



**Kawa Paradise Limited v Kenia Rafikis Limited (Environment and Land Miscellaneous Application E001 of 2022) [2022] KEMC 28 (KLR) (21 December 2022) (Ruling)**

Neutral citation: [2022] KEMC 28 (KLR)

**REPUBLIC OF KENYA  
IN THE KWALE LAW COURTS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2022  
ZK KAGENYO, DR  
DECEMBER 21, 2022**

**BETWEEN**

**KAWA PARADISE LIMITED ..... APPLICANT**

**AND**

**KENIA RAFIKIS LIMITED ..... RESPONDENT**

**RULING**

1. The Bill of Costs subject of this ruling is dated 19<sup>th</sup> September 2022 and it was filed on the 20<sup>th</sup> day of September 2022 by the Respondent in the Miscellaneous Application that was filed in Court on the 14<sup>th</sup> day of January 2022 by way of a Notice of Motion and for the purposes of this ruling, the then Respondent shall be the Applicant herein and the then Applicant shall be the Respondent herein.
2. The Party and Party Bill of Costs trickled from the Ruling delivered by Hon. Lady Justice A.E. Dena on the 16<sup>th</sup> day of May 2022 marking the Application as withdrawn and granting costs of the same to the Applicants herein, Kawa Paradise Limited.
3. The Respondent did not file any response to the Applicants Bill of Cost despite being served with the Notice of Taxation and a Hearing Notice.
4. The matter was filed and determined within 2022 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.
5. The Applicant herein opposed the application filed in the main suit by the Respondent by way of filing a Preliminary objection herein and this amounts to a denial of liability more so considering that it is on the basis of that Preliminary Objection in addition to the application to withdraw the suit that the suit was terminated with costs. In that premise, this suit was determined in a summary manner without going to full trial.



6. Schedule 6 Part A, paragraph 1(b) provides that in such circumstances where the suit is determined in a summary manner whatsoever without going to full trial, the instruction fees chargeable shall be 75% of the fees chargeable under item 1(b).
7. Item 1 in the Bill of Costs (Instruction Fees) is drawn at Ksh. 120, 000/= the Applicant stating that it was to defend a matter in which it was to lose its property.
8. The matter having been instituted by way of Notice of Motion shall be taxed under Schedule 6 Paragraph Part A Paragraph 1 (b) if the value is to be determined. The value of the subject matter cannot be discerned from the pleadings, ruling or any settlement by the parties. The Applicant equally does not suggest before this court the acreage, interest in the land or the location of the land to aid this court to assess the impetus of their proposition.
9. This leaves the matter to the discretion granted to the taxing officer.
10. I have considered the nature of the suit and the court record generally. I notice that the judge did not certify the same as a complex matter. The parties however have high interest in the suit and as such the importance of the suit to the parties cannot be gainsaid. The Respondent had gone to court to get an avenue to challenge a finding which had been made in favour of the Applicant herein. It was about land, a factor of production said to be a highly emotive issue in this country. There is no novel issue that was placed before the court.
11. Accordingly, I opine that instruction fees of Ksh.120,000/= is not unreasonable and will be apt in the circumstances and as provided for under the Advocates Remuneration Order, the instant matter having been resolved summarily will attract 75% of the said amount of Ksh.120,000/=, which is Ksh.90,000/=. Item 1 of the Bill of Costs is therefore taxed at Ksh. 90, 000/= and Ksh. 30, 000/= is taxed off.
12. Item 2 drawn at Ksh. 1, 000/= is taxed off as the Notice of Appointment was filed on the 28<sup>th</sup> January 2022.
13. Item 3 is taxed at Ksh. 500/= and Ksh. 500/= is taxed off.
14. Item 4 drawn at Ksh. 22, 400/= is taxed off for lack of proof of such service.
15. Item 5 drawn at Ksh. 1, 050/= is taxed off for lack of proof of such perusal.
16. Item 6 is taxed at Ksh. 472/= and Ksh. 528/= is taxed off.
17. Item 7 is taxed at Ksh. 200/= and Ksh. 100/= is taxed off.
18. Item 8 is taxed at Ksh. 1, 400/= noting that the service was done via email. Ksh. 21, 000/= is taxed off.
19. Item 11 is taxed at Ksh. 100/= and Ksh. 1,150 is taxed off for lack of proof of the same.
20. Item 12 is taxed at half day at Ksh. 7, 100/= and Ksh. 7, 900/= is taxed off.
21. Item 13 is taxed at Ksh. 400/= and Ksh. 200/= is taxed off.
22. Item 14 is taxed at Ksh. 1, 450/= and Ksh. 725/= is taxed off.
23. Item 15 is taxed at Ksh. 500/= and Ksh. 500/= is taxed off.
24. Item 16 is taxed as drawn at Ksh. 1, 250/=.



25. Item 17 drawn at Ksh. 22, 400/= is taxed off for there are two Affidavits of Service, one for Christopher Kinyanjui Kamau and the other for Clement Ogotu Owende which makes the court find either of the two as ingenuine bearing in mind that no receipts were produced for such travelling.
26. Items 18 and 19 drawn at Ksh. 1, 100/= and 200/= respectively are taxed off for the reasons given on item 17 above.
27. Item 20 is taxed at one hour at Ksh. 3, 000/= and Ksh. 4, 100/= is taxed off.
28. Item 21 drawn at Ksh. 1, 000/= is taxed off for being an unascertainable hanging item.
29. Item 22 is taxed at Ksh. 450/= and Ksh. 225/= is taxed off.
30. Item 23 is taxed at Ksh. 2, 650/= and Ksh. 1, 325/= is taxed off.
31. Item 24 is taxed at Ksh. 500/= and Ksh. 500/= is taxed off.
32. Item 25 is taxed as drawn at Ksh. 1, 000/=.
33. Item 26 drawn at Ksh. 22, 400/= is taxed off for lack of evidence of such service.
34. Item 27 is taxed as drawn at Ksh. 7, 100/=.
35. Item 28 is taxed as drawn at Ksh. 7, 100/=.
36. Item 29 drawn at Ksh. 5, 000/= is taxed off for being an unascertainable hanging item.
37. In the end, the Bill of Cost dated 19<sup>th</sup> September 2022 and filed in court on 20<sup>th</sup> September 2022 is taxed at Ksh.125, 172 /=. A total of Ksh. 145, 403/= is taxed off.
38. The Bill of Cost was drawn at Ksh. 270, 575/= of which more than a  $\frac{1}{6}$  has been disallowed and hence each party shall bear its own cost of this Bill.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MS-TEAMS ([HTTPS://BITLY/3AM8SK7](https://bitly/3AM8SK7)) AT KWALE ON THIS 21<sup>ST</sup> DAY OF DECEMBER 2022.**

**KIONGO KAGENYO**

**DEPUTY REGISTRAR**

**ENVIRONMENT AND LAND COURT, KWALE**

In the presence of;

Mr. Archibald Kimbada- Court Assistant

