



**Grace Bible Church Machakos & another v Kyalo & another  
(Environment and Land Miscellaneous Application E029 of 2021)  
[2024] KEELC 5969 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 5969 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E029 OF 2021  
CA OCHIENG, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**GRACE BIBLE CHURCH MACHAKOS ..... 1<sup>ST</sup> OBJECTOR**

**CHRISTOPHER MUSEMBI MUTISO ..... 2<sup>ND</sup> OBJECTOR**

**AND**

**JACKSON MUNYAO KYALO ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD MUMO KIOKO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is before Court for determination is the 2<sup>nd</sup> Objector/Applicant's Chamber Summons Application dated the 15<sup>th</sup> January, 2024 brought pursuant to Rule 11(2) of the [Advocates \(Remuneration\) Order](#) 2014 and Order 21 Rule 9 D of the [Civil Procedure Rules](#). The Applicant seeks the following Orders:-
  1. That this Honourable Court be pleased to set aside the decision of the Taxing Officer dated 6<sup>th</sup> April, 2023 in which the Respondents were awarded costs in the sum of Kshs.84,280.
  2. That the Honourable Court be pleased to remit the Bill of Costs dated 15<sup>th</sup> February, 2022 to the Executive Officer for fresh taxation, with directions that the taxation be in compliance with the provisions of Schedule 6 of the [Advocates Remuneration Order, 2014](#) and Order 21 Rule 9D of the [Civil Procedure Rules, 2010](#) (Revised 2020).
  3. That the costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Christopher Musembi Mutiso where he deposes that the Bill of Costs dated the 15<sup>th</sup> February, 2022 is not taxed as per scale under the provisions of Schedule 6 of the [Advocates Remuneration Order, 2014](#).



He contends that the Taxing Officer abrogated the express provisions of Order 21 Rule 9D of the [Civil Procedure Rules \(Revised 2020\)](#) and Schedule 6 of the [Advocates Remuneration Order, 2014](#). He avers that the Taxing Officer erroneously made the decision by taxing the Bill of Costs at Kshs.84,820 without considering their Advocates' submissions dated the 29<sup>th</sup> August, 2022. He sought for the Bill of Costs dated the 15<sup>th</sup> February, 2022 to be remitted to the High Court for fresh taxation with directions that it should be in compliance with the Advocates Remuneration Order, 2014.

3. The Respondent opposed the instant Application by filing a Replying Affidavit sworn by Francis Ndambuki Sila, the Advocate in conduct of this matter on his behalf where he deposes that the instant Chamber Summons Application is frivolous, baseless, vexatious, an afterthought and an abuse of the court process. He explains that the Bill of Costs dated the 15<sup>th</sup> February, 2022 emanated from the Applicant's Application dated the 5<sup>th</sup> May, 2021 wherein they sought leave to appeal out of time but the Application was dismissed vide the Court's Ruling dated the 24<sup>th</sup> January, 2022. He insists that both parties' filed their respective submissions to the Bill of Costs dated the 15<sup>th</sup> February, 2022 which the court extensively considered after which it taxed the Bill of Costs at Kshs. 84,820. He argues that the Applicant has not pinpointed the various items in the Bill of Costs in which the Taxing Officer erroneously allowed, hence exercising her discretion wrongly. He avers that the Advocates Remuneration Order only provides for the minimum fees chargeable and the taxed sum of Kshs. 84,820, cannot be said to exceed the scale of fees chargeable without the Applicant providing the requisite particulars. Further, the Applicant has not annexed the Ruling of the Taxing Officer.
4. The Application was canvassed by way of written submissions.

#### **Analysis and Determination**

5. Upon consideration of the instant Chamber Summons Application including the respective Affidavits and rivalling submissions, the only issue for determination is whether the decision of the Taxing Officer dated the 6<sup>th</sup> April, 2023 in which the Respondents were awarded costs in the sum of Kshs. 84,280, should be set aside.
6. The Applicant in his submissions reiterated his averments as per the Supporting Affidavit and insisted that the impugned Bill of Costs was not taxed as per Schedule 6 of the [Advocates Remuneration Order](#) and Order 21 Rule 9D of the [Civil Procedure Rules](#). To buttress his averments, he relied on the following decisions: [Eastland Hotel Limited v Wafula Simiyu & Co. Advocates](#) (2014) eKLR; [Judicial Service Commission v Gladys Boss Shollei & Another](#) (2014) eKLR and [Justice Amraphael Mbogholi Msagha Vs Chief Justice & 7 others](#) Nairobi HCMA No. 1062 of 2004.
7. The Respondent in his submissions has also reiterated the averments in the Replying Affidavit and insist that the impugned Bill of Costs was taxed as per scale. Further, that no reasons have been advanced by the Applicant to prove the Taxing Officer erred in principle in taxing the said Bill of Costs.
8. In this instance, the Applicant was aggrieved by the Taxing Officer's decision in respect to the Bill of Costs dated the 15<sup>th</sup> February, 2022. He contended that the impugned Bill of Costs is not taxed as per scale in accordance with the provisions of Schedule 6 of the [Advocates Remuneration Order, 2014](#). Further, that the Taxing Officer abrogated the express provisions of Order 21 Rule 9D of the [Civil Procedure Rules \(Revised 2020\)](#) and Schedule 6 of the [Advocates Remuneration Order, 2014](#). He argued that the Taxing Officer erroneously made the decision by taxing the Bill of Costs at Kshs. 84,820 without considering his Advocates' submissions dated the 29<sup>th</sup> August, 2022. The Respondent opposed the instant Application insisting that the parties' submissions were considered and the impugned Bill of Costs was taxed according to scale.



9. I note the instant application has been brought under Rule 11(2) of the *Advocates Remuneration Order* which provides that:-

“(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.”

10. From perusal of the Court record, I note the impugned Bill of Costs emanated from a Ruling delivered on 24<sup>th</sup> January, 2022 in respect to the Applicant’s Notice of Motion Application dated the 5<sup>th</sup> May, 2021 seeking a stay of execution as well as enlargement of time to file a Memorandum of Appeal. Further, I note from the Ruling dated the 6<sup>th</sup> April, 2023, in respect to the impugned Bill of Costs, the Taxing Officer awarded instructions fees.

11. Schedule 6 of the *Advocates Remuneration Order 2014* provides that:-

“The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it—

(a) To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defense or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties and

(b) To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of interpleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties..”

12. In *Nyangito & Co. Advocates vs. Doinyo Lessos Creameries Ltd.*, HC Misc No. 843 of 2013; [2014] eKLR the learned Judge held inter alia:-

“... the instructions fees ought to take into account the amount of work done by the advocate, and where relevant, the subject matter of the suit as well as the prevailing economic conditions; one must envisage a hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particular high fee sometimes demanded by counsel of pre-eminent reputation; then one must know that what fee this hypothetical character would be content to take on the brief; clearly it is important that advocates should be well motivated but it is also in the public interest that cost be kept to a reasonable level so that justice is not put beyond the reach of poor litigants.”

13. In *Peter Muthoka & Another v Ochieng & 3 Others*, Civil Appeal No. 328 of 2017; [2019] eKLR, it was held that:-

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason,



recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court. Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.”

14. In the case of *Republic v Ministry of Agriculture and 2 others: Ex parte Muchiri W’Njuguna & others* [2006] eKLR it was held that:-

“The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant facts.”

15. While in *Joreth Limited v Kigano & Associates* [2002] 1 E.A. 92 at 99-100 it was held that:-

“We would at this stage point out that the value of the subject matter for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable the taxing officer is entitled to use his discretion to assess such instruction fees as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances.”

16. Based on the facts as presented after perusing the impugned Bill of Costs as well as the Ruling of the Taxing Officer, it is my considered view that the figure awarded as item 1 being instruction fees was not justified as there was no complex issue being dealt with in the application seeking enlargement of time to file Memorandum of Appeal. As for the other items they were taxed to scale and I find no reason to interfere with them. Since, I find that Taxing Officer awarded an excessive amount for item (1), I hold that the decision of the Taxing Officer was indeed an error in principle.

17. In the circumstances, while relying on the legal provisions cited above and associating myself with the quoted authorities, I proceed to set aside the decision of the Taxing Officer dated 6<sup>th</sup> April, 2023 in respect to the Respondents’ Bill of Costs dated the 15<sup>th</sup> February, 2022. I remit the said Bill of Costs back to a different Deputy Registrar for fresh Taxation.

18. In the foregoing, I find the Chamber Summons Application dated the 15<sup>th</sup> January, 2024 merited and will allow it, but make no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 18TH DAY OF SEPTEMBER, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Ms. Wachira for Applicant

No appearance for Respondents



