



REPUBLIC OF KENYA



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**Abdalla & 6 others v National Environment Management Authority
& another (Environment and Land Miscellaneous Application
E087 of 2024) [2025] KEELC 5501 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5501 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E087 OF 2024

JO OLOLA, J

JULY 24, 2025

IN THE MATTER OF: THE ADVOCATES ACT

-AND-

IN THE MATTER OF: PARTY & PARTY BILL OF COSTS

-AND-

**IN THE MATTER OF: REFERENCE FROM THE RULING OF THE NATIONAL
ENVIRONMENT TRIBUNAL AT NAIROBI DELIVERED ON 8TH APRIL, 2024**

BETWEEN

MOHAMED AHMED ABDALLA 1ST APPLICANT
SALIM SAID 2ND APPLICANT
AMIN S SALIM 3RD APPLICANT
ABDULLAZIZ ABBAS 4TH APPLICANT
RASHID AS 5TH APPLICANT
BHARAT DEVIDAS WAITHA 6TH APPLICANT
KETAN DOSHI 7TH APPLICANT

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT**

KHANSA DEVELOPERS LIMITED 2ND RESPONDENT



RULING

1. By a Chamber Summons application dated 5th November 2024, the seven (7) Applicants prays for orders:
 1. That the Honorable Court be pleased to review or set aside the assessment of costs by the Tribunal delivered and dated 8th April, 2024;
 2. That the Honorable Court be pleased to tax the 2nd Respondent's party and party bill of costs; and
 3. That the costs of the application be provided for.
2. The application is supported by an Affidavit sworn by Mohamed Ahmed Abdalla (the 1st Applicant) and is premised *inter alia* on the grounds that:
 - a. On 5th May, 2022 the Applicants herein filed Mombasa ELC Petition No.16 of 2022 seeking several declaratory orders including an order that the 2nd Respondent's impugned project violated the Petitioners' right to a clean and healthy environment. The Applicants also sought an order declaring the Environmental Impact Assessment License unconstitutional, null and void;
 - b. On 24th May, 2022, the 2nd Respondent filed a Preliminary Objection challenging the jurisdiction of the court to hear the dispute at the first instance;
 - c. On 26th July 2022, the Court delivered a detailed Ruling dismissing the 2nd Respondent's Preliminary Objection and further ordered that all matters pertaining to the issuance of environmental impact assessment (EIA) and Environmental Audit and issuance of a report thereof raised up in the pleadings to be referred to the National Environment Tribunal;
 - d. For expediency, the Court also directed that the Notice of Motion application and the Petition be heard together and concluded within 90 days from the date of the Ruling;
 - e. Acting on the instructions of the Court, the Petitioners filed Appeal No. 39 of 2022 ("the NET Appeal") to the National Environment Tribunal as ordered by the Court;
 - f. Before the NET Appeal was determined, this Court on 23rd February 2023, delivered a judgment in which it declared all the permits issued to the 2nd Respondent, including the EIA License as null and void;
 - g. Following the court's Judgment, the NET proceeded to strike out the Notice of Appeal with costs to the 2nd Respondent;
 - h. Pursuant to the Ruling, the 2nd Respondent filed a Party and Party Bill of Costs, and on 8th April 2024, the 1st Respondent was awarded costs amounting to Kshs 830,073/=;
 - i. On 26th July 2023, the 2nd Respondent herein filed an application for review of the Judgment and on the 30th April, 2024, the court delivered another Ruling reviewing its judgment and ordered that each party to bear their own costs;



- j. Considering that the costs awarded in the NET Appeal was based on the costs awarded in ELC Petition No. 16 of 2022, it is fair and just following the review that the costs awarded by the Tribunal be set aside;
 - k. In awarding the sum of Kshs. 830,073/= the Tribunal failed to consider the relevant principles in taxation particularly in regard to instruction fees which was calculated on the value of the suit property; and
 - l. It is therefore in the best interest of justice that the Honorable Court interferes with the award of the Tribunal as it causes an injustice to the Applicants
3. Khansa Developers Limited (the 2nd Respondent) are opposed to the application. In a Replying Affidavit sworn on its behalf on 28th January, 2025 by one of its directors Sammy Kamuio Mukuri, the 2nd Respondent denies that the National Environment Tribunal (NET) awarded them costs simply on the basis that the Petitioner has been awarded costs in the Petition No. 16 of 2022. The 2nd Respondent avers that they moved the NET for costs and that parties were directed to file written submissions thereon.
 4. The 2nd Respondent further avers that they honored the directive and filed submissions dated 21st August, 2023 but the Applicants did not file any. Having considered the 2nd Respondent's submissions, the NET delivered a Ruling on 1st September 2023 subsequent to which the 2nd Respondent filed its party and Party Bill of Costs.
 5. The 2nd Respondent further avers that in their Party and Party Bill of Costs, they had sought for the sum of Kshs. 8,459,491.30 but the NET only awarded them Kshs. 830,073/=. It is further their case that the value of the subject matter was ascertainable from the pleadings filed in Petition No. 16 of 2022 and it is only fair and just that the 2nd Respondent be allowed to enjoy the fruits of its judgment.
 6. I have carefully perused and considered the Chamber Summons as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
 7. By their application before the Court, the Applicants urge the court to be pleased to review and/or set aside the assessment of costs by the National Environment Tribunal (NET) delivered and dated 8th April, 2024. It is the Applicant's case that the costs awarded by the NET were based on the costs awarded in ELC Petition No. 16 of 2022 and that since the Environment and Land Court had since reviewed the orders and directed that each party bears its own costs, it was only fair and just that the costs awarded by the Tribunal be set aside.
 8. The application before the court is expressed to have been filed under Paragraph 11 of the [Advocates Remuneration Order](#), 2014. The said paragraph provides as follows:
 - “(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”



9. As it turned out, the present application was instituted some seven (7) months after the decision of the NET that is sought to be reviewed. The reasons for the late filing can be discerned from the supporting affidavit wherein the Applicants give details of a flurry of activities which led to the filing of the Appeal before the NET and what happened thereafter.
10. According to the Applicants, they had initially filed Mombasa ELC Petition No. 16 of 2022 to which the 2nd Respondent filed a Preliminary Objection. It was their case that they had moved to the Tribunal following a Ruling delivered on 26th July, 2022 wherein the court dismissed the objection but directed that all matters pertaining to the issuance of Environment Impact Assessment (EIA) and environment audit reports be raised before the Tribunal.
11. The Applicants told the court that as their matter was still pending before the Tribunal, the ELC delivered its judgment on 23rd February 2023 declaring all the permits issued by 1st Respondent herein as null and void and granting the Applicants costs. Consequently, upon that judgment, the Tribunal proceeded to strike out their Appeal with costs to the 2nd Respondent on the grounds that the matter had already been adjudicated before this court. As it would turn out, the judgment of this court was on 30th April, 2024 reviewed and an order made that each party bears its own costs.
12. Having given that background, the Applicants aver as follows at Paragraphs 14 and 16 of the Supporting Affidavit:

“ 14. From the background above, it is important to note that:-

- a. The NET Appeal was filed pursuant to the orders of this court (issued) on 26th July, 2022;
- b. The subsequent dismissal with costs of the NET Appeal was because of a judgment of this court which nullified all the permits including the EIA permit;
- c. The award of costs to the 2nd Respondent in NET Appeal was premised on the grounds that this court awarded costs in ELC Petition No. 16 of 2022 (*supra*); and
- d. This court set aside its orders of costs to the Applicants herein in ELC Petition No. 16 of 2022.

15. I am advised, and so submit, the decision of the Tribunal to award costs of Kshs. 830,073/= was erroneous on the following grounds:-

- a. The decision of the Tribunal to award Costs because another court has awarded costs is unreasonable;
- b. The amount in item 1 of the 2nd Respondent's Party and Party Bill of Costs which was taxed and allowed at Kshs. 830,073/= is manifestly excessive as indicative of error in principle;
- c. The Tribunal failed to consider the relevant principle in taxation of particularly the instruction fees by, principally, calculating it on the value of the suit property.
- d. Further the Tribunal failed to consider the non-complexity of the matter or issues before it assessed costs at Kshs. 830,073/=;



- e. The matter or issues before the Tribunal were straightforward which required little effort. The Tribunal disregarded this fact and awarded costs which was disproportionate; and
 - f. Costs awarded should not be as a form of punishment to the other party. In this case, the costs awarded by the Tribunal are excessive and oppressive, akin to punishing us; and
16. In addition to the foregoing, I am advised, and so submit, that considering that the costs awarded was based on the costs awarded in ELC Petition No. 16 of 2012 and considering this court reviewed its orders that each party bear their own costs, it (is) fair and just that the costs awarded by the tribunal be set aside.”
13. In my considered view however, I did not think it was open for the Applicants to move the court in the manner in which they did. Granted that a number of events took place before they filed this application, they could not however file a reference under Paragraph 11 of the Advocates Remuneration Order, 2014 without first seeking the enlargement of time for the period provided thereunder. In the matter herein, the Applicants have neither sought for the enlargement of time nor sought the reasons of the taxing officer for the items they object to.
14. Secondly, while the Applicants insisted that the award of costs to the 2nd Respondent was premised on the ground that this court awarded costs in ELC Petition No. 16 of 2022, I was unable to find any basis for that contention. All that the Applicants have attached as Exhibit 8 is the Party and Party Bill of Costs filed by the 2nd Respondent and dated 19th October, 2023. All that is discernable from that Bill is that the Respondents had sought to be awarded the sum of Kshs. 8,459,491.30.
15. The Applicants’ failure to follow the procedure set under paragraph 11 of the Advocates Remunerations Order and the omissions to exhibit the Tribunal’s Ruling on the Party and Party Costs is in my view fatal to the Applicant’s case. In the absence of the reasoning of the Tribunal, there was no basis upon which this court could find and come to the conclusion that the sum of Kshs. 830,073/= awarded as costs was unreasonable and that it warranted a review.
16. In the premises I did not find any merit in the Chamber Summons dated 5th November, 2024. It is dismissed with costs to the 2nd Respondent.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 24TH DAY OF JULY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Indesia Advocate for the Applicants
- c. Mr. Makau Advocate for the 1st Respondents
- d. No Appearance for the Other Respondents

