



REPUBLIC OF KENYA



KENYA LAW
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Barclays Bank of Kenya Limited v National Land Commission & another (Environment and Land Case 152 of 2018) [2025] KEELC 18326 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18326 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 152 OF 2018
SM KIBUNJA, J
DECEMBER 17, 2025

BETWEEN

BARCLAYS BANK OF KENYA LIMITED PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND DEFENDANT

RULING

[Chamber Summons Dated 18th July 2025]

1. The plaintiff moved the court through the chamber summons dated 18th July 2025 seeking for the ruling of the taxing officer of 9th July 2025 be set aside on items 1 & 2; the 2nd defendant's Bill of Costs dated 21st January 2025 be remitted for taxation before any taxing officer and costs. The application is predicated on the six (6) grounds on its face and supported by the affidavit of Mercy Wambugu, legal counsel, sworn on the 18th July 2025, in which she inter alia deposed that the taxing officer taxed the Bill of Costs at Kshs.1,685,040.31; that taxing officer derived the value of the subject matter of Kshs.68,541,182 from the pleadings instead of using the amount awarded in the judgement.
2. The application is opposed by the 2nd defendant through the replying affidavit of Jillian Ndirangu, advocate, sworn on the 2nd October 2025, inter alia deposing that the plaintiff was served with the 2nd defendant Bill of Costs dated 21st January 2025 but did not file any objection before the taxing officer; that the claim by the plaintiff that the value of the subject matter can only be derived from the judgement is misleading in view of Schedule 6 of the Advocates Remuneration Order which at clause 1(b) states such value for purposes of calculating the instruction fees can be determined from pleadings, judgement or settlement between the parties; that the judgement dismissed the plaintiff's claim with costs, that sought to revise the value of the suit property from Kshs.68,541,182 to Kshs.132,050,000, that shows to the plaintiff, the subject matter was valued more that the value the taxing officer used



in the taxation; that the taxing officer applied the correct provisions of the law by stating the value of the subject matter was Kshs.68,541,182 that was in the originating summons; that as the plaintiff has not provided an alternative value for the subject matter, their application is without merit and should be dismissed with costs.

3. The learned counsel for the plaintiff and 2nd defendant filed their submissions dated 8th October 2025 and 30th October 2025 respectively that the court has considered.
4. The issues arising from the reference for the court's determinations are as follows:
 - a. Whether the plaintiff has established any error, misapplication or misapprehension of the taxation principles by the taxing officer in taking the value of the subject matter from the pleadings.
 - b. Who pays the costs?
5. The court has carefully considered the grounds on the reference, affidavit evidence, submissions by the learned counsel, superior court decisions cited thereon, the record and come to the following determinations:
 - a. The 2nd defendant's Bill of Costs dated the 21st January 2025, that was taxed vide the taxing officer's ruling delivered on 9th July 2025, was according to the 2nd defendant served upon the plaintiff without enlisting a response. That fact was captured by the taxing officer, at paragraph 2 of the said ruling and the plaintiff has not disputed it throughout the chamber summons. The taxing officer cannot therefore be faulted for proceeding to tax the said bill of costs, and even though it was undefended, Kshs.6,006 was taxed off.
 - b. The taxing officer ruling clearly shows that he correctly took note that the suit was filed in the year 2018, and the applicable Order was Advocates Remuneration Order 2014. The learned counsel for the 2nd defendant has correctly submitted that contrary to the plaintiff's contention that the taxing officer erred in taking the value of the subject matter from the pleadings, clause 1(b) of Schedule 6 of the Advocates Remuneration Order, actually provides that the value for purposes of calculating the instruction fees can be determined from pleadings, judgement or settlement between the parties.
 - c. I have perused the court's judgement delivered on 10th May 2023, and it is as the 2nd defendant submitted that the plaintiff's suit was dismissed with costs. The court's decision did not contain a value that can be construed to be the value of the subject matter. There is no agreed value of the subject matter agreed by the parties herein as this suit was not settled through the parties consent, but through a merit hearing. Under the circumstances, the only recourse the taxing officer had to establish the value of the subject matter so as to calculate the instruction fees was the pleadings. I have perused the record and noted the plaintiff's originating summons dated the 25th June 2018 had two different figures that can be taken as the value of the subject matter, that is Kshs.68,541,182 that the plaintiff had been awarded, and Kshs.132,050,000 that in its view was the amount it was entitled to. The plaintiff should count itself lucky that the 2nd defendant it not pursue its Bill of Costs based on the higher claim, and the taxing officer opted for the amount awarded as the value of the subject matter.
 - d. From the foregoing, the claim by the plaintiff that the taxing officer erred by relying on the value of the subject matter on the plaintiff's own pleadings, is not only misplaced but also misleading as the judgment it claims the value should have come from had no award capable



to be construed as the value of the subject matter. The reference is therefore without merits and is for dismissal.

- e. The plaintiff having failed in its reference should under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, that provides that costs follow the event unless where otherwise directed on good reasons, meet the 2nd defendant's costs.
6. Flowing from the foregoing determinations, the court finds and orders as follows:
- a. That the plaintiff's chamber summons/reference dated the 18th July 2025 is without merit.
 - b. The said chamber summons/reference is dismissed.
 - c. The plaintiff to meet the 2nd defendant's costs.

It is so ordered.

DATED, SIGNED, AND VIRTUALLY DELIVERED ON THIS 17TH DAY OF DECEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the Presence of:

Plaintiff : Mr. Kongere

Defendants : Mr Mumu for 1st Defendant

Kalekye-Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

