendant filed the notice of motion dated 7th August 2024 seeking for review of the taxation ruling that was determined through the ruling dated 21st August 2024 that is subject matter of this reference.

- b. In the instant reference application on the review ruling of 21st August 2024, the plaintiff objects to the removal of item 115 of Kshs.600,000. In accordance with Rule 11 of the Advocates Remuneration Order 2017, the plaintiff wrote a letter dated 4th September 2024 to the Taxing Master, seeking for reasons but received no response. I have perused the Taxing Master's amended ruling of 21st August 2024, and noted it contains the reason for removing the said sum under sub-heading "1. Item 115" as follows:

"This item provides for payments for execution which should be evidence by receipts. It is also notable that this activity occurred post trial hence does not form part of the awarded costs. it is taxed off entirely."

That as the taxing master's reasons for removal of Kshs.600,000 is apparent on the amended ruling delivered on 21st August 2024, there was no need for the taxing master to reiterate the reasons again through correspondence. See the decision in the case of Mumias Sugar Company Limited versus Professor Tom Ojienda and Associates KSM HC Misc. No. 279 of 2017 [2018] eKLR.

- c. In the case of Joreth versus Muturi Kigana & Company Advocates (2002) eKLR, the Court of Appeal observed as follows;

"Besides it is not really in the province of a judge to retax the bill. If the judge comes to the conclusion that the taxing master has erred in principle he should refer the bill back for taxation by the same or another taxing officer with appropriate directions on how it should be done. It was stated by the predecessor of this Court in the case of



Steel Construction & Petroleum Engineering (E.A.) Ltd vs. Uganda Sugar Factory Ltd (1970) E.A. 141 per spry JA at page 143:

"Counsel for the appellant submitted, relying on D'Souza v. Ferao [1960] EA 602 and Arthur v. Nyeri Electricity Undertaking [1961] EA 492 that although a judge undoubtedly has jurisdiction to re-tax a bill himself, he should as a matter of practice do so only to make corrections which follow from his decision and that the general rule is that where a fee has to be re-assessed on different principles, the proper course is to remit to the same or another taxing officer. I would agree that, as a general statement, that is correct, adding only that it is a matter of juridical discretion."

The principles of taxation are aptly stated in the case of Premchand Raichand Ltd and another versus Quarry Services of East Africa Ltd & Others No 3 (1972) EA 162 where the court noted as follows on the principles on taxation:

- "(a) successful litigant ought to be fairly reimbursed for costs he has had to incur
 - b. That costs be, not allowed to rise to such level as to confine access to justice to the wealthy.
 - c. that the general level of remuneration of advocates must be such as to attract recruits to the profession and
 - d. that as far as practicable there should be consistency in the awards made.
 - e. that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances
 - f. the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically
 - g. the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party."
- d. From the amended ruling delivered on 21st August 2024, it is clear the first reason given by the taxing master for reviewing the taxation ruling of 10th July 2024 by taxing off the sum of Kshs.600,000 was that there were no receipts provided as proof of the cost of incurring the said sum. The second reason was that the execution is a post trial activity that does not form part of the awarded costs. That while it is true that the plaintiff needed to tender documentary evidence in proof that the sum claimed was indeed incurred when removing the developments and structures that were encroaching onto his suit property after the defendants failed to do so as ordered in the judgement, the taxing master's finding that it was not part of the costs awarded as it was out of a post-trial activity was erroneous, in view of the order (a) of the judgement and order (1) of the decree that are unambiguous.
- e. That had the plaintiff tendered documentary evidence like receipts confirm having expended the said amount in executing the order (1) of the decree, then they would have been entitled to such sum as part of their costs. However, as no such evidence was presented before the taxing master, and remembering that the rule of evidence that he who alleges must prove, then I find no basis of interfering with the taxing master's decision in the amended ruling of 21st August 2025. The plaintiff's objection is therefore without merit.



- f. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the events unless where for good cause the court orders differently. As the plaintiff's reference is without merit, then costs are awarded to the defendants.
6. From the foregoing determinations on the chamber summons dated 7th October 2024, the court finds and orders as follows:
- a. The application is devoid of merit and is hereby dismissed.
- b. The plaintiff to bear the costs of this application.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 15TH DAY OF OCTOBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the Presence of:

Plaintiff : Mr Odhiambo

Defendants : M/s Nduku

Kalekye-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

