



REPUBLIC OF KENYA



**Curzon v Muthama & 3 others (Civil Suit 993 of 2016)
[2024] KEELC 126 (KLR) (24 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 126 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT 993 OF 2016
AA OMOLLO, J
JANUARY 24, 2024**

BETWEEN

PAUL CURZON PLAINTIFF

AND

MARTIN NGAO MUTHAMA 1ST DEFENDANT

STEPHEN KIRIANKI NKANYAMA & 2 OTHERS 2ND DEFENDANT

RULING

1. For determination is the reference filed by the Plaintiff/Applicant through a chamber summons application dated 29th November 2022. The Applicant sought to be granted orders:
 - a. That the Honourable court be pleased to set aside the decision of the Taxing Officer made on 10th November, 2022 and refer to the Bill of Costs dated 7th April, 2022 to another taxing officer for re-taxation.
 - b. That the costs of this reference be provided.
2. The Application is supported by the following grounds:
 - i. That the Learned Taxing Officer ignored the subject matter of the suit as set out in the pleadings and judgment while taxing the Bill of Costs.
 - ii. That the Learned Taxing Officer held brief for the Defendants and purported to excuse the 3rd Defendant from paying the costs when the judgment was that the 1st, 2nd and 3rd Defendants were to meet the costs of the suit.
 - iii. That the Learned Taxing Officer had no jurisdiction to excuse the 3rd Defendant from paying the costs of the suit.



- iv. That the Learned Taxing Officer erred when she found that the value of the subject matter was Kshs.15,000,000/=.
 - v. That the Learned Taxing Officer erred when she failed to consider the totality of the value of the subject matter of this suit and particularly overlooked the suit property Title 209/3163/ Kileleshwa.
3. I have not seen on record (both in the physical or online) of pleadings filed by the Defendants in opposition to the application. Despite this, I will consider the application on its merits.
 4. The Plaintiff pleaded that the taxing officer erred in law when she proceeded to exempt the 3rd Defendant from payment of the taxed costs. However, this is not the finding of the taxing master. The taxing officer only referred to the general damages awarded as against the 1st and 2nd Defendants/ Respondents which awarded was used in assessing the instructions fees. There is no finding from the Ruling on the taxation which excluded the 3rd Defendant from paying the costs.
 5. The second ground was that the instructions fee awarded was too low and that the taxing officer erred in assessing the same assuming the value of the property was Kshs 15,000,000. The sum of Kshs 15,000,000 was awarded as general damages for trespass and which from the body of judgement is because the Plaintiff was denied possession by the 1st and 2nd Defendants. The award had nothing to do with the value of the property but the user thereof. Although the value of the property was not disclosed in the pleadings filed, the compensation for loss of user would not be a basis to ascertain the value for purposes of taxation. Consequently, I find merit in this ground of the Reference.
 6. The Applicant also asked for review of the taxed costs on account of failure of the taxing officer to assess items 8 and 96 of the bill of costs. Upon perusal of the ruling under review, it is noted that item 8 was taxed at Kshs 1550. It is only item 96 that was omitted.
 7. The application succeeds in part that the bill is remitted to the Deputy Registrar for assessment of the instruction fees and item 96 of the bill of costs. The same shall be done by any Deputy Registrar other than Hon. Diana Orago. Since the Reference was not defended, the Plaintiff is awarded half costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY 2024

A. OMOLLO

JUDGE

