



Brook Villas Estate Limited v Gatu & another (Environment & Land Case 25 of 2016) [2024] KEELC 5627 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5627 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 25 OF 2016**

**AA OMOLLO, J
JULY 25, 2024**

BETWEEN

BROOK VILLAS ESTATE LIMITED APPLICANT

AND

DUNCAN MACHARIA GATU 1ST RESPONDENT

URIITHI CO-OPERATIVE SOCIETY LIMITED 2ND RESPONDENT

RULING

1. The Plaintiff has filed a reference against the 1st defendant's taxed bill vide chamber summons dated 19th March, 2024. It sought orders that;
 - i. That this Honourable Court be pleased to set aside in its entirety the Ruling delivered by Honourable J. P. Omollo delivered on the 28th November, 2023.
 - ii. That this Honourable court be pleased to order that the 1st Respondent's Bill of Costs be re-taxed by another Deputy Registrar of this Honourable Court.
 - iii. That the costs of this Application be borne by the 1st Respondent in any event.
2. The application is premised on the grounds on its face inter alia;
 - a. That the Honourable Deputy Registrar misdirected herself in taxing the bill of Costs dated 5th May, 2023.
 - b. That the Honourable Deputy Registrar misinterpreted the provisions of the Advocates Remuneration Order, 2014 while taxing the Items listed in the Bill of Costs thereby arriving at an erroneous figure specifically for the Instruction Fees and Other items therein.



- c. That therefore, it is necessary that the Bill of Costs dated 5th May, 2023 is re-taxed by another Deputy Registrar to subvert the prejudice that has already befallen the Applicant herein.
3. The affidavit sworn in support of the application repeated the grounds already listed.
 4. The application is challenged vide the replying affidavit of Duncan Macharia Gatu sworn on 15th April, 2024. He deposed that the Applicant has made generalized swearing statements in the grounds in support of the application without specifying any allegation made against the taxing officer. He avers the application is without and ought to be dismissed.
 5. Parties filed respective submissions which I have considered. The Applicant submitted that; the provisions of Schedule 6 of the Advocates Remuneration Order sets out the parameters to be considered in determining costs payable as instruction fees. This requires that the instruction fees should be calculated in accordance to the value of the subject matter. In this case, they submit that the value of the subject matter and which formed the subject of dispute was the payment of the 40% of the purchase price by the Plaintiff, translating to Kshs.33,600,000/=. That this value can be easily ascertained and therefore, the taxing master had the mandate to assess instruction fees according to what was considered as just and fair. Unfortunately, this was never done and thus the taxing master arrived at an erroneous figure.”
 6. He argues further that he was at a loss as to what made the prosecution of the task at the trial court greatly time-consuming, research-intensive and skill-engaging so as to justify an enhanced award of instruction fees. Your Ladyship, at the risk of repetitive, there was no record in the supporting documents before the taxing master that showed great volumes of crucial documents which were drafted, received, perused and/or reviewed to justify the enormous amount awarded and that is not already computed as instruction fees.
 7. The Applicant thus challenges the amounts taxed as instructions and getting up fees, items 46, 57, 58, 59, 76 and 107 which items were assessed at Kshs.3,000 instead of Kshs.1,100/=. He also challenges items 99 & 100 which were awarded pursuant to adjournment.
 8. The 1st Defendant filed submissions dated 3rd June, 2024 and agreed with the case law cited by the Applicant for instance *Joreth Limited vs. Kigani & Associates* (2002) IEA 92. They submitted that the Applicant has failed to prove the allegations that would persuade this court to interfere with the exercise of discretion by the taxing master. They urged the court to dismiss the reference.
 9. I have considered all the issues raised and my unadorned task is to determine whether or not the taxing master erred in the items pointed out by the Applicant. It is without a doubt that the value of the subject matter is to be ascertained from pleadings and or judgment, in a matter. The Applicant argues that the subject matter was 40% of the purchase price of the suit property and not the whole value of Kshs.84,000,000.
 10. In paragraph 17(A) of the amended plaint, the Applicant pleaded thus;

“ The Plaintiff states that it entered the property and offered it for sale to third parties with the knowledge of the 1st Defendant and that all along the 1st Defendant knew and it was expressly contained in the Sale Agreement that the Plaintiff was buying the property for subsequent subdivision and sale to various Sub-purchasers and this can clearly be deduced from Clause 2(b) at Page 2.



11. Under the reliefs sought, the plaintiff sought for specific performance against the 1st Defendant, permanent injunction stopping the 1st Defendant from selling the suit property Juja/Komo/Block 1/3452 to the 2nd defendant and or any other parties. Thus the plaintiff was claiming the suit property and not refund of any deposit paid or breach of contract of a 40% of the purchase price. paragraph 4 of the plaint gave the price at Kshs.84,000,000/= divided at Kshs.7,000,000 per acre. Neither did the Applicant state that it was buying less than twelve (12) acres of the suit property.
12. I hold that the taxing master was right in using the sum of Kshs.84 million as the value of the suit property. The Honourable Deputy Registrar showed the calculation in the body of her ruling which led to the award of Kshs.1,460,000 as instructions fees. It follows that one third for getting up fees is calculable from the instructions fees. I refuse to interfere with the two items as taxed.
13. For items 46, 57 – 59, 76 and 107, the Kshs.1,100 proposed by the Applicant is where parties appear before the judge for half hour or less. In instances where the appearance is for one hour, the ordinary state is Kshs.2,300 and high scale is at 3000. For half day, the fee is Kshs.5,000 or 7,100/=. Item 46 was taxed at Kshs.2,300, Item 57 @ 5,000, item 58 @ 2,300 and item 59 @ 5,000.
14. The Applicant has not demonstrated that the appearance before the judge on the stated dates was for one or less. It could have done this by annexing copies of the cause list to show that its case was listed among the top ones. I find no justification to interfere with a reasoned determination of the taxing master.
15. Lastly is items 99 and 100 of the bill which was attendance for hearing the court records reads that the judge informed the parties at 3.55 p.m. and 1.45 p.m. respectively that they could not be reached. They were in court the whole day and so the winner gets a bite at the cherry.
16. The result is, I find no merit in the reference filed via the chamber summons dated 19th March, 2024. It is dismissed with costs to the 1st Defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2024.

A. OMOLLO

JUDGE

