



**Mbugua & 101 others v National Environment Management Authority & 2 others
(Tribunal Appeal 177 of 2016) [2024] KENET 633 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KENET 633 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 177 OF 2016**

**EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR,
DUNCAN KURIA & RONALD ALLAMANO, MEMBERS**

APRIL 16, 2024

BETWEEN

BETTY MBUGUA 1ST APPELLANT

DAVID NDIRANGU & 100 OTHERS 2ND APPELLANT

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT**

NAIROBI CITY COUNTY 2ND RESPONDENT

HON ROBERT MBATIA 3RD RESPONDENT

RULING

Background

1. Vide a Judgment delivered by this Honourable Tribunal on 5th March, 2019, the Tribunal allowed the Appellants' Appeal with orders as to costs to be borne by the 3rd Respondent. Subsequent to this, the Appellants filed their Party & Party Bill of Costs dated 18th December, 2023.
2. Despite having been served, the record does not show any response to the said Bill of Costs by the Respondents.

Computation of Costs

3. Pursuant to Section 129 (3) (c) of [EMCA](#) and Rule 39 of the [National Environment Tribunal Procedure Rules](#), 2003, and Schedule 11 of the [Advocates Remuneration Order](#) 2014, we hereby make the following determination as to each itemized cost in the Appellant's Bill of Costs dated 18th December, 2023 and drawn at Kshs. 1,224,700.



Instructions fees

4. The starting point for determining instruction fees for Party and Party Costs under Part A of Schedule 11 is by considering the value of the subject matter in either, the pleadings, the judgment or the settlement, whereafter, if the value of the subject matter cannot be ascertained, the Tribunal is at liberty to exercise its discretion to arrive at a just decision. These principles were laid out in the case of [*Peter Muthoka & another v Ochieng & 3 others*](#) [2019] eKLR where the Court held as follows;

“It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that 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 one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.” (emphasis added)
5. What then is the value of the subject matter in this matter? In answering the foregoing question, we have painstakingly perused through the pleadings and the judgment in this matter and have failed to sight the value of the subject matter. In such circumstances therefore, the Tribunal will use its discretion to assess instruction fees as we consider just, taking into account, among other matters, the nature and importance of the matter, the complexity of the matter, and the general conduct of the proceedings as provided in Schedule 11(3) and (9) of the [*Advocates Remuneration Order*](#).
6. Having regard to the primary issue in contention between the parties, which is issuance of an environmental impact assessment license, the Tribunal notes that while the Appellants deployed a considerable amount of industry in this matter which took a total of three years to be settled, the dispute was not a complex one in nature and did not raise novel, weighty or convoluted jurisprudential issues for determination.
7. Consequently, as the Appellants having sought to be awarded Kshs. 1,000,000 as instruction fees, we tax the same at Kshs. 700,000. The sum of Kshs. 300,000 is taxed off.

Attendances

8. Schedule 11 (10) provides that:
 - a. On any necessary attendance on the Tribunal other than at the hearing Kshs. 500
 - b. On any necessary attendance by an Advocate at the offices of the tribunal other than (a) Above Kshs. 500
 - c. Attendances at the hearing—
 - i. For each day after first day Kshs. 4,000
 - ii. For each part of the day after the first Kshs. 2,100
 - iii. Where costs of adjournment of the case are awarded Kshs. 1,200



9. Items 3, 10, that seek costs for various attendances before the registry are taxed as prayed while Items 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 that seek costs for various attendances before the Tribunal are taxed at Kshs. 4,000.

Photocopy

10. Schedule 11(6) provides the following -

“Binding and Photostat copies; actual costs incurred supported by vouchers of all necessary photocopying will be allowed to the successful party.”

11. The Appellants have not produced any vouchers or receipts to support the claimed amount incurred. Item 4 that seeks for photocopy costs (20 copies) is taxed off from the Bill.

Drawing, perusals and filing

12. Schedule 11 (5) provides that,

“The instruction fee shall include taking instructions, drawing, perusals, engrossing documents and filing the same”

13. Items 2, 3, 6, 7a, 7b, 8, 9, 10, 11, 12, 14, 15, 16 and 17 seek costs for drawing; perusals and filing of court's documents which are included in the instruction fee therefore are disallowed in their entirety.

Service

14. As there is no provision within Schedule 11 of the [Advocates Remuneration Order](#) bearing service of documents, the Tribunal herein disallows item 5 and 13 that seek for a sum of Kshs. 6,000 and Kshs. 3,000 respectively.

Order

15. The Tribunal therefore makes the following orders:

The Bill of Costs dated 18th December, 2023 is taxed as follows:

- i. Instruction Fees- Kshs. 700,000
- ii. Other FeesKshs. 73,000

Total Sum Kshs.773,000 /=

DATED AND DELIVERED AT NAIROBI, THIS 16TH DAY OF APRIL, 2024

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

