



REPUBLIC OF KENYA



Mwangi & another v Municipal Council of Thika & another (Environment & Land Case 2022 of 2007) [2024] KEELC 3647 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3647 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 2022 OF 2007**

MD MWANGI, J

APRIL 11, 2024

BETWEEN

JACINTA NJERI MWANGI 1ST PLAINTIFF

DAVID WANGANGA MWANGI 2ND PLAINTIFF

AND

MUNICIPAL COUNCIL OF THIKA 1ST DEFENDANT

KENYA POWER & LIGHTING CO LTD 2ND DEFENDANT

(In respect of the Chamber Summons Application dated 6th September, 2023 seeking to set aside the determination on costs by the Taxing Master)

RULING

Background

1. The Plaintiffs/Applicants in this matter seek to set aside the decision by the Taxing Master delivered on 24th August, 2023 and have the same resubmitted before another Taxing Master. The application is premised on the grounds that:
 - a. The Taxing Master erred in principle in assessing a non-existent or improperly filed bill of costs by the 2nd Defendant at Kshs 499,779/-
 - b. The Taxing Master erred in principle by hearing and determining the 2nd Defendant's bill of costs at a higher scale than required in the *Advocates Remuneration Order*.
2. The application was further supported by the affidavit of Eric N. Mugo sworn on 6th September, 2023. In the said affidavit, the deponent reiterates the grounds on the face of the application. He further states that the Taxing Master did not give any basis, ground and or reasons upon which the bill was taxed and in the circumstances, the same is arbitrary, unprocedural and unfair.



Response by the 2nd Defendant

3. The 2nd Defendant's response was by way of a replying affidavit sworn by Fredrick Otieno Okeyo sworn on 25th October, 2023. The deponent of the affidavit deposes that the Plaintiffs/Applicants appeared for taxation of the bill of costs on 5th July, 2023 and requested for time to file submissions. However, despite being granted 14 days to file submissions, the Plaintiffs did not comply.
4. The 2nd Defendant further points out that the Plaintiffs did not seek reasons for the decision of the Taxing Master before lodging the application to challenge it. The 2nd Defendant therefore asserts that the application by the Plaintiffs lacks merit and has not demonstrated that the taxed costs were extremely high as to amount to an injustice to warrant the setting aside of the ruling by the Taxing Master. There is essentially no error of principle that has been demonstrated by the Applicants.

Court's Directions:

5. The Court's directions were that the Plaintiffs' application be canvassed by way of written submissions. Both sides complied. The Court has had the opportunity to read and consider the submissions which now form part of its record.

Issues for determination:

6. Having considered the application by the Plaintiffs, the response by the 2nd Defendant as well as the submissions by the Applicants and by the Respondent, the only issue for determination is whether the application is competent and meets the threshold for setting aside of the decision by the Taxing Master.

Analysis and Determination:

7. The procedure for challenging a taxation is provided for under paragraph 11 of the [*Advocates Remuneration Order*](#) which provides as follows:
 - i. Should any party object to the decision of the taxing Master, he may within fourteen days after the decision give notice in writing to the taxing Master of the items of taxation to which he objects.
 - ii. The Taxing Master shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within 14 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.
 - iii. Any person aggrieved by the decision of the Judge under subsection (2) may, with the leave of the Judge but not otherwise appeal to the Court of Appeal.
 - iv. The High Court shall have power in its discretion by order to enlarge 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.
8. In the case of [*Machira & Co. Advocates v Arthur Magugu*](#) [2012] eKLR, it was held that the [*Advocates Remuneration Order*](#) is a complete code which does not provide for appeals from the Taxing Master's decision. Rule 11 of the [*Advocates Remuneration Order*](#) provides for ventilation of grievances from such decisions through references to a judge in Chambers.



9. In *Kamau Kinga & Company Advocates v Grace Wanjiku Kabiaru* [2017] eKLR, the Court expressed a similar opinion that the Law governing the matter (challenge of a decision of taxation) is the *Advocates Remuneration Order*. The court stated that:-

“...an aggrieved party writes to the Court asking for reasons for the taxation of certain items in a particular way. Once the reasons are given, the aggrieved party, then moves the Court by reference according to rule 11 of the order.”
10. Explaining the provisions of paragraph 11 of the *Advocates Remuneration Order*, the Court in *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Ltd* [2017] eKLR, held that:

“The provisions of paragraph 11 serve several purposes. Firstly, the requirement that a party seeding reasons gives a notice of the items objected to, serves to narrow down the issues, and secondly give notice to the adverse party and the Taxing Master of his objection. Thus, the Taxing Master, adverse party and ultimately the reference Court in their respective roles can focus on the specific matter objected to rather than entire bills of costs, which often run into several pages. The objective is obvious, the expeditious disposal of taxing disputes. The compliances with the requirements of paragraph 11 of the remuneration order is not a mere technicality that can be pushed aside peremptorily as the Applicant appears to suggest. The provisions of Article 159(2)(d) of the *Constitution* were not intended to overthrow procedural or technical requirements but to guard against “undue regard” to procedural technicalities in the administration of Justice.”
11. In this case, the Plaintiffs/Applicants challenge the decision of the Taxing Master delivered on 24th August, 2023. I have keenly perused the Court record especially after the delivery of the ruling. I find no notice of objection as contemplated under paragraph 11 (1) of the *Advocates Remuneration Order*.
12. The Notice of Objection as explained in the case of *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Ltd* (*supra*), serves to narrow down the issues and informs the adverse party, the Taxing Master and the reference Court of the specific items objected to.
13. The objection notice is the premises upon which a reference is grounded. Without it, any reference filed is not only incompetent but also premature. That is the fate of this reference.
14. I will nonetheless proceed to interrogate the merits of the reference before me despite my finding that it is incompetent, as good practice demands.
15. The reference is primarily based on two grounds. The 1st ground is that the Taxing Master erred in principle by assessing a non-existent or improperly filed bill of costs by the 2nd Defendant. The Applicants do not however explain why they refer to the 2nd Defendant’s bill of costs as non-existent. The bill is on the record of the Court and is dated 25th October, 2022.
16. Again, the Applicants have not explained why they refer to the bill as improper. In their submissions dated 12th February, 2024, the Applicants referred to the provisions of Order 21 Rule 9A of the *Civil Procedure Rules* that requires a party claiming costs at a Magistrate’s Court to file a written request, statement of costs and supporting documents with a breakdown of the costs sought.
17. The case before me and from which the 2nd Defendant seeks costs was first filed in the High Court before eventually being transferred to this Court. Order 21 Rule 9A of the *Civil Procedure Rules* therefore is inapplicable in this case.



18. The 2nd ground that the Applicants rely on is that the Taxing Master erred in principle by assessing the 2nd Defendant's bill of costs at a higher scale than provided for in the *Advocates Remuneration Order*.
19. As I pointed out earlier, the Applicants did not issue an objection notice specifying the items they object to. They have not specified the same in their application nor in their submissions. The 2nd Defendant's bill of costs as presented had a total of 134 items. It is unclear to me which item was taxed at a higher scale as alleged by the Applicants.
20. In any event, taxing an item at a higher scale than required in the *Advocates Remuneration Order* in itself is not a ground for setting aside the decision of the Taxing Master. As clearly stated in the case of *First American Bank of Kenya v Shah & others* [2002] I EA 64 by Ringera, J (as he then was),

“the Court cannot interfere with the Taxing Master's decision unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly so excessive as to justify an inference that it was based on an error of principle.”
21. The Court went further to state that,

“it would be an error of principle to take into account irrelevant factors and, according to the Remuneration order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any directions by the trial judge.”
22. It was incumbent upon the Plaintiffs/Applicants in this case to demonstrate that the Taxing Master's award {on any of the particular item(s) objected to} was so manifestly excessive as to justify an inference that it was based on an error of principle to justify its setting aside. The Applicants merely made allegations but made no efforts to justify the allegations.
23. Consequently, I find no error of principle nor any justification whatsoever to warrant the setting aside of the decision by the Taxing Master delivered on 24th August, 2023. I dismiss the Plaintiffs/Applicants' application dated 6th September, 2023 with costs to the 2nd Defendant/Respondent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF APRIL, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mugo for the Plaintiffs/Applicants

N/A for the Respondents

Yvette: Court Assistant

