



**Sikalieh (Suing as the Chairman of KLDA on behalf of Tree Lane Residents)
v National Environment Management Authority & 2 others (Appeal
22 of 2022) [2023] KENET 1344 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KENET 1344 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
APPEAL 22 OF 2022**

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

SEPTEMBER 21, 2023

BETWEEN

**SAMORA SIKALIEH (SUING AS THE CHAIRMAN OF KLDA ON BEHALF OF
TREE LANE RESIDENTS) PLAINTIFF**

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
DEFENDANT**

SPASSO BAR RESTAURANT & LOUNGE 2ND DEFENDANT

**DIRECTOR (OWNER) SPASSO BAR RESTAURANT &
LOUNGE 3RD DEFENDANT**

RULING

1. The Tribunal on 3rd March 2023 marked the instant appeal as withdrawn and directed that the 2nd Respondent bear the costs of the appeal. The issue of the award of costs and its quantum was reserved for submissions by the parties.
2. The Appellants filed their Bill of Costs dated 21st March 2023 and seek costs of Kshs. 1,698,065. In support of their Bill of Costs, they filed submissions dated 21st March 2023. The 2nd Respondent did not file any response to the Appellant's Bill of Costs.

Determination

3. This Tribunal is vested with jurisdiction to make an order for costs pursuant to Section 129 (3) (c) of EMCA and Rule 39 of the National Environment Tribunal Procedure Rules, 2003. The legal



framework for the assessment of costs before Tribunals, including the National Environment Tribunal, is provided for under Schedule 11 of the [*Advocates \(Remuneration\) \(Amendment\) Order*](#), 2014.

4. Where the value of the subject matter can be ascertained from the pleadings filed, then Party and Party costs are computed as provided under Schedule 11 (8). Where the value of the subject matter cannot be ascertained, the scale is provided for under Schedule 11(9).
5. The Tribunal makes the following determination: having considered the Appellant's Party and Party Bill of Costs dated 21st March 2023 and submissions in support thereof.

Instruction Fees

6. The Appellant seeks to be awarded a sum of Kshs. 1,450,000/= as instruction fees. They contend that the value of the subject matter of the appeal is Kshs. 30,000,000.
7. The Tribunal finds that the value of the subject matter cannot be ascertained in the present case. The Notice of Appeal did not have a pecuniary value, nor did the pleadings and affidavits filed by the parties. Thus, no legal basis is employed by the Appellant in the computation of the instruction fees as Kshs.1,450,000/=.
8. 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 (emphasis added).
9. We have perused the pleadings on record and find that the appeal before us was not of a complex nature. The substratum of the appeal revolved around noise pollution. We, therefore, guided by Schedule 11(9), tax instruction fees at Kshs. 100,000. The sum of Kshs. 1,350,000 is taxed off.

Drawings, Perusals And Photocopies

10. Schedule 11, Paragraph 5 of the [*Advocates Remuneration Order*](#) provides that instruction fees shall include taking instructions, drawing, perusals, engrossing documents and filing the same. Items 3, 9, 10, 17 and item 1 under the heading of disbursements are disallowed in their entirety since they are covered under the instruction fees.
11. The Appellant claims photocopying costs under items 4 and 5 of the Bill of Costs. Schedule 11, paragraph 6 of the [*Advocates Remuneration Order*](#) provides that for Binding and Photostat copies, actual costs incurred supported by vouchers of all necessary photocopying will be allowed to the successful party. In this case, the claim was not supported by any evidence and is thus disallowed in its entirety.

Attendances

12. Items 7, 11, 13, 14, 15 and 16 of the Bill of Costs seek costs for attendances before the Tribunal. Schedule 11 paragraph 10 (a) of the [*Remuneration Order*](#) sets out a sum of Kshs.500 for any necessary attendance to the Tribunal other than at the hearing. Therefore, items 7, 11, 13, 14, 15 and 16 of the Bill of Costs are taxed at Kshs.500 each to a total sum of Kshs.3, 000/=



Expert Witness

13. Item 2 of the Bill of Costs seeks fees for preparing an expert report and getting the expert. Paragraph 7 of the [Remuneration Order](#) provides that Expert witness expenses may be allowed in accordance with Rule 74A of the [Advocates Remuneration Order](#). Section 74A (1) (b) provides thus;

The Taxing Master shall allow reasonable charges and expenses of witnesses who have given evidence and shall take into account all circumstances and without prejudice to the generality of the foregoing, the following factors—

- (b) if the witness is a party, the time spent giving evidence;

We note that the matter did not proceed to a hearing; the claim is therefore disallowed.

Service

14. Items 6, 8, 12 and 18 of the Bill of Costs seek costs for service of pleadings and court orders upon the Respondents. A claim for expenses of this nature is not provided for under Schedule 11 of the [Advocates \(Remuneration\) \(Amendment\) Order](#), 2014; the same is disallowed in its entirety.

Order

15. The Tribunal makes the following orders:

The Bill of Costs dated 21st March 2023 is taxed as follows:

- i. Instruction Fees- Kshs. 100,000/=
- ii. Costs for attendance before the Tribunal- Kshs. 3,000/=

Total Sum Kshs. 103, 000/=.

DATED AND DELIVERED AT NAIROBI, THIS 21ST DAY OF SEPTEMBER 2023

Emmanuel Mumia.....Chairman

Winnie Tsuma.....Vice-chair

Kariuki Muigua.....Member

Duncan Kuria.....Member

Ronald Allamano.....Member

