



**Republic v Land Registrar Kwale & another; Tolksdorf (Exparte Applicant) (Environment & Land Miscellaneous Case 4 of 2021) [2022] KEMC 44 (KLR) (14 December 2022) (Ruling)**

Neutral citation: [2022] KEMC 44 (KLR)

**REPUBLIC OF KENYA**

**IN THE KWALE LAW COURTS**

**ENVIRONMENT & LAND MISCELLANEOUS CASE 4 OF 2021**

**ZK KAGENYO, DR**

**DECEMBER 14, 2022**

**(FORMERLY MSA ELC MISC 31 OF 2013)**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW  
PROCEEDINGS FOR ORDERS OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT, CAP 300 LAWS OF (NOW REPEALED)**

**AND**

**IN THE MATTER OF THE REGISTRATION OF LAND KNOWN AS PLOT  
NO. KWALE/GALU KINONDO/1203 SITUATED IN KWALE COUNTY**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAND REGISTRAR KWALE ..... 1<sup>ST</sup> RESPONDENT**

**LENNY MURAYA MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CAROLA TOLKSDORF ..... EXPARTE APPLICANT**

**RULING**

1. The Bill of Costs subject of this ruling was filed on the 3<sup>rd</sup> day of June 2022 by the Interested Party herein the Applicant. The *Ex-parte* Applicant herein the Respondent filed her written submissions dated 12<sup>th</sup> July 2022 on the 18<sup>th</sup> July 2022. The Applicant then filed his submissions dated 21<sup>st</sup> July 2022 on the 27<sup>th</sup> day of September 2022.



2. The Party and Party Bill of Costs trickled from the Ruling delivered by Lady Justice A.E. Dena on the 7<sup>th</sup> day of March 2022 dismissing the Notice of Motion dated 13<sup>th</sup> June 2013 with costs to the Interested Party.
3. The Notice of Motion dated 13<sup>th</sup> June 2013 was filed on 17<sup>th</sup> June 2013 and the matter concluded on the 7<sup>th</sup> March 2022 and therefore the applicable Advocates Remuneration Orders are the 2009 and 2014 under Schedule VI for proceedings in the High Court and Courts of Equal Status.
4. The parties have a meeting of the minds regarding items 2, 3, 4, 5, 6, 7, 8, 14, 15, 16, 17, 18 and 24 and as such they are taxed as drawn.
5. Item 1 in the Bill of Costs (Instruction Fees) is drawn at Ksh. 900,000/= based on a speculative value of Ksh. 15, 000, 000/= of which I take the value of Ksh. 1, 500, 000/= at paragraph 1 of the Applicant's submissions as a typographical error. The Applicant contends that since the forced Sale Value was placed at 5, 000, 000/=, the land must have been valued at Ksh. 7, 000, 000/= to warrant such a forced sale value and hence taking judicial notice that land as a factor of production do appreciate, the speculative appreciated value must be at Ksh. 15, 000, 000/=.
6. On her part, the Respondent maintains that the value can be discerned from the pleadings as Ksh. 5, 000, 000/= and that should be the basis.
7. It is trite that the value of the subject matter is to be determined from the pleadings, judgement or settlement between the parties.
8. There was no settlement in the suit neither the value stated in the final disposition by the judge. In the file, the pleadings filed by the parties included the Notice of Motion by the Respondent herein and the very detailed Replying Affidavit of Lenny Muraya Mwangi deponed on the 29<sup>th</sup> August 2013. In that affidavit, the Applicant herein placed the value of the land as Ksh. 5, 000, 000/=. In the submissions, he maintained that that was the forced sale value and the open market value ought to have been Ksh, 7, 000, 000/=. However, in the same affidavit at paragraph 26, he described the land as an agricultural land, of which, earlier at paragraph 16 he had said that he had paid a Stamp Duty of Ksh. 100, 000/=. At this juncture, it is worthy noting that assessment of the stamp duty is done by an independent government agency and for it to be placed at Ksh. 100, 000/= for an agricultural land whose duty is at 2% of the value of the land, then the independent government valuer must have placed it at Ksh. 5, 000, 000/= as well.
9. The Applicant asked the taxing officer to find that the land has now appreciated in value. However, the instructions he got from his client were so given in 2013 or thereabout based on the then value of the land and not presently based on the present value. The instructions fees are to be taxed based on the value of the land as at that time. As such, I base the instructions fees on the value of Ksh. 5, 000, 000/=. The matter was contested and as such the Advocates Remuneration Order, 2009, Schedule VI (b) is applicable and I consequently tax the instruction fees at Ksh. 152, 000/= Calculated as;
 
$$(Ksh. 77,000/=) + (\times Ksh. 5,000,000/=) = Ksh. 152, 000 \text{ and } Ksh. 748, 000/= \text{ is taxed off.}$$
10. The Respondent proposed a calculation akin to the prorated/ clustered PAYE calculations as is her interpretation of plus an additional 1.5% as stated in the table under Schedule VI Paragraph 1 (b). Whereas this would appear to be the way out from accusations of double-awarding the fees, in my interpretation of the same however, I find that the words extra or excess or their equivalent are absent and the natural meaning I got is that the 1.5% is to be levied on the entire value of the subject matter. For instance, the equivalent clauses in the [Advocate Remuneration Order 1989](#) read plus ½% on the amount over Sh. 750, 000. (underline mine).



11. Whereas the documents in items 9, 10 and 11 have a relation with this case, they were drafted for the sole consumption of the Applicant at the evidence and due diligence stage and cannot be said to have a direct nexus as a cost or incidental to this suit. They are thus taxed off.
12. On item 12 on 6<sup>th</sup> November 2019, the matter was coming up for highlighting of submissions but it seems that the advocate for the Applicant left once the matter was placed aside by the judge as when the matter was called out at 4:30 p.m, only the advocate for the Respondent was present. There is no indication on the time spent in court on that day and the same shall be taxed at Ksh. 3, 000/= taking notice of the time taken for call-over in court. Regarding the attendance to court on 10<sup>th</sup> February 2020 I note that the advocate for the Applicant was absent. The upshot is that item 12 is taxed at Ksh. 3, 000/= and Ksh. 12, 000/= is taxed off. (ARO 2014 Schedule VI item 7 (d))
13. Item 13 talks of a Hearing Notice dated 24<sup>th</sup> October 2020. I have perused the court file and could not see the said notice. The Applicant did not furnish a copy nor did he allude to the number of folios on the same. The Respondent stated that the same was two folios. I see that on 23<sup>rd</sup> October 2020, an ex-parte hearing date was taken and the parties appeared on the next date of 2<sup>nd</sup> March 2021 and hence I make a presumption that the hearing notice was served and received by the Applicant. As such, I will tax it based on the 2 folios stated by the Defendant and further taking notice on the length of an ordinary hearing notice. I thus tax it at Ksh.50×2=Ksh. 100/= and tax off Ksh. 900/=. ([ARO 2014](#) Schedule VI item 8 (b))
14. On Item 19, I have perused the file and I could not find the said letter dated 27<sup>th</sup> October 2021. The same is therefore taxed off.
15. Item 20, the attendance to court on 11<sup>th</sup> November 2021 is taxed as drawn. ([ARO 2014](#) Schedule VI item 7 (d)). With regard to the item named Drawing Notice of Ruling, I have perused the court file and could not see the said notice. The Applicant did not furnish a copy nor did he allude to the number of folios on the same. The Respondent stated that the same was two folios. I see that on 17<sup>th</sup> January 2022 the Honourable Judge directed the Applicant herein to serve the notice and, on the 21st February 2022, being the scheduled date, the other parties appeared and hence I make a presumption that the hearing notice was drawn by the Applicant. As such, I will tax it based on the 2 folios stated by the Defendant and further taking notice on the length of an ordinary ruling notice. I thus tax it at Ksh.180×2=Ksh. 360/= and tax off Ksh. 2, 140/=. ([ARO 2014](#) Schedule VI item 4 (d))
16. In item 22 I have perused the file and I could not find the ruling notice. I have further perused the proceedings of 2<sup>nd</sup> March 2022 when the ruling date was slated for 7<sup>th</sup> March 2022 and the same do not allude to an order for service. As such, the item is taxed off.
17. Item 23 is a disbursement for filing of ruling notice. I have perused the file and I did not see the said ruling notice or in its place, a receipt indicating filing of the same. As such, the same is taxed off.
18. Item 25 in one-part talks of the travelling cost without specifying the person travelling. I find that these are disbursements that I would require proof of the same and in the absence of such prove such as receipts, the same are taxed off for now. The 2<sup>nd</sup> part of item 25 asks for costs of the travel of the Applicant herein to the site. I note that the attendance by the said Applicant was not mandatory but he was at liberty to choose. However, as this is a direct disbursement, if the Applicant could provide receipts for the said disbursements the same could be considered but without any such proof, the same shall be taxed off for now. The third and last limb on this item was the surveyor's cost. I note that the court had indicated that the same cost was to be borne by the parties. However, I could not see any bill from any such surveyor or any payment receipt and hence without such prove, the same is taxed off for now.



19. On VAT, this being a party to party bill of costs, the same shall not be awarded.
20. In the end, the Bill of Cost filed in court on 3<sup>rd</sup> June 2022 is taxed at Ksh.277, 960/= . A total of Ksh. 1,351,376/= is taxed off.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MS-TEAMS AT KWALE ON THIS 14<sup>TH</sup> DAY OF DECEMBER 2022.**

**KIONGO KAGENYO**

**DEPUTY REGISTRAR**

**ENVIRONMENT AND LAND COURT**

**KWALE**

In the presence of;

Mr. Archibald Kimbada- Court Assistant

Mr. Njonjo holding brief for Mr. Njoroge for the Applicant

Ms. Wanjiku holding brief for Mr. Obonyo for the Respondent

