



Project Innovations Limited v Aziza Residential Suites Limited & another (Civil Case 392 of 2012) [2025] KEHC 722 (KLR) (Civ) (30 January 2025) (Ruling)

Neutral citation: [2025] KEHC 722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 392 OF 2012
LP KASSAN, J
JANUARY 30, 2025**

BETWEEN

PROJECT INNOVATIONS LIMITED APPLICANT

AND

AZIZA RESIDENTIAL SUITES LIMITED 1ST RESPONDENT

CATHERINE RUTH WAMUYU MIMANO 2ND RESPONDENT

RULING

1. The application before me is the one dated 4th April 2024 seeking the following orders:
 1. That the ruling by the Taxing officer delivered on 22nd March 2024 disallowing the instruction fees to defend the counter claim in the sum of Kshs 600,000 be set aside.
 2. That the bill of costs be remitted back to the Deputy Registrar to assess the instructions fees and getting up fees for defending the Defendants/Respondent's counter claim.
 3. That the costs of this application be provided for.
2. The same is supported by the affidavit of Christopher Rapasi Nguru alias Ibrahim Nguru dated 4th April 2024.
3. The main ground for the reference is that the Honourable taxing master did not consider the instruction fees to defend the counter claim which was 600,000/-. The Respondents filed grounds of opposition dated 15th October 2024 and submissions dated 5th November 2024. Their main contention is that the application was filed in clear contravention of provisions of paragraph II (I) and (II) of the Advocates Remuneration Order.

This court has considered the same and the issue for determination is;



1. Whether or not the application contravenes the law.
2. Whether or not the Honourable Taxing Master/Deputy Registrar erred in failing to consider the instructions fees raised on the counter claim.
4. The provisions of paragraph II (2) provides:

“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 receipt of the reassurance apply to a judge by chamber summons, which shall be served on all parties concerned setting out the grounds of his objection.”
5. To this court, the ruling and reasons were always available and the respondent has always had the opportunity to access the same, hence they cannot be seen to say that they are in darkness. If anything any delay in filing the application is a technicality of procedure that falls under Article 159(d) of *the constitution*.
6. To this court, a counter claim is a separate suit and attracts separate instruction fees hence taxable independently from the instruction fees in the main suit and the taxing master erred in failing to consider the same.
7. This court concurs with the decision in *Kanyiriri & Associates Advocates Vs Salama Beach Hotel Limited & 4 others* where the Environment and Land Court in Malindi held that;

A counter claim assertion that a defendant could have made by starting a law suit if the Plaintiff had not already begun an action. It is governed by almost the same rules that regulate a claim made by a Plaintiff except that it is a part of the answer that the Defendant files in response to the Plaintiff’s claim. A counter claim is therefore in all respects a suit by the Defendant. The Applicant is therefore entitled to instruction fees on the counter claim. The taxing officer erred in not awarding fees on the counter claim. The taxing officer erred in not awarding the Applicant instruction fees on the counter claim.”
8. I thus allow the application dated 4th April 2024 and refer the file back for taxation on item 1, that is; instruction fees for counter claim and the getting up fees.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JANUARY 2025.

HON. L. KASSAN

JUDGE

In the presence of:

Mbati for the Applicant

Siagi for Respondent

Guyo - Court Assistant

