



**Hasham Lalji Properties Limited v Koskey alias Jassan K Koskey (Environment & Land Case 286 of 2012) [2024] KEELC 13236 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13236 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 286 OF 2012  
EO OBAGA, J  
NOVEMBER 18, 2024**

**BETWEEN**

**HASHAM LALJI PROPERTIES LIMITED ..... PLAINTIFF**

**AND**

**HASSAN K KOSKEY ALIAS JASSAN K KOSKEY ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a chamber summons dated 9.7.2024 in which the Defendant/Applicant seeks the following orders:-
  1. Spent.
  2. Spent.
  3. That the Honourable court be pleased to enlarge time for the Applicant to object to the decision of the Taxing officer made on 17.5.2024 and the reasons of the said decision contained in the ruling which only came to the notice of the Defendant/Applicant on 3.7.2024 and also enlarge the time to file this reference.
  4. That the decision and finding of the Taxing officer contained in the ruling dated 17.5.2024 be set aside for being excessive and not justified and the certificate of taxation issued on 28.5.2024 together with all consequential orders therefrom to be set aside together with the warrant of attachment and sale issued on 14.6.2024 herein.
  5. That the costs of this objection be borne by the plaintiff/Respondent in any event.
2. The Applicant contends that he was not notified of the date for the delivery of ruling hence the delay in filing a reference to this court. The Applicant explains that the ruling on the bill of costs was set for delivery on 10.5.2024 which happened to be declared a public holiday. The Applicant's Advocates



sent a representative to the court registry to get the new date for ruling and was informed that the same was to be delivered on notice.

3. Unknown to the Applicant, the ruling was delivered on 17.5.2024, a certificate of costs extracted and warrants of attachment issued. The Applicant states that his Advocates were not notified of the ruling date by either the court or the Respondent's counsel.
4. On the issue of items 1 and 2 on the bill of costs of 14.6.2022, the Applicant contends that the same was excessive and unjustified. He further contends that the taxing officer ignored the value of the subject matter which was contained in the pleadings and instead assigned instruction fees which was not justified.
5. The plaintiff/Respondent opposed the Applicant's application based on a replying affidavit sworn on 19.7.2024 in which the Respondent contends that the Applicant's application is a non-starter and an abuse of the court process. The Respondent states that a public notice was issued to the effect that ruling on the bill of costs dated 14.6.2022 was to be delivered on 17.5.2024 and that the Respondent cannot be penalized for commencing a proper execution process to recover its costs.
6. On the issue pertaining to items 1 and 2 of the bill of costs, the Respondent contends that the Applicant has not demonstrated any grounds upon which this court can interfere with the discretion of the taxing officer. The Respondent further contends that the value of the suit properties contained in the counter-claim could not be used to ascertain the value of the suit properties which are at the Central Business District of Eldoret
7. The Respondent further states that its claim was for interference with the suit properties and that the value in the counter-claim was plucked from the air and cannot therefore reflect the true value of the suit properties.
8. The Applicant filed his submissions dated 7.8.2024 in which he submitted that his Advocates are based in Nairobi and is not in the Telegram group for Eldoret Advocates where the notice for ruling of 17.5.2024 was published and would therefore not have been aware of the date of ruling and more particularly when the Respondents did not serve his Advocates with a ruling notice.
9. The Applicant relied on the case of Joreth Limited –vs- Kigano & Associates Civil Appeal No. 66 of 1999 (2002) eKLR where the Court of Appeal held as follows:-

“We would at this stage point out that the value of the subject matter of the suit for purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement or settlement.”

10. The Applicant also relied on the case of Peter Muthoka & another –vs- Ochieng and 3 others Nairobi Civil appeal No. 328 of 2017 (2019) eKLR where the court stated as follows:-

“It is only where the value of the subject matter is not determinable from the pleadings, the judgement or settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instruction fees in accordance with what he considers just, bearing in mind the various elements contained in the provision we are addressing. He does not have discretion as to what he considers just but the discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided; either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be done on one of the three. It is not open to the taxing officer to choose one or the other to use them in



combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.

11. The Applicant submitted that the value of the subject matter of the suit was clearly set out in the pleadings and was outlined in the judgment as being Kshs. 4,500,000/= and 8,000,000/= for the two properties respectively.
12. The Applicant further submitted that the taxing officer committed an error of principle calling for the court's intervention. He relied on the case of Kamunyori & CO. Advocates – vs- Development Bank of Kenya Limited (2015) eKLR where it was held as follows:-

“It is now an accepted principle that a judge will normally remit the matter to the taxing officer for reconsideration where there is an error of principle. Failure to ascribe the correct value of the subject matter is an error of principle. Authorities on taxation shows that a judge will normally not interfere with the taxing officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instruction fee is arrived on the wrong principles, it will be set aside.”
13. The Applicant also relied on the case of Kagwimi Kangethe & Co. Advocates –vs- O-lerai Nurseries Limited (2009) eKLR where it was stated as follows: -

“An example of error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles.”
14. The Respondent filed its submissions dated 7.8.2024 in which it was submitted that there was no reason given to justify enlargement of time to file a reference. It was submitted that a public notice was issued wherein the ruling which was to be delivered on 10.5.2024 was rescheduled to 17.5.2024 but the Applicant's Advocates chose not to attend court for the ruling.
15. The Respondent cited the case of Joreth Limited (Supra) and submitted that the objection by the Applicant does not fall within the parameters set out in that case and that therefore there is no justification to interfere with the discretion of the taxing officer.
16. The Respondent further submitted that the value of Kshs 4,500,000/= and 8,000,000/= which was brought up by the Applicant could not be taken as the actual value of the properties as the properties are at the Centre of Eldoret town. In trying to justify the instruction fees given by the taxing officer, the Respondent submitted that the taxing officer took into account the nature of the claim and time taken which spurns over 15 years and its complexity.
17. I have carefully considered the Applicant's application as well as the objection to the same by the Respondent. I have also considered the submissions by the parties. The issues which emerge for determination are firstly, whether time for filing reference should be extended. Secondly, whether this court should interfere with the discretion of the taxing officer. Thirdly, which order should be made on costs.
18. On the first issue, there is no contention that ruling on the bill of costs dated 14.6.2022 was set for 10.5.2024. The ruling was however not delivered on that date as the day was declared a public holiday. The court then rescheduled the ruling date to 17.5.2024 when the same was delivered. The rescheduling of the ruling date was published in the wall of the Eldoret Bar-Bench group on Telegram. It is common knowledge that the firm of T. O. K'opere & Co. Advocates are based in Nairobi and are not members of the Eldoret – Bar- Bench. There was no ruling notice given by either the court or the



firm of Nyairo & Co. Advocates. There was therefore no way the Applicant's advocates would have known that the ruling set for 10.5.2024 had been rescheduled to 17.5.2024.

19. The Applicant only became aware of the delivery of ruling when Eshikoni Auctioneers served warrants of attachment. I therefore find that there is a good reason why the Applicant did not file a reference within the prescribed time. I therefore enlarge the time as prayed for in paragraph 3 of the chamber summons dated 9.5.2024.
20. On the second issue, it is clear that the principles for ascertaining the value of the subject matter of a suit for purposes of taxation were set out in the Joreth Limited case (Supra). The principles were amplified in the case of Peter Muthoke (Supra) where it was emphasized that the taxing officer can only invoke his discretion if the value of the subject matter cannot be ascertained from the pleadings, judgement or settlement.
21. In the instant case, the Respondent had filed a suit against the Applicant in which it sought among other prayers injunctive orders against the Respondent from interfering with Eldoret Municipality Block 12/615 and Block 13/60. The contention was that the Applicant was laying claim to the two properties based on forged documents. The Applicant filed a defence in which he stated that he had purchased the properties for Kshs. 4,500,000/= and 8,000,000/=. This is the basis upon which he filed his counter-claim to which the Respondent filed an answer in defence. It is this counter-claim which the Applicant was using to defend the Respondent's claim.
22. It is therefore clear that the value of the subject matter was Kshs 4,500,000/= and 8,000,000/=. The combined amount was Kshs 12,500,000/= and this is the amount which the Applicant was claiming in the alternative. This amount was clear from the pleadings and was mentioned in the judgment. It was therefore not open to the taxing officer to go outside the value in the pleadings and invoke his discretion on the basis that the properties were at the Eldoret CBD and their value could not be Kshs. 12,500,000/= as submitted by the Respondent. I therefore find that the taxing officer committed an error of principle by assessing instruction fees which was manifestly excessive and not justified. I therefore allow the Applicant's application in terms of prayer 4 of the chamber summons dated 9.7.2024. The Applicant's bill of costs is remitted back for taxation by a taxing officer other than B. Kiptoo based on the value as disclosed in the pleadings. The Applicant shall have costs of this application.

It is so ordered.

CONCLUSIONS

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

M/s Odwa for Plaintiff.

Mr. Ongocho for Mr. K'opere for Defendant.

Court Assistant -Laban

