



**Mbuli v Oduwo & 3 others (Environment & Land Case 1627 of 2007)
[2024] KEELC 922 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 922 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1627 OF 2007
LN MBUGUA, J
FEBRUARY 22, 2024**

BETWEEN

BEATRICE MBULI PLAINTIFF

AND

RISPAH N ODUWO 1ST DEFENDANT

THE COMMISSIONER OF LANDS 2ND DEFENDANT

**THE PERMANENT SECRETARY MINISTRY OF LANDS &
HOUSING 3RD DEFENDANT**

THE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The Plaintiff's Chamber summons dated 5.9.2023 is for determination. It is a reference against the ruling of the taxing master, Hon. I.N Barasa dated 26.7.2023 in respect of the party and party bill of costs dated 22.8.2022. She seeks orders to set aside the said ruling, arguing that the said ruling did not give reasons as to why Party and Party instructions costs was increased from Ksh. 35,000 to Ksh. 250,000, and that already the sum of Ksh. 35,000 is above the Ksh.11,000 or 1/3 of the instruction fee.
2. She also avers there was no mention of the value of the subject matter in the pleadings herein and that the applicable remuneration order was that of 1997.
3. The application is opposed by the 1st Defendant *vide* grounds of opposition dated 24.11.2023. She contends that the price of the subject matter is mentioned in the pleadings, that the taxing officer gave her reasons for the ruling and correctly exercised her discretion by utilizing 3 advocates remuneration orders for 1997, 2006 and 2014 since the bill of costs related to periods between 2005 when the matter was filed to 2017 when it was concluded.



4. The reference was canvassed vide written submissions. The Plaintiff's submissions are dated 15.1.2024. It is argued that it is the legitimate expectation of all litigants that taxation shall be done under the guidelines of the Remuneration Order applicable at the time of filing suit, thus it was erroneous for the taxing officer to use different remuneration orders in giving arbitrary awards. Thus under Rule 11 of the Advocates (Remuneration) Order, this court has jurisdiction to review the ruling.
5. The 1st Defendant filed submissions dated 18.1.2024. It is submitted that by dint of Sections 107, 108 and 109 of the Evidence Act, the Plaintiff bears the burden of proving that the taxing officer erred in principle.
6. The case of Direct Line Assurance Company Limited v Hamilton Harrison & Mathews Advocates [2021] eKLR is cited to submit that the taxing officer has discretion to assess instructions fee as he considers just. It is argued that the taxing officer judiciously exercised her discretion when awarding the Plaintiff ksh.250,000/= as instruction fees for the claim while taking into account the cost of purchase of the suit property.
7. I have considered all the arguments raised herein and the submissions. The issue for consideration is whether the taxing master erred in arriving at the figure of sh.1 066 616 in her assessment of costs.
8. The record indicates that Judgment herein was entered for the 1st Defendant on 3.3.2017 whereupon she was awarded costs of the suit, cross claim and counterclaim. Subsequently, she filed the party and party bill of costs dated 22.8.2022 and in a ruling delivered by Hon. Barasa on 26.7.2023, the bill was taxed at ksh.1,1066,616/=. The Plaintiff claims that the taxing officer erred in arriving at the said award.
9. In arriving at the decision herein, the court shall be guided by the decision of the court in Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR (*supra*) where the Court stated that;

“On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”
10. I have considered that the suit was filed in the year 2005 and determined in the year 2017. The taxing master had stated that;
11. I have considered that the suit was filed in the year 2005 and determined in the year 2017. The taxing master had stated that;

“The bill of costs swaddles the period 14.10.2005 to 3.3.2017. The suit has been in court through three Advocates Remuneration Orders (ARO); 1997, 2006 and 2014. Each item in the bill of costs shall be taxed pursuant to the ARO applicable when the service was rendered,”
12. I find that the taxing master took a proper position in the application of the three remuneration orders.
13. It is settled that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement; See Joreth Ltd v Kigano & Associates [2002] EKLK. I note that at paragraph 7 of the Defendants amended defence and counterclaim dated 16.11.2006, the 1st Defendant pleaded that she was allotted the suit parcel at ksh.3,040,000/=. This is the value that was considered by the taxing master as at year 2005. However, the taxing master also stated that “I am alive to the fact that the value of the suit property has appreciated for the period that the suit has been pending in court.....” .



14. The provisions of the ARO 1997 (in relation to instruction fees) at PART V1 (a) gives the taxing officer the discretion to increase or decrease the sum. In the case at hand, the taxing master gave the reasons as to why she arrived at the figure of ksh.250,000/= as instruction fees. I find no fault in the said figure. Thus I find no merits in the Plaintiff's complaint that instruction fees were excessive.
15. On the issue of the getting up fees, I find that the same flows directly from instruction fees and ought not to be less than one third of the instruction fees. The award of ksh.250,000 which is equivalent to instructions fees awarded herein is unexplained and erroneous. The correct figure would be 1/3 of Ksh.250,000 = Ksh.83,000.
16. In the end, the only part of the ruling of the Deputy Registrar which can be faulted is in respect of the get up fees, which sum is hereby awarded at Ksh.83 000 instead of Ksh 250 000, hence Ksh.167 000 is taxed off for this item. The final figure is arrived at Ksh.1 066 616- 167 000 = 899 616.
17. The application is allowed to the extent that the Party and Party bill of costs stands at Ksh. 899 616. Each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Olande for Plaintiff

Ngane for 1st Defendant

Court assistant: Eddel

