



**Gathuthi Factory Co. Ltd v Wambugu (Environment & Land Case
21 of 2020) [2024] KEELC 5494 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5494 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 21 OF 2020**

**JO OLOLA, J
JULY 26, 2024**

BETWEEN

GATHUTHI FACTORY CO. LTD PLAINTIFF

AND

DUNCAN NDEGWA WAMBUGU DEFENDANT

RULING

1. By the Chamber Summons application dated 5th May 2023, Duncan Ndegwa Wambugu (the Defendant)/Applicant) prays for orders:-
 - 1) That the decision of the taxing master delivered on 29th March 2023 in so far as the same relates to the reasoning and determination pertaining to taxation of all items in the Bill of Costs dated 2nd March 2023 be set aside;
 - 2) That the Honourable Court be pleased to refer the matter back for re-taxation of the whole Bill of Costs, with proper directions thereto;
 - 3) That in the alternative to Prayer 2, the Honourable Court do exercise its inherent jurisdiction and be pleased to re-tax the Bill of Costs dated 2nd March, 2023 afresh; and
 - 4) That the costs of this application be provided for.
2. The application is supported by a brief affidavit sworn by the Applicant wherein he deposes at the relevant Paragraphs 2 to 5 thereof as follows:-
 - “2. That the Applicant’s Bill of Costs dated 2nd March 2023 was taxed on 29th March 2023 at Kshs. 49,725/= and the Applicant being aggrieved by part of the Taxing Master’s ruling, made this application based on grounds that the



Taxing Master had misdirected herself when she failed to consider the value of the subject matter as the same could not be ascertained from the pleadings;

3. That it is on this premises that the Applicant has filed the present application for reference to challenge the Taxation of all items of the Bill of Costs dated 2nd March 2023;
 4. That the Applicant's application for reference has merit and ought to be heard and a determination made on the issue of all the items of the Bill of Costs dated 2nd March 2023; and
 5. That it is therefore in the interest of justice that the application be allowed and the taxation of the items on the Applicant's Bill of Costs be reviewed and/or re-taxed.
5. By this Reference, the Applicant faults the decision of the Taxing Master of this court as delivered on 29th March 2023. By an Amended Bill of Costs dated 2nd March 2023, the Applicant had sought the sum of Kshs. 699,575/= as the costs and expenses payable to himself for successfully defending the suit herein.
 6. When the Party and Party Bill of Costs came up for taxation on 29th March 2023, the same was taxed at Kshs. 49,725/=. Aggrieved by the said taxation, the Appellant filed this Reference on 8th May 2023 urging this court to either set aside the decision and refer the matter back for re-taxation or to exercise its inherent jurisdiction and to proceed and re-tax the Bill of Costs itself.
 7. As it were, the procedure to be followed when a Party is dissatisfied with the decision of a Taxing Officer is provided for under Paragraph 11 of the *Advocates Remuneration Order*, 2014 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.
 8. In the matter before me, the decision of the Taxing Officer was rendered on 29th March 2023. I have perused the court file but I was unable to find any objection filed by the Applicant on the items he was objecting to. I was also unable to find any request made by the Applicant to the Taxing Officer for her to provide the reasons for the decision rendered on 29th March 2023.
 9. In a matter such as this where there were no reasons contained in the decision of the Taxing Master, the Applicant was required to request for the same in writing and to wait for the same to be delivered. In the matter herein, the Applicant has clearly filed the Reference outside the 14 days of the delivery of the decision and before requesting and/or being furnished with the reasons.
 10. That being the case, I find and hold that the Reference as instituted is incompetent for being out of time and premature for being instituted before the relevant steps were taken.
 11. In the premises, the Chamber Summons is struck out with no order as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 26TH DAY OF JULY, 2024.

In the presence of:



No appearance for the Plaintiff.

Mr. Duncan Wambugu for the Defendant/Applicant present.

Court Assistant: Michael

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J. O. OLOLA

JUDGE

