



**Rural Housing Estates Ltd v Ghani & another (Environment and Land
Case 237 of 2012) [2024] KEELC 118 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 118 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 237 OF 2012
EO OBAGA, J
JANUARY 25, 2024**

BETWEEN

RURAL HOUSING ESTATES LTD PLAINTIFF

AND

MOHAMMED IFTEKHAR GHANI 1ST DEFENDANT

**THE ADMINISTRATOR OF THE ESTATE OF AHMED MALAKWEN ARAP
SISIWA 2ND DEFENDANT**

RULING

1. This is a ruling of a notice of motion dated 22.9.2023 brought by way of a reference under Rule 11(1) and (2) of the *Advocates Act*. The Applicant contends that the taxing officer allowed an excessive amount under item number 1 and 2 of the Party and Party bill of costs filed on 22.6.2023.
2. The Applicant further contends that the taxing officer had no valuation in respect of which he would have ascertained the value of the subject matter and that he used a valuation report of a property which was not the subject of litigation in this suit resulting in the taxation of the bill of costs. The Applicant therefore prayed that the ruling of the taxing officer delivered on 18.8.2023 be set aside and that a fresh taxation on item number 1 and 2 be carried out by a different taxing officer.
3. The Applicant's application was opposed based on a replying affidavit sworn on 3.11.2023. The Respondent contends that the reference herein has been brought in bad faith and is only meant to delay the realization of the costs due to the Respondent. The Respondent further contends that the Applicant has all along known that LR. No. Eldoret Municipality Block 15/334 and Eldoret Municipality Block 15/2309 are one and the same and that the Applicant has never raised any issue on the valuation report he is now claiming that it is in respect of a different parcel.
4. I have considered the Applicant's application as well as the opposition to the same by the Respondent. There were no directions given as to the filing of written submissions but I notice that the Respondent



had filed submissions before the matter was referred to me for fixing a hearing date. When the matter was placed before me on 6.11.2023, I directed that it be heard on 7.12.2023.

5. On 7.12.2023 the counsel for the Applicant sought for 3 days to file a further affidavit. Though this request was granted, no further affidavit was filed. The only issue for determination is whether the taxing officer was wrong in the manner he ascertained the value of the subject matter as to call for intervention by this court.
6. This court can only interfere with the taxing officer's discretion if it is demonstrated that he committed an error of principle. An error of principle can be committed, where the taxing officer has not applied the correct provisions of the *Advocate's Remuneration order*; where he has awarded an amount which is excessive or too low or where he has failed to take into account relevant factors or has taken into account irrelevant factors.
7. In the instant case, the Applicant is contending that the taxing officer taxed a sum which was too high and that he used a valuation report in respect of a property which was not the subject of litigation. I have carefully gone through the pleadings herein. The Respondent had entered into an exchange agreement with the late Ahmed Malakwen Arap Sisiwa in respect of LR. No. Eldoret Municipality Block 15/334 which measures about 20 acres. This exchange agreement was entered into on 23.7.1994. The Respondent was given immediate possession which he has been enjoying since then to date.
8. On 16.5.2006, the Applicant sued the Respondent seeking to have him evicted from Eldoret Municipality Block 15/2309. The Applicant alleged that it had obtained title to this property on 21.12.2004. When the hearing of this case was concluded, it was found that the title held by the Applicant under parcel No. Eldoret Municipality Block 15/2309 was fraudulently procured. The court ordered its cancellation. It is therefore clear that what the Applicant was claiming to be Eldoret municipality Block 15/2309 was actually Eldoret Municipality Block 15/334 which was occupied and is still occupied by the Respondent.
9. The valuation was based on parcel Eldoret Municipality Block 15/334. This is the valuation which the taxing officer relied on. The Applicant cannot therefore claim that the taxing officer based instruction fees on a valuation in respect of a different parcel. Item number 2 which is getting up fees automatically follows what is found due on item on instruction fees. I therefore find that the taxing officer was right in applying the value of the land as shown in the valuation report in respect of LR. No. Eldoret Municipality Block 15/334. I therefore find no merit in the reference which is hereby dismissed with costs to the 1st Defendant/Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF JANUARY, 2024.

E. OBAGA

JUDGE

In the virtual presence of;

Mr. Kiboi for 1st Defendant.

Court Assistant –Brian

E. OBAGA

JUDGE

25TH JANUARY, 2024

