



Colfax Holdings Limited v National Land Commission (Environment & Land Petition 003 of 2022) [2023] KEMC 273 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEMC 273 (KLR)

**REPUBLIC OF KENYA
IN THE KWALE LAW COURTS
ENVIRONMENT & LAND PETITION 003 OF 2022
ZK KAGENYO, DR
JULY 5, 2023
(FORMERLY MSA ELC PETITION NO. 33 OF 2021)**

BETWEEN

COLFAX HOLDINGS LIMITED PETITIONER

AND

THE NATIONAL LAND COMMISSION RESPONDENT

RULING

1. The Bill of Costs subject of this ruling is dated and filed by the Petitioner on the 16th day of March 2023, hereinafter the Bill.
2. The Bill was served upon the Respondent on the 21st day of March 2023 but did not yield any response from the Respondent.
3. The Bill trickled from the Judgment delivered by Lady Justice A.E. Dena on the 6th day of March 2023 in favour of the Petitioner and with costs against the Respondent.
4. The Respondent having been served with both the Bill and Notice of Taxation and having opted not to contest, the matter proceeded ex-parte.
5. The matter had been initiated by way of a Petition dated 13th August 2021 and filed 3 days later and therefore the applicable Advocates Remuneration Order is the Legal Notice No. 35, the Advocates (Remuneration) (Amendment) Order, 2014 hereinafter the ARO and more particularly under Schedule 6 for costs of proceedings in the High Court and Courts of Equal Status. The matter was contested.
6. Item 1 in the Bill of Costs (Instruction Fees) is drawn at Ksh. 5, 601, 580/= the Petitioner stating that the subject matter was found to be of Ksh. 359, 105, 371/=.



7. The Petitioner initiated the suit by way of a Petition dated 13th August 2021 which the Respondent responded to by way of a Replying Affidavit of Fidelis K. Mburu of 12th May 2022.
8. In the said Replying Affidavit, the Respondent at paragraph 16 and 17 described the Petitioner's petition as,

“.....the entire Petition is a simple claim for money baptized a Petition and it raises no constitutional issues.....the entire petition fails the test in Anarita Karimi versus Republic”
9. This formed one of the 5 issues for determination framed by the Judge and at paragraph 23 of the judgment, the Petition was described as a Constitutional Petition and as such, it is to be taxed under Paragraph 1 (j) of the ARO.
10. The matter was opposed and went to full trial.
11. I have considered the nature of the matter herein and appreciate that other such cases were mentioned as having been pursued by the parties herein and hence cannot be said to be novel in terms of the issues raised for determination. Further, the suits against the Respondent required it to remit what it was required to do and as of duty this cannot be said to raise anything novel. Further, I note that it is a case that involved huge sums of money but it cannot however be said to be complex or difficult in handling the same as in my considered view, it called for application of diligence and standard employment of an advocate's professional skills. However, given the amounts at stake, the matter was of great importance to the parties.
12. Having considered the foregoing and being persuaded on the nature of the brief, taxing under paragraph 1 (j) (ii) of the said Schedule 6 of the ARO, the instruction fees is taxed at Ksh. 200, 000/= and Ksh. 5, 401, 580/= is taxed off.
13. Item 2 on the get up fees, the matter went to full trial. It is taxed at Ksh. 66, 666.67 being a third of the instruction fees and a Ksh. 1, 800, 526.33 is taxed off.
14. Items 3 and 4 drawn at Ksh. 600/= and 1, 800/= respectively are taxed as drawn at Ksh. 2, 400/=.
15. Item 5 drawn at Ksh. 1, 000/= is taxed off as the Petition had not even been drawn as at that date.
16. Items 6 and 7 drawn at Ksh. 1, 400/= and Ksh. 90/= are taxed as drawn at Ksh. 1, 490/=.
17. Item 8 drawn at Ksh. 1, 560/= is taxed at Ksh. 1, 300/= and Ksh. 260/= is taxed off.
18. Items 9, 11 and 14 drawn @ Ksh. 1, 000/= is taxed at Ksh. 1, 500/= and a total of Ksh. 1, 500/= is taxed off.
19. Items 10, 12 and 13 are taxed as drawn at Ksh. 1, 540/=.
20. Items listed under Attendances and itemized as 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13 are taxed as drawn under paragraph 7 (d) of the ARO, save to say that item 2 was before Justice N. A. Matheka and not Lady Justice A.E. Dena. As such, the aforelisted items are taxed as drawn at Ksh. 30, 000/=. Under the same itemization, items 1 and 8 drawn @ Ksh. 3, 000/= were not supported by the record and hence a total of Ksh. 6, 000/= is taxed off. Lastly, item 7 drawn at Ksh. 3, 000/= is taxed under Paragraph 7 (c) ARO at Ksh. 1, 000/= and Ksh. 2, 000/= is taxed off.



21. On the amount itemized as item 1 under the heading disbursements and drawn at Ksh. 6, 000/=, the receipt issued on 16th August 2021 shows that a total of Ksh. 10, 150/= was paid. The same is taxed as drawn at Ksh. 6, 000/= being the desired amount and part of the evinced amount.
22. The Petitioner asked the court to add one half as provided within the remuneration Act and drew the figure at Ksh. 3, 762, 381.50 only. That was strange to me and the same is taxed off.
23. In the end, the Bill of Cost dated 16th March, 2023 and filed on even date is taxed at Ksh.311, 896.67/= . A total of Ksh. 10, 975, 247.50 only is taxed off.
24. The Bill of Cost was drawn at Ksh. 11, 287, 114.50 only of which more than a $\frac{1}{6}$ has been disallowed and hence the Plaintiff shall bear his own cost of this Bill.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MS-TEAMS AT KWALE ON THIS 5TH DAY OF JULY 2023.

KIONGO KAGENYO

DEPUTY REGISTRAR

ENVIRONMENT AND LAND COURT, KWALE

In the presence of;

Mr. Archibald Kimbada- Court Assistant

Mr. Borona for the Petitioner

