



**Ngeru & another v Ndonga & 2 others (Environment and Land Case Civil Suit 1031 of 2013) [2025] KEELC 403 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 403 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 1031 OF 2013  
AA OMOLLO, J  
JANUARY 30, 2025**

**BETWEEN**

**JANE WAMBUI NGERU ..... 1<sup>ST</sup> PLAINTIFF**

**SCHOLASTICA WAITHERA KAMAU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**KIBASUI NDONGA ..... 1<sup>ST</sup> DEFENDANT**

**DANIEL MAINGI ..... 2<sup>ND</sup> DEFENDANT**

**DENNIS NJAGI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Defendants have challenged the taxed costs for the plaintiff vide the chamber summons dated 11<sup>th</sup> September, 2024. The application was supported by the affidavit of Dennis Njagi. The Reference is premised on the following grounds:
  - a. The assessed Instruction fees is not based on the Judgment sum thus amounts to an error in principle;
  - b. Item 2, 3a, 3b, 3c, 4a, 4b, 4c, 5, 8, 9, 10, 10a, 10b, 10c, 12, 14b, 15, 16, 17, 18, 21, 22, 25, 26, 31, 32, 33, 34, 37, 38, 40, 41, 43, 51, 52, 54, 55, 59, 60, 63, 64, 65, 66, 69, 70, 72, 73, 75 and 80 of the Bill of Costs are not drawn to scale. The Taxing Officer’s holding that they are drawn to scale, therefore amounts to an error in principle and is an error on the face of the record.
  - c. The Taxing Officer allowed Items 30, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 and 96 of the Bill of Costs as drawn despite the fact that the Plaintiffs failed to tender evidence of the expenses incurred as required by the law. The holding therefore, amounts to an error in principle.



- d. The Taxing Officer erred in law by allowing Items 21, 26, 43, 52 and 75 of the Bill of Costs despite the fact that they are catered for under Instruction Fees thus are not chargeable.
2. The parties filed their respective submissions in support of and against the reference. The Defendants/Applicants submitted that the instruction fee should have been charged based on the judgment sum of Kshs.50,000 and that schedule 6 does not allow charging for getting up fees where no defence is filed as is herein. On the other hand, the plaintiff submitted that the taxing master did not error as the effort employed by counsel in the prosecution of the case and the length of time to conclude the suit was unreasonable.
  3. I have perused the orders granted to the plaintiff which were several including an award for general damages in the sum of Kshs.50,000. The amended plaint had sought for orders of permanent injunction; An order for vacant possession of the suit property L.R No. NBI Block 79/787; general damages and mense profits. All the prayers sought were awarded.
  4. It is therefore erroneous for the Defendant/Applicants to submit that the Instructions fees could only be based on the judgment sum awarded for general damages. Yet the general damages was only one of the prayers sought. I don't find the amount taxed as instruction fee unreasonable.
  5. On the amount of Kshs.50,000 awarded as getting up fee, the Remuneration Order provides under paragraph 2 of schedule 6 that;  

“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 be not less than one-third of the instruction fee allowed on taxation.”
  6. From the record, the suit was not defended. The Plaintiff admits as much in paragraph 16 of her submissions but contend that substantial preparation was necessary due to the complexity of the issues raised. She argues that she should not remain uncompensated due to a procedural gap or the defendant's in action. She cites the case of Kamunyori & Company Advocates vs. Development Bank of Kenya Ltd (2015) eKLR.
  7. It is the provisions of the Advocates Renumeration Order which guides the award of fees chargeable. Where it does not make provision and the said Rule has not been declared unconstitutional, this court does not intend to re-invent the wheel. The preparation works the plaintiff's advocate undertook is compensated in the instruction fees. I hold that since the Renumeration Order does not allow for charging of getting up fee, the taxing master was in error to award the same.
  8. The remainder of the items challenged were based on drawing of documents and making copies thereof and the taxing master wholesomely proceeded to tax them as drawn to scale. The Applicants have submitted that the amount awarded vis a vis the number of folio's were not up to scale. For instance, that the plaint contained 14 folio's but costs awarded was for 32 folios which was in error. On her part, the plaintiff argued that schedule VI(1)(a) of the ARO 2006 allows for charging on documents as a whole, including folios related to exhibits and necessary annextures.
  9. I am persuaded to find the need to re-submit the file before the taxing master for parties to argue their case on how many folios per document and the requisite costs permitted under the Order. The taxed costs appealed did not give details to confirm the amount assigned to each document drawn was correct.



10. Consequently, I hold that the reference is merited save for the sum awarded as the instructions costs which remain as taxed. The amount awarded as getting up fees is struck off. The remainder items shall be taxed afresh before another taxing master other than Hon. Vincent Kiplagat. Costs of the reference to the Defendants/Applicants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY, 2025**

**A. OMOLLO**

**JUDGE**

