



**Ng'era (Suing as the personal representative of Joseph Boro Ng'era (Deceased) v Sunbird Lodge Limited (Environment & Land Case 75 of 2017) [2024] KEELC 849 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 849 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 75 OF 2017  
MAO ODENY, J  
FEBRUARY 22, 2024**

**BETWEEN**

**SAMMY NGUGI NG'ERA (SUING AS THE PERSONAL REPRESENTATIVE OF JOSEPH BORO NG'ERA (DECEASED)) ..... PLAINTIFF**

**AND**

**SUNBIRD LODGE LIMITED ..... DEFENDANT**

**RULING**

1. This ruling is in respect of a Chamber Summons dated 30<sup>th</sup> October 2023 by the Defendant/applicant seeking the following orders:
  - a. That the decision of the taxing officer Hon. Rose Ombata delivered on 12<sup>th</sup> October, 2023 on the taxation of the Plaintiff/Respondent's amended party & party Bill of Costs dated 14<sup>th</sup> August, 2023 be set aside and/or vacated.
  - b. That the Plaintiff/Respondent's Party & Party bill of costs be taxed afresh by a different constituted taxing officer in strict compliance with the Advocates Remuneration Order and the applicable principles of taxation.
  - c. That in the alternative that this honorable court be pleased to reassess the fees due to item No. 2 and 3 in respect of the plaintiff /respondent's party/party bill of costs and make a finding on the same.
  - d. That the honorable court be pleased to order that costs of this application as well as the cost in the contended bill be borne by the plaintiff/respondent.
2. The application was supported by the annexed affidavit of Richard Corcoran a director of the defendant who deponed that the plaintiff's amended party and party bill of costs dated 14<sup>th</sup> August



2023 had been taxed at Kshs.4,365,070/=. That he instructed his advocates on record to file a reference as the amount taxed was inordinately high.

3. He also deponed that the taxing officer awarded Kshs.3,145,000/= under item No. 2 for instruction fees and Kshs.1,048,033/= for getting up fees which amounts were inordinately high since the value of the subject matter cannot be ascertained from the plaint.
4. He further deponed that the subject matter of the suit was on the validity of a lease agreement that the plaintiff and the defendant had entered into and that the bill of costs as taxed did not take into account the said factor. That the taxing officer misapprehended the law and the principles of taxation and that it is only fair and just that the court orders for a fresh taxation to be done.

### **Defendant's Submissions**

5. Counsel for the defendant relied on the cases of *First American Bank of Kenya v Shab and others* [2002] EALR 64 at 69 & *Joreth Ltd v Kigano & Associates* Civil Appeal No66 of 1999 (unreported) and submitted on whether the amounts charged as appears in the bill of costs are justifiable.
6. It was counsel's submissions that since the suit was filed on 17<sup>th</sup> February 2014 the remuneration order that is applicable is that of the year 2014. Counsel further submitted that Schedule 6 of the Advocates Remuneration Order 2014 was applicable in the calculation of instruction fees and it is not clear how the plaintiff arrived at Kshs.25,000,000/= that was billed at item No. 2.
7. Mr. Situma relied on the cases of *Peter Muthoka & another vs Ochieng & 3 Others* [2019] eKLR, *Samuel Muchiri Njuguna* Civil Appeal No. 144 of 2000 LLR48129 (CAK), *Premchand & Richard v Quarry Services No. 3* [1972] and submitted that the value of the subject matter cannot be ascertained from the pleadings and therefore the amount as billed was exaggerated. That the said item ought to have been taxed at Kshs.75,000/= which would have been adequate and sufficient.
8. Counsel also submitted that since getting up fees is a third of instruction fees, item No. 3 ought to have been taxed at Kshs.25,000/= and urged the court to set aside the taxed costs and have the bill taxed afresh by another taxing master.

### **Plaintiff's Submissions**

9. Counsel submitted that the defendant's application did not follow the procedure provided for under paragraph 11 of the *Advocates Remuneration Order* as it did not give a notice to the taxing officer indicating the taxed items they were objecting to before filing the present application.
10. Counsel relied on the case of *Multiline Motors (Kenya) Ltd v Migori County Government* [2021] eKLR and submitted that the taxing officer has discretion in taxing a bill of costs even where the value of the subject matter cannot be ascertained.
11. Counsel further relied on the case of *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR and submitted that the value of the subject matter in the present case can be ascertained as the land was valued at Kshs.196,000,000/=, the lodge built on the suit property was worth Kshs.70,000,000/= making the total valuation to be Kshs.266,000,000/=.
12. It was counsel's submissions that since the suit was complex and complicated, the instruction fees should be enhanced to Kshs.25,000,000/= and urged the court to dismiss the defendant's application with costs.



## Analysis And Determination

13. The issues for determination are whether the reference was filed within time and whether the court should set aside the taxing officer's ruling delivered on 12<sup>th</sup> October, 2023.
14. Paragraph 11 (1) and (2) of the *Advocates Remuneration Order* provides for the procedure to be followed when a party is dissatisfied with a decision of a taxing officer 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.
15. The ruling on taxation was delivered on 12<sup>th</sup> October 2023 by the taxing officer. Under paragraph 11(1) of the *Advocates Remuneration Order*, the defendant ought to have given a notice in writing to the taxing officer on the items of taxation to which it objected to within fourteen days. There is no evidence that such notice was indeed issued or filed.
16. In the case of *Abmed Nasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd* [2006] eKLR held as follows:

“Although rule 11(1) of the *Advocates Remuneration Order* stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of subrule (2) of rule 11 of the *Advocates Remuneration Order* demands so. The said rule was not indeed to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”
17. If the Applicant were to rely on the above decision that there was no need to file a notice of objection to the items on the Bill of costs, it would have been prudent for the Applicant to give reasons why the reference was not filed within the stipulated time for the court to consider.
18. The defendant filed its reference on 30<sup>th</sup> October 2023 which was eighteen days after the taxing officer delivered her ruling. The defendant has not given any reasons for the delay in filing the reference. The same ought to have been filed within fourteen days of the ruling, that would have been by 26<sup>th</sup> October 2023.
19. This was clearly out of time and no application to enlarge time was sought by the defendant as provided under paragraph 11 (4) of the *Advocates Remuneration Order* as follows:

“The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”



20. The upshot is that the defendant's application dated 30<sup>th</sup> October 2023 is struck out for being incompetent. Each party to bear their own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF FEBRUARY 2024.**

**M. A. ODENY**

**JUDGE**

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28<sup>th</sup> March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure.

