



**Ndambuki v Wambua & 2 others (All Sued as the Administrators of the Estate of the Late Beth Nduku Wambua) (Environment and Land Miscellaneous Application E023 of 2024) [2024] KEELC 7231 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7231 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2024**  
**CA OCHIENG, J**  
**OCTOBER 31, 2024**

**BETWEEN**

**FRANCIS NDAMBUKI ..... APPLICANT**

**AND**

**GEORGE MUKONZA WAMBUA ..... 1<sup>ST</sup> RESPONDENT**

**PAUL MUTUA WAMBUA ..... 2<sup>ND</sup> RESPONDENT**

**SAMUEL MUINDI WAMBUA ..... 3<sup>RD</sup> RESPONDENT**

**ALL SUED AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE BETH NDUKU WAMBUA**

**RULING**

1. What is before Court for determination is the Applicant's Chamber Summons application dated the 30<sup>th</sup> May, 2024 brought pursuant to Rule 11 (2) and Schedule 6 of the [Advocates \(Remuneration\) Order](#), sections 1A, 1B and 3A of the [Civil Procedure Act](#). The Applicant seeks the following Orders:
  1. That this Honourable Court be pleased to vary and/or set aside and/or vacate the decision of the Taxing Officer, Hon. M. A. Otindo delivered on the 24<sup>th</sup> May, 2024 and/or any other consequential orders arising therein.
  2. That this Honourable Court be pleased to remit the Bill of Costs dated 2<sup>nd</sup> August, 2023 for re – taxation before a different Taxing Officer with appropriate directions thereof.
  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 the Applicant Francis Ndambuki where he deposes that the subject judgement was delivered on 26<sup>th</sup> July,



2023, and the Respondent filed a Party to Party Bill of Costs dated the 2<sup>nd</sup> August, 2023 before the Deputy Registrar. He confirms that on the 24<sup>th</sup> May, 2024, the Taxing Master delivered her Ruling in relation to the Bill of Costs dated the 2<sup>nd</sup> August, 2023. Further, that the Taxing Master, taxed Item (1) relating to instructions fees at Kshs 300,000/=. He avers that the Taxing Master found that the value of the property could not be ascertained from the documents filed. He argues that the Taxing Master proceeded to tax the instructions fee on the basis that the transaction fell within 'other transactions' under Schedule 6 and stated that the amount demanded by the Respondents of Kshs 3 million was inordinately high and unjustifiable. Further, that despite the value of the property being unknown, the value of the transaction herein can be ascertained to be Kshs 3,000/= from the pleadings and documents filed, which ought to have formed the basis of taxation. He insists that under Schedule 6(1) (b), properties not exceeding Kshs 500,000/= are to be taxed at Kshs 75,000/= but the Taxing Master taxed it at Kshs 300,000/=. Further, that the Taxing Master did not give any substantive basis for the arrival at the figure neither was any logical explanation given. He reiterates that the amount awarded is inordinately high as well as unjustified, and enforcement of the same would amount to a grave injustice. He reaffirms that the award of Kshs 512,990/= is based on wrong principles.

3. The Respondents opposed the instant application by filing a replying affidavit sworn by the 1<sup>st</sup> Respondent George Mukonza Wambua who deposes that the said application is frivolous and lacks merit, aimed at trivializing the complexity including stakes involved in this land matter. He claims it is the Applicant who dragged this matter for nine (9) years. He insists that the Deputy Registrar saw a significant reduction of their Party and Party Bill of Costs. He argues that it is unreasonable and baseless to hold the subject value of this suit at Kshs 3,000/= given that this is a land matter and the stakes are high. Further, that the valuation proposed by the Applicant is grossly understated and does not reflect the true economic and social value of the land in dispute. He avers that it is common sense and judicial knowledge that land matters involve significant intricacy and research, surpassing the complexity of ordinary matters. Further, the Advocate on record expended several man – hours and resources in pursuing this matter. He reiterates that the amount awarded by the Deputy Registrar reflects a balanced and fair consideration of the work done.
4. The reference was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the instant Chamber Summons application including the rivalling affidavits and submissions, the only issue for determination is whether the Taxing Master's decision dated the 24<sup>th</sup> May, 2024 in respect to the Party and Party Bill of Costs dated the 2<sup>nd</sup> August, 2023, should be set aside.
6. The Applicant contends that the Taxing Master erred by awarding Kshs 300,000/= as instructions fee in the impugned Bill of Costs, yet the value of the suit land could be ascertained from pleadings as amounting to Kshs 3,000/=.
7. In his submissions, the Applicant reiterated his claim and insisted that the Taxing Master ignored the expressly pleaded transaction value of the suit property of Kshs 3,000/= (as at 1975) as set out in the Complaint dated the 16<sup>th</sup> April, 2015. Further, that the value of the land was ascertainable from the pleadings and hence the Taxing Master erred in principle in awarding a high instructions fee. He further submitted that as per the *Advocates Remuneration Order* Schedule 6 (1) (b) where the value is below Kshs 500,000/=. the instructions fee should be at Kshs 75,000/=. Further, that in this instance, appropriate getting up fees would be <sup>1</sup>/<sub>3</sub> of the instructions fee translating to Kshs 25,000/=. To buttress his averments, he relied on the following decisions of *Peter Muthoka & another v Ochieng & 3 others* NRB Civil Appeal No 328 of 2017 (2019) eKLR; *Kamunyori & Company Advocates v*



Development Bank of Kenya Limited (2015) Civil Appeal 206 of 2006 and Republic v Minister for Agriculture & 2 others Ex parte W’Njuguna & 6 others NRB HC Misc. Appl. No 621 of 2000 (2006) eKLR.

8. The Respondents in their submissions reiterated their averments as per their replying affidavit and insisted that the Applicant has not provided sufficient grounds for setting aside the Deputy Registrar’s Ruling on costs. They submitted that the Deputy Registrar’s Ruling on the Party and Party Bill of Costs and the value of the subject matter, were fair and justified. Further, that the Applicant was at liberty to obtain a Valuation Report to substantiate his claim. They argued that the suit property is situated in a prime area of Machakos Town where surrounding plots typically sell for over Kshs 12,000,000/=. Further, that the principle of proportionality in costs is recognized in the Civil Procedure Rules, which states that costs should be reasonable and commensurate with the value of the subject matter. They further submitted that the Deputy Registrar appropriately balanced these factors, ensuring that the awarded costs were neither punitive nor disproportionately high. They reiterated that the instant application is frivolous and an abuse of the court process. To support their averments, they relied on the following decisions: Shah v Mbogo (1967) EA 116; Ndungu v Serem (Civil Appeal 110 of 2019) (2022) KEHC 13599 (KLR) (12 October 2022) (Judgement); Republic v County Government of Nyeri & another (2015) eKLR; Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board (2005) eKLR; Joreth Ltd v Kigano & Associates (2002) 1EA 92; and James Wangalwa & another v Agnes Naliaka Cheseto (2012) eKLR and Kivanga Estates Limited v National Bank of Kenya Limited (2017) eKLR.
9. On the issue of the instructions’ fee, 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 inter-pleader 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..”

10. In the case of Joreth Limited v Kigano & Associates [2002] eKLR the court held inter alia:

“We would at this stage point out that the value of the subject matter of a suit 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 so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and 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.”

11. Further in Republic v Ministry of Agriculture & 2 others: Ex parte Muchiri W’Njuguna & others (2006) eKLR it was held as follows:

“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”

12. See also the case of *Crossley Holdings Ltd v Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries & Cooperatives & 3 others; Ogendo & another (Interested Party)* (Constitutional Petition 6 of 2020) (2022) KEELC 2529(KLR) (15 July 2022) (Ruling).
13. In this instance, the Applicant’s main contention is that the Taxing Master erred in principle because she awarded a higher instructions fee yet the value of the suit land was ascertainable from the pleadings. I note from the pleadings, it only indicated the consideration paid in 1975 for the suit land. Further, there is no indication if any party furnished court with a valuation report on the current value, of the suit land. Be that as it may, it is trite that instructions fee should be pegged on the value of the property ascertained from the pleadings but the Taxing Master has discretion to consider the work done. Upon perusal of the Plaint, I note the value of the subject property was not provided for, but it indicated consideration paid in 1975 was Kshs 3,000/=. In the current scenario, the Taxing Master declined to award the higher instructions fee claimed by the Respondents but determined the instructions fee based on her discretion.
14. Based on the facts as presented while relying on the legal provisions I have cited and associating myself with the quoted decisions, I find that the Applicant has failed to demonstrate that the Taxing Master erred in exercising her discretion by considering the work done in her calculation of instructions fee, as the value of the suit land was not expressly stated as claimed. In my view the Applicant’s argument that the amount awarded was inordinately and unjustifiable since the value of the transaction herein can be ascertained to be Kshs 3,000/= from the pleadings, which ought to have formed the basis of taxation is not plausible.
15. This court takes judicial notice of the fact the value of Kshs 3,000/= in 1975 cannot be the same in the year 2024, due to inflation. I opine that the Taxing Master was correct in taxing Item (1) relating to instructions fee at Kshs 300,000/= since the value of the property could not be ascertained and she proceeded to tax on the basis that the transaction fell within ‘other transactions’ under Schedule 6.
16. In the circumstances, I will proceed to uphold the determination of the Taxing Master as regards Item (1) of the Bill of Costs in respect to instructions fee. On the issue of item (2) on getting up fees, I wish to refer to Schedule 6 Paragraph (2)(i) of the *Remuneration Order* which provides as follows:-

“In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall not be less than one-third of the instruction fee allowed on taxation.

Provided that this fee may be increased as the taxation officer considers reasonable but it does not include work comprised in the instruction fees...”
17. In relying on the legal provisions I have quoted, I do not find that the Taxing Master erred by awarding  $\frac{1}{3}$  of the instructions fee in respect to Getting Up fees and will not interfere with it.
18. It is against the foregoing that I find the Chamber Summons application dated the 30<sup>th</sup> May, 2024 unmerited and will proceed to dismiss it, with costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024**



**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms. Mutune holding brief for Mr. Mutava for Respondent

Maingi for Applicant

Court assistant – Simon/Ashley

