



REPUBLIC OF KENYA



**Nyachoti and Company Advocates v Gacheru (Environment & Land Miscellaneous Case 13 of 2022) [2022] KEMC 27 (KLR) (28 December 2022) (Ruling)**

Neutral citation: [2022] KEMC 27 (KLR)

**REPUBLIC OF KENYA  
IN THE KWALE LAW COURTS  
ENVIRONMENT & LAND MISCELLANEOUS CASE 13 OF 2022**

**ZK KAGENYO, DR**

**DECEMBER 28, 2022**

**BETWEEN**

**NYACHOTI AND COMPANY ADVOCATES ..... APPLICANT**

**AND**

**JAMES MWANGI GACHERU ..... RESPONDENT**

**RULING**

**Ruling On Advocate-client Bill Of Cost Filed On 29th July 2022**

1. The Bill of Costs subject of this ruling is dated 27<sup>th</sup> July 2022 and it was filed on the 29<sup>th</sup> July 2022 by the Advocate, the Applicant herein.
2. The Advocate-Client Bill of Costs emanates from the professional legal services rendered by the Applicant acting for the Respondent as the Plaintiff in the Kwale ELC Case No. 72 of 2021, James Mwangi Gacheru -v- Charles Njogu & 2 Others, formerly Mombasa ELC No. 143 of 2020.
3. In the said suit, the Applicant, acting for the Respondent filed a Plaint on 1<sup>st</sup> October 2020 and on 5<sup>th</sup> May 2022, the Applicant was replaced with the firm of Ndegwa & Sitonik Advocates through a Notice of Change of Advocates dated 4<sup>th</sup> May 2022. The fact that there existed an Advocate – Client relationship is not in issue 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 under Article 162 (2) of *the Constitution* of Kenya.
4. The matter was contested.
5. Pursuant to Part B of Schedule 6 of the ARO, the court proceeded to first determine the taxation as if under Part A as hereunder.



6. The Respondent contests that the Applicant was paid a one-off payment of Ksh. 926, 500/= and therefore is unjustified to be claiming for any other monies through these taxation proceedings. It is against this background that the Respondent filed a Notice of Motion application dated 2<sup>nd</sup> day of September 2022 that this court dealt with on the 30<sup>th</sup> day of September 2022 and hence the issue stands determined. The court, in its capacity as the Taxing Officer shall therefore proceed to tax the Bill accordingly.
7. Item 1 in the Bill of Costs (Instruction Fees) is drawn at Ksh. 2, 162, 500/= based on the prayers sought in the Plaint and inviting the court to consider the due diligence and issues involved, the intricate nature of the case, the importance of the case to the parties and the responsibility accorded therein and find that the value of the subject matter as Ksh. 97, 500, 000/= a position attacked by the Respondent urging this court to consider that on 29<sup>th</sup> day of October 2010, the Taxing Master had taxed a similar matter involving the same subject matter and parties and the instruction fees were taxed at Ksh. 159, 500/=, taxing off Ksh. 781, 500/=.
8. I would have gracefully relied on the said Certificate of Taxation but even though I was invited to take judicial notice of judgments from other courts, the same was not converted to evidence by the Respondent to be relied upon by this court.
9. The court in its capacity as the Taxing Officer endeavored to find the basis of laying the taxation of the instruction fees. In this case, the value of the subject matter could not be discerned from the pleadings by the parties, any judgment as the matter is yet to be concluded or any settlement.
10. The crux of the dispute between the Plaintiff and his adversaries is ownership of the land Reference No. Galu/ Kinondo/ 679 Kwale measuring 1.3 Hectares. This is no small land. It seems to further have been subdivided into at least 11 plots and titles issued going by prayer (f) in the Plaint. The Advocate was to work in the best interest of his client and have not only the titles cancelled but also the green cards rectified.
11. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in that suit laid equally strong cases claiming ownership of the suit property. The Plaintiff pleaded fraud while the 1<sup>st</sup> and 2<sup>nd</sup> Defendants pleaded as being purchasers for value. It was a case that involved complex issues and required notable industry from the Advocate. It cannot however be said to be novel but as one issue which required just diligence and standard employment of an advocate's professional skills.
12. I have considered the nature of the suit and the court record generally. I have also considered the interest of the parties evident in the pleadings and the proceedings on the court record. I have considered the acreage of the property the subject of the suit. Further, I have considered the work done by the applicant in executing the respondent's brief. I am persuaded that an instruction fee of Ksh. 1, 100,000/= is fair and reasonable in the circumstances. Item 1 (a) is taxed at Ksh. 1, 110, 000/= and Ksh. Ksh. 1, 052, 500/= is taxed off.
13. Item 2 was on Getting up fees. The Applicant asked to be awarded the getting up fees at Ksh. 720, 833/= maintaining that the matter was ready for hearing and had been fixed for hearing for 16<sup>th</sup> day of February 2022. The Respondent refutes this claim and maintains that the Applicant is not entitled to getting up fees. This antagonistic position shall be resolved by the court record.
14. On 12<sup>th</sup> October 2021, the coram before the judge reads that Ms. Nyaga was holding brief for Nyachoti for Plaintiff, Mr. Maganga for 1<sup>st</sup> Defendant Mr. Kithi and Mr. Musyoka for 2<sup>nd</sup> Defendant and no appearance for the Attorney General. The matter on that date was coming up for pretrials. It was certified ready for hearing, albeit, with leave to all the 3 defendants to comply with Oorder 11 of the



Civil Procedure Rules. The matter was set down for hearing for the 6<sup>th</sup> day of December 2021, in open court, a date that the 2<sup>nd</sup> Defendant occasioned an adjournment to the 16<sup>th</sup> day of February 2022.

15. As such, I am satisfied that the Applicant is entitled to getting up fees which is taxed at Ksh. 370, 000/= and Ksh. 350, 000.33/= is taxed off.
16. Item 3 was drawn at Ksh. 20, 300/=. Rule 17 defines a folio to be 100 words. The drawing said to be done on 29<sup>th</sup> September 2022 were 16 pages of approximately 21 folios. The same shall all be taxed under Schedule 6 paragraph 4 (a) of the ARO at Ksh. 3, 650/= and Ksh. 16, 650/= is taxed off.
17. Item 4 is drawn at Ksh. 3, 300/= as, “to making four copies thereof.” It has not been clarified what copies were made. Due to the ambiguity, the entire Ksh. 3, 300/= is taxed off. The same fate falls to items 5, 7, 8, 9, 12 and 15 which made it difficult for me to tax due to their ambiguities and as such the Ksh. 3, 000/=, Ksh. 3, 150, Ksh. 3, 000/=, Ksh. 172, 840/=, Ksh. 5, 000/= and Ksh. 200/= respectively is taxed off.
18. Item 6 is drawn at Ksh. 19, 400/=. It is taxed against 32 folios at Ksh. 5, 300/= and a total of Ksh. 14, 100/= is taxed off.
19. Item 10 is drawn at Ksh. 1, 000/=. However, I could not see the said letter and hence the Ksh. 1, 000/= is taxed off.
20. Items 11 and 13 are each drawn at Ksh. 1, 000/=. Under schedule 6 paragraph 6 of the ARO, each is taxed as drawn making a total of Ksh. 2, 000/=.
21. Item 14 is drawn at Ksh. 1, 850/= based on 9 folios as per the Applicant. Under schedule 6 paragraph 4 (e) of the ARO, the same is taxed at Ksh. 1, 620/= and a total of Ksh. 230/= is taxed off.
22. Item 16 is taxed as drawn at Ksh. 50/=.
23. Item 17 is taxed as drawn at Ksh. 150/=.
24. Item 18 is taxed as drawn at Ksh. 100/=.
25. Item 19 is taxed as drawn at Ksh. 1, 350/=.
26. Item 20 is taxed as drawn at Ksh. 1, 500/=.
27. Item 21 is taxed as drawn at Ksh. 200/=.
28. Item 22 is taxed as drawn at Ksh. 50/=.
29. Item 23 is taxed as drawn at Ksh. 50/=.
30. Item 24 is taxed as drawn at Ksh. 100/=.
31. Item 25 is taxed as drawn at Ksh. 800/=.
32. Item 26 is taxed as drawn at Ksh. 250/=.
33. Item 27 is taxed as drawn at Ksh. 50/=.
34. Item 28 is taxed on the relevant 2 folios at Ksh. 100/= and Ksh. 100/= is taxed off.
35. Item 29 is taxed as drawn at Ksh. 500/=.
36. Item 30 drawn at Ksh. 5, 000/= is taxed off as the matter was considered by the judge in chambers in the absence of counsel on the 1<sup>st</sup> October 2020.



37. Item 31 is drawn at Ksh. 5, 000/=. I have looked at the proceedings of 4<sup>th</sup> March 2021 which were to take a ruling date. The same is taxed under Schedule 6 Paragrap 7 (d) of the ARO at Ksh. 1, 900/= and Ksh. 3, 100/= is taxed off.
38. Item 32 is drawn at Ksh. 2, 300/=. There is no time indication and, in the absence thereof, being two typed rulings, 5 pages each, the same is taxed as drawn at Ksh. 2, 300/=.
39. Item 33, the matter was adjourned but after long arguments for and against the adjournment. The same is taxed at half day being Ksh. 7, 100/= and Ksh. 7, 900/= is taxed off.
40. Item 34 drawn at Ksh. 1,900/= is taxed off as that day the Applicant herein did not attend court.
41. Item 35 is taxed as drawn at Ksh. 1, 900/=.
42. Item 36 drawn at Ksh. 500/= is taxed off as the same is not supported by the record in the file.
43. Item 37 drawn at Ksh. 100, 000/= is taxed off as the same is not supported by evidence.
44. Item 38 is taxed as drawn at Ksh. 12, 300/=.
45. Item 39 is taxed as drawn at Ksh. 4,095/=.
46. Item 40 is taxed as drawn at Ksh. 75/=.
47. Item 41 drawn at Ksh. 75/= is taxed off as is a repetition of item 40.
48. Item 42 is taxed as drawn at Ksh. 75/=.
49. Item 43 is taxed as drawn at Ksh. 75/= even though the receipt showed Ksh. 500/=.
50. As such;
  - i. Total under Part A of Schedule 6 is taxed to a total of Ksh. 1,511,020/=.
  - ii. increase The fees under Part A ((i) above) by 50% adds to Ksh. 2,266,530/=.
  - iii. to add VAT at 16% (16% of Ksh. 2,274,030/=)=Ksh. 362,644.80/=
  - iv. to add Disbursements = Ksh. 16, 620/=
  - v. Total: Ksh. 2,645,794.80/=
51. The Bill of Cost was drawn at Ksh. 5,689,305.13 of which more than a  $\frac{1}{6}$  has been disallowed and hence each party shall bear its own cost of this Bill.
52. In the end, the Bill of Cost dated 27<sup>th</sup> July 2022 and filed on the 29<sup>th</sup> July 2022 is taxed at Ksh. 2,645,794.80/=
53. By consent of the parties on the 14<sup>th</sup> day of December 2022, this ruling shall be transmitted to the parties via their provided emails being; admin@nyachoti.com for the Applicant and info@mklegalconsult.com for the Respondent.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MS-TEAMS (HTTPS://BIT.LY/3AM8SK7) AT KWALE ON THIS 28<sup>TH</sup> DAY OF DECEMBER 2022.**

**KIONGO KAGENYO**



**DEPUTY REGISTRAR  
ENVIRONMENT AND LAND COURT, KWALE**

In the presence of;

Mr. Archibald Kimbanda- Court Assistant

