



REPUBLIC OF KENYA



Munga & 9 others v Munga (Environment & Land Miscellaneous Case E125 of 2021) [2024] KEELC 1603 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1603 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND MISCELLANEOUS CASE E125 OF 2021

OA ANGOTE, J

MARCH 14, 2024

**IN THE MATTER OF: A REFERENCE ON THE DECISION AND RULING
OF THE HON. I.N BARASA DELIVERED AND DATED 9TH AUGUST 2023**

IN THE MATTER OF: A BILL OF COSTS DATED 22ND JULY 2022 AND 6TH MAY 2023

BETWEEN

GEOFFREY KARONGO MUNGA & 9 OTHERS APPLICANT

AND

GEOFFREY NJUGUNA MUNGA RESPONDENT

RULING

1. Before the Court for determination is the Applicant's Chamber Summons dated 21st August 2023 and brought under Rule 11 of the Advocates Remuneration Order. The Applicant is seeking for the following orders:
 - a. The decision of the taxing master delivered in a ruling dated 9th August 2023 be set aside in respect of items 1, 2, 3, 5, 6, 10 and 11 on the bill dated 5th May 2023.
 - b. The Court be pleased to tax the said items and make necessary adjustments and directions thereon.
 - c. In the alternative to (b) above, the Court be pleased to remit the bill for fresh taxation and determination on items 1, 2, 3, 5, 6, 10 and 11 only.
 - d. The Applicant having challenged the bill of costs dated 22nd July 2022 be awarded costs for the said bill and the same be deemed as dismissed with costs.
 - e. Any costs paid to the Respondent pursuant to the ruling dated 9th May 2023 be refunded forthwith.



- f. Costs of the application be borne by the Respondent.
2. The reference is based on several grounds and supported by an affidavit sworn by the Applicant who deponed that the Respondent filed a bill of costs before the Deputy Registrar; that the parties filed their respective submissions and that on 28th February 2023, the Deputy Registrar directed that the Respondent file a bill for disbursements rather than a bill of costs.
 3. The Applicant deponed that this was in agreement with his submissions which were to the effect that the Respondent could not file a bill of costs as he was not an advocate and that he was not awarded costs despite being successful in his challenge of the impugned bill.
 4. The Applicant contended that the Respondent filed another bill dated 6th May 2023 where he claimed disbursements; that the Respondent introduced new items to the bill without leave of the Court and that he is aggrieved by the ruling of the Deputy Registrar.
 5. It was deponed that the Deputy Registrar erred in awarding item 1 which was a copy of the ruling and was not necessary; that the Deputy Registrar erred in awarding Kshs. 2500 legal consultation fees (items 2 and 3) to a person who was acting in person and is not a qualified advocate; that the Deputy Registrar erred in awarding Kshs. 1500 (items 5 and 11) for taxi fare while the attendance was virtual and that the Deputy Registrar awarded Kshs. 400 (item 6) for physical attendance while the attendance was virtual.
 6. The Respondent filed a Replying Affidavit in which he deponed that the Deputy Registrar in her ruling dated 28th February 2023 ordered that there be no order as to costs when striking out the bill of costs dated 22nd July 2022 and that he filed the bill of disbursements with receipts in support thereof as directed by the Deputy Registrar.
 7. The Respondent deponed that he is not an advocate and did not present himself as such; that he just sought the advice of an advocate, something that was within his rights to do and that he hails from Gachie village where there is no stable internet connection and had to incur costs travelling to the Court station to use the Court facilities for his Court appearance.
 8. In reference to item 10, the Respondent stated that he was awarded Kshs. 800 and not Kshs. 1080 as claimed by the Applicant and that these amounts were incurred as he was browsing at the cyber and typing his responses/ submissions as well as printing copies to deliver to the Applicant's advocates office.

Analysis and determination

9. The Applicant has stated that he is entitled to costs on the dismissed Bill of Costs dated 22nd July 2022 having successfully challenged the same. The Respondent stated that the said bill was dismissed without costs.
10. In his ruling, the taxing master held as follows:

“As the Respondent is a lay person, I will strike out the party and party bill of costs dated 22nd July 2022 with no order as to costs and allow the Respondent to file a bill of costs claiming the disbursements expended in the proceedings.”
11. The award of costs under section 27 of the *Civil Procedure Act* is discretionary. The taxing master gave reasons why she did not award costs on the bill of costs that was struck out. I have no reason to fault her decision on refusal to award costs.



12. The Applicant has also challenged the decision of the taxing master on various items. The Applicant has challenged the awarding of costs under item 1 which he states was a copy of the ruling and not a necessary item in the Bill of Costs.
13. It is well within the rights of any party to a suit to request for a copy of a ruling from the Court. The Respondent requested one and the same was issued to him at a cost of Kshs. 1000. There is a receipt issued by the Judiciary supporting this position. He was entitled to this refund.
14. The Applicant has challenged items 2 and 3 on the grounds that the Respondent is not an advocate and should not be receiving legal fees. The Respondent argued that he did not present himself as an advocate but paid an advocate for consultation.
15. The evidence on record supports the latter assertion. There are two receipts issued by Emmerson Koome Muketha Advocate, on 30th September 2021 and 1st October 2021. The first is for payment for legal consultation while the second is for payment of legal advice for filing a Replying Affidavit.
16. From the foregoing, I am convinced that the items were rightfully taxed as the Respondent sought legal advice, paid for it and presented evidence of the same. He did not hold himself out as an advocate.
17. The Applicant has challenged the awarding of taxi costs to attend Court under items 5 and 11 on the grounds that the attendance was virtual. The Respondent stated that he is from Gachie where there is no stable internet connection and this necessitated him taking a taxi to get to the Court's customer care virtual desk on time to attend Court.
18. Receipts dated 19th January 2022 and 18th November 2021 were produced in support of this position. On a balance of probabilities, I find that the Respondent's explanation is plausible and the amounts were rightfully taxed.
19. The Applicant has challenged the awarding of Kshs. 400 under item 6 as a cost for virtual attendance while the attendance was virtual. This is erroneous as the Respondent was awarded Kshs. 100 as bus fare under item 6.
20. Additionally, and as stated in the preceding paragraphs, the Respondent was coming from Gachie where there was no stable internet connection and had to travel to Nairobi to access the same. The Applicant's claim under this item has no merit.
21. The Applicant has challenged the awarding of Kshs. 1080 for making of copies under item 10. As per the bill of costs on record, the Respondent was awarded Kshs. 800 under item 10. There is a receipt on record dated 1st December 2021 and issued by Earthscope Cyber. It shows that the Respondent incurred the stated cost by printing, scanning and making photocopies. I find this plausible.
22. In view of the foregoing, I find that none of the Applicant's challenges to the decision of the taxing master held water. The reference lacks merit and is hereby dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 14TH DAY OF MARCH, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Njuguna for Respondent

Mr Gachara for Applicant



Court Assistant -Tracy

