



Mosoti (On behalf of Lower Kamulu Acre Tano Residents) v National Environment Management Authority & 2 others (Tribunal Appeal 16 of 2020) [2023] KENET 1368 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KENET 1368 (KLR)

REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 16 OF 2020
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
OCTOBER 25, 2023

BETWEEN

BONIFACE NYAGAKA MOSOTI (ON BEHALF OF LOWER KAMULU ACRE TANO RESIDENTS) APPLICANT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST RESPONDENT

MACHAKOS COUNTY GOVERNMENT 2ND RESPONDENT

UNITED PAINTS LIMITED 3RD RESPONDENT

RULING

1. On 19th October, 2022, the Tribunal dismissed the Intended Appellant/Applicant's Notice of Appeal dated 17th March, 2020 and amended Notice of Appeal dated 1st April, 2020, with costs to the Respondents.
2. Subsequently, pursuant to the provisions of under rule 39(1) of the NET procedure rules 2003 and schedule 11 of the [Advocates \(Remuneration\) \(Amendment\) Order](#) 2014 the 3rd Respondent filed their Party & Party Bill of Costs dated 16th August, 2023.
3. The record does not show any response to the said Bill of Costs by the Appellant.

Computation of Costs

4. Having been vested with the jurisdiction to make orders as to costs pursuant to Section 129 (3) (c) of [EMCA](#) and Rule 39 of the [National Environment Tribunal Procedure Rules](#), 2003, and by virtue of



Schedule 11 of the Advocates Remuneration Order 2014, we hereby make the following determination as to each itemized cost in the 3rd Respondents Bill of Costs dated 16th August, 2023 and drawn at Kshs. 125,500 as follows:

Instruction Fee

5. Item 1 relates to the instruction fee of Kshs. 100,000 which cannot be ascertained from the subject matter of the suit. It is worthy noting that in Joreth Limited v Kigano & Associates [2002] eKLR, the court held 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.
6. Further in Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W’Njuguna & 6 others (2006) eKLR Justice Ojwang (as he then was) stated

“The complex elements in the proceedings, which guide the exercise of the taxing officer’s discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated deployment of a considerable amount of industry and was inordinately time consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated –apart, of course, from the need to show if such works have been provided for under a different head of costs.
7. Further schedule 11(3) of Advocates Remuneration Order provides as follows:

“When taxing the costs consideration shall be given by the taxing officer to either the value of the subject-matter or, where the value of the subject matter cannot be determined, to the following criteria.

 - a. the nature and importance of the proceedings;
 - b. the complexity of the matter and the difficulty or novelty of the question raised;
 - c. the amount or value of the subject matter,
 - d. the time expended by the advocate(s),
 - e. the number and importance of the documents prepared or perused, without regard to length.”
8. Having read the provisions of Schedule 11(3) as read together with provisions of Schedule 11(9) of the Remuneration Order and having perused the documents on record, the subject matter and the respective responses by the 3rd Respondent, it clear in our minds that considerable effort was invoked in applying their legal mind to the legal issues raised by the Appeal.
9. The instruction fees under Item 1 is therefore rightly taxed at Kshs. 100,000.00.



Attendances

10. Schedule 11 (10) provides that:

10.

- (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
- (d) Where costs of adjournment of the case are awarded Kshs. 1,200

11. Items 2, 3,4,5,6,7,9,9* 10,11 and 14 that seek costs for various attendances before the registry and the court are taxed as prayed for in the Bill of Costs dated 16th August, 2023.

Photocopy and Binding

12. 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.”

13. Item 12 seeks for Photocopy and binding costs, (168 folios), making 8 bundles thereof at Kshs 10 per copy and a total of 8,400.00. This Item is taxed at Kshs. 8,400.00

Drawing and Filing of Bill of Costs

14. Schedule 11 (5) provides that,

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

Items 13 and 15 seeking for costs for drawing and filing of bill of costs are disallowed in their entirety since they are covered under the instruction fees.

Service

15. Schedule 7 (11) provides the following -

Drawing and filing affidavit or return of service Kshs 1,000

16. Item 16 seeks for a sum of Kshs.1000 for service of the Bill of Costs and is therefore taxed at Kshs.1000.00.



Order

17. The Tribunal therefore makes the following orders:

The Bill of Costs dated 16th August 2023 is taxed as follows:

- i. Instruction Fees- Kshs. 100,000/=
- ii. Other fees Kshs. 24,000

Total Sum Kshs. =124,000/=

DATED AND DELIVERED AT NAIROBI, THIS 25TH DAY OF OCTOBER 2023

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

