



**Kienge v Nyauntu & another (Environment and Land Case
55 of 2015) [2025] KEELC 7242 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7242 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE 55 OF 2015**

M SILA, J

OCTOBER 22, 2025

BETWEEN

SAMUEL OMARI KIENGE PLAINTIFF

AND

FRANCIS MORANGA NYAUNTU 1ST DEFENDANT

KENYA COMMERCIAL BANK LIMITED 2ND DEFENDANT

RULING

1. The application before me is that dated 10 June 2025 filed by the 2nd defendant. The applicant contends that the plaintiff/respondent proceeded to tax his bill of costs ex parte at Kshs. 1,657,000/=, extracted a decree, then went to appoint a firm of auctioneers who proclaimed the properties of the applicant. In this application, the applicant wants to set aside the taxed costs, the warrants of attachment, and the execution process, and that she be allowed to file a response to the respondent's bill of costs dated 5 December 2024. The application is opposed by the plaintiff.
2. To put matters into perspective, the plaintiff/respondent is the registered proprietor of the land parcel Bassi/Bogetaorio II/2834. He filed suit against the applicant and the 2nd defendant, claiming that the 2nd defendant fraudulently presented that he had offered the suit land as security for monies advanced by the applicant to the 2nd defendant. Inter alia he wanted orders to nullify the charge. The applicant's position was that the respondent voluntarily charged the suit land. She also filed a counterclaim to have the respondent pay the monies outstanding on the loan offered to the 1st defendant. I heard the case and delivered judgment on 14 March 2024. I was persuaded that the respondent had demonstrated that he never signed any charge over the suit land. I was not persuaded by the counterclaim which I dismissed. I awarded costs to the respondent jointly and/or severally against both defendants.
3. I see that the respondent filed a bill of costs dated 5 December 2024 asking for costs of Kshs. 3, 607, 650/=. From the record I see that on 31 January 2025 a representative of counsel for the respondent



took the date of 12 March 2025 for taxation. I see again that on 12 March 2025 the matter was before Hon. Kugwa, the Deputy Registrar, for taxation. Only Mr. Sagwe, learned counsel for the respondent/decree holder was present and he asked that the bill be taxed as drawn. The Deputy Registrar reserved a date for ruling and eventually delivered his ruling on 30 April 2025 taxing the bill at Kshs. 1, 657,000/=. The respondent appointed an auctioneer to execute for this amount and it is then that this application was filed.

4. The application is based inter alia on grounds that the bill of costs was never served and neither was counsel for the applicant notified of the date for taxation. There is also contention that the warrants of attachment and sale were issued irregularly.
5. The respondent filed grounds of opposition inter alia that the bill of costs was taxed to scale, and that proclamation and attachment was in accordance with the law. I however see no address in the grounds of opposition on the issue of failure to serve the bill of costs and the taxation notice. In his submissions, Mr. Sagwe, learned counsel for the respondent urged that if aggrieved, the applicant needed to file a reference to this court to contest the amount taxed.
6. I have perused the record. I have seen a taxation notice dated 16 February 2025 stating that taxation of the bill of costs will be on 12 March 2025. However, I have seen no affidavit of service indicating that this taxation notice was duly served upon the applicant. There is in fact no evidence whatsoever that the applicant was made aware that the bill of costs will be taxed on 12 March 2025. In those circumstances, it was wrong for the Deputy Registrar to proceed to tax the bill without first being satisfied that the bill of costs and the taxation notice have been served upon the applicant. The applicant deserved to be heard before the bill of costs was taxed.
7. I am therefore persuaded to set aside the taxation of the respondent's bill of costs and also persuaded to set aside the entire process of execution of the said costs.
8. I order that the bill of costs be served upon the applicant, and the respondent must also serve any date given for taxation of that bill of costs.
9. The applicant will have the costs of this application.
10. Orders accordingly.

DATED AND DELIVERED THIS 22 DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:

Ms. Magoma for the applicant

Mr. Sagwe for the respondent

Court Assistant – Michael Oyuko.

