



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kathurima v Mburugu (Civil Case E004 of 2022)  
[2024] KEMC 128 (KLR) (15 January 2024) (Ruling)**

Neutral citation: [2024] KEMC 128 (KLR)

**REPUBLIC OF KENYA  
IN THE GITHONGO LAW COURTS  
CIVIL CASE E004 OF 2022  
AT SITATI, SPM  
JANUARY 15, 2024**

**BETWEEN**

**ALEXANDER KATHURIMA ..... PLAINTIFF**

**AND**

**ROSE MUKIRI MBURUGU ..... DEFENDANT**

**RULING**

1. On 24<sup>th</sup> November, 2023 the Defendant/Applicant filed an objection to the Plaintiff's Bill of Costs dated 9<sup>th</sup> October, 2023 challenging a number of items in the Bill.
2. The Plaintiff/Respondent filed Grounds of Objection dated 7<sup>th</sup> December, 2023 contending that the taxation had already taken place and the objection was unfounded since the Defendant ought to approach the High Court by way of a reference if aggrieved by the taxation.
3. The parties did not exchange any written submissions but orally canvassed their positions as reflected in their filed pleadings.
4. The only issue to be decided is whether or not the objection to taxation is merited.

**Determination**

5. The Court's record reflects that on 14<sup>th</sup> November, 2023 the court taxed the costs at Kshs 156, 000/-. This means that the objection is being filed after the taxation was already completed.
6. In this scenario, the court this Honourable Court is required to determine whether it can entertain this objection for an exercise which is already done. On the authorities, there was extensive guidance



from the decision in Vincent Kibiwott Rono v Abraham Kiprotich Chebet & another [2022] eKLR (Nyakundi J.) where the learned Judge had this to say:

“What is before the court is a reference of the decision delivered on 17<sup>th</sup> January 2022. A reading of the decision shows that it is a ruling on the taxation of the bill of costs dated 5<sup>th</sup> August 2021. The trial magistrate was exercising his jurisdiction as a magistrate and not a taxing officer. Rule 10 of the advocates remuneration order provides;

7. The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.
8. The court in Bernard Gichobi Njira v Kanini Njira Kathendu & another [2015] eKLR held;

A magistrate is allowed and/or mandated by law to assess or tax costs payable in a given case. The words or terminology used whether “assess” or “tax” is immaterial in my view. The bottom line is to determine the total amount of costs payable. The fact that a magistrate has taxed or used the terminology “taxation” to assess or determine costs payable is not fatal if the bill presented before the court is in compliance with the requirements of Schedule VII of the Advocates Remuneration Order. To make a different finding in my view would be unconstitutional in view of Article 159 (2) (d) of *the Constitution*...
9. On the question of jurisdiction, there is no dispute from both sides in this reference that magistrates or indeed subordinate courts in Kenya have jurisdiction to determine costs payable in cases filed before those courts. The Applicant conceded that magistrates also have jurisdiction to assess costs but on the same breath contended that they lacked jurisdiction to tax costs presented to them by way of Bill of Costs. For me this is simply a question of semantics because ‘taxation of costs’ and ‘assessment of costs’ means one and the same thing.
10. Having established that taxation and assessment mean basically the same thing, it is therefore in order that the dispute as to the assessment is brought before this court by way of reference”
11. It is therefore evident that the trial magistrate fulfilled the purpose that was determination of the total amount of costs payable. The next bone of contention is the process a party disputing the assessment should follow. I note that there are no provisions for challenging assessments made by magistrate’s courts therefore, in the interests of justice, the high court which has jurisdiction to tax bills of costs can intervene.
12. In arriving at the foregoing position, the learned Judge found guidance from the authority of Donholm Rahisi Stores (firm) V EA Portland Cement Ltd [2005] eKLR where Waweru J held:

“Taxation of costs whether those costs be between party and party or between advocate and client is a special jurisdiction reserved to the taxing officer by the Advocates’ Remuneration Order.
13. The court will not be drawn into the arena of taxation except by way of reference (from a decision on taxation) made under Rule 11 of the Advocates Remuneration Order.
14. In the result, the Court find merit in the Grounds of Opposition dated December 7, 2023 and dismisses with costs the Objection by the Defendant/Applicant dated November 24, 2023.



**DAGTED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 15<sup>TH</sup> DAY OF JANUARY,  
2024**

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**HON. T. A. SITATI**

**SENIOR PRINCIPAL MAGISTRATE**

**GITHONGO LAW COURTS**

Present

Wilson Nkunja Advocate for the Plaintiff/Respondent

Ronny Court Assistant

