

KENYA / JUDGMENT

Mutyaene v Metropol Credit Reference Bureau Ltd & another

[2026] KEHC 13360 (KLR)

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COURT

High Court

BEFORE

JK Serгон

CASE / FILE NUMBER

Civil Case 47 of 2016

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Mutyaene v Metropol Credit Reference Bureau Ltd & another (Civil Case 47 of 2016) [2026] KEHC 13360 (KLR) (1 September 2026) (Ruling) Neutral citation:

[2026] KEHC 13360 (KLR) Republic of Kenya In the High Court at Nakuru Civil Case 47 of 2016 JK Serгон, J September 1, 2026 Between Reuben Kioko Mutyaene Plaintiff and Metropol Credit Reference Bureau Ltd 1 st Defendant Kenya Commercial Bank Ltd 2 nd Defendant

Ruling

1. This ruling is the outcome of the reference by way of Chambers summons dated 6 th February, 2026. When the reference came up for hearing this court gave directions to have the reference disposed of by written submissions. 2. The background of this matter is short and straightforward. Reuben Kioko Mutyaene, the plaintiff/applicant herein filed an action before this court by the plaint which plaint was later amended and further amended and dated 2 nd July, 2021 against Metropol Credit Reference Bureau Ltd, 1 st Defendant/ Respondent and Kenya Commercial Bank, the 2 nd Defendant/Respondent. 3. In the further amended plaint the plaintiff/applicant sought for declaratory orders, special damages, an apology, general damages plus costs against the Defendant/Respondents. 4. The suit was heard and dismissed with costs vide the judgement delivered on 27 th July, 2023. The 1 st Defendant filed the Party and Party Bill of Costs dated 10 th December, 2023 while the 2 nd defendant filed the Party and Party Bill of Costs dated 11 th August, 2023. 5. The aforesaid Bills of Costs were taxed by Honourable Christine Menya. The 1 st Defendant's Bills of costs was taxed at Ksh 3,123,800/33 while the 2 nd Defendant's Bill of costs was taxed at Ksh 7,787,738/11. 6. The plaintiff being aggrieved by the Taxing Officer's decisions the plaintiff filed the reference the subject matter of this instant ruling. 7. This court was beseeched to set aside the rulings and taxation of the 1 st and 2 nd Defendant's Party and Party Bill of

Costs dated 10 th December, 2023 and 11 th August, 2023 taxed at Ksh 3,123,800/33 and Ksh 7,787,738/11 respectively. 8. This court was further urged to either re-assess/retax the aforesaid Bill of Costs. It is the submission of the plaintiff that the taxing officer erroneously based her taxation on calculations that took into consideration of loan-related monetary exposure of Ksh 21,941,560 and Ksh 83,136,944/=. 9. It is the plaintiff's averment that the aforesaid loan amounts were non-existent and fictitious which were later deleted and expunged, therefore they should not have been construed as genuine sums that the plaintiff was in actual sense indebted. On its part, the 1 st Defendant/Respondent is of the submission that the taxing officer did not err in principle in arriving at her decision. 10. The 1 st Defendant/Respondent pointed out that the value of the subject matter can be discerned from the applicant's further amended pleadings which are Ksh 21,941,560 and Ksh 83,136,944/=. The 1 st Respondent further pointed out that the plaintiff pleaded for special damages amounting to Ksh 32,939,278/=. In sum, the 1 st defendant is of the view that the taxing officer applied the correct principle in determining the instructions fees payable to the 1 st Respondent. 11. On its part the 2 nd Defendant/Respondent is of the submission that the decision of the taxing officer was grounded on sound principles of law guiding the assessment and taxation of costs. It is point out that the figures relied upon were discerned from the pleadings as follows: Ksh 158,799 being the value of non-performing loans pleaded and Ksh 32,971,078/= as special damages aggregating at Ksh 191,770,809/= as the total value of the subject matter pleaded. 12. Having considered the rival arguments, it is not in dispute that the taxing officer in this matter relied on the figures pleaded in the further amended pleadings to assess the amount of costs. 13. The Supreme Court in *Kenya Airports Authority Vs Otieno Ragot & Co. Advocates* 2024 KESS 4(KLR) held inter alia " Equally, the Court of Appeal in considering the issue of how the value of a subject matter can be determined in *Peter Muthoka & Another Vs Ochieng & 3 others* Civil Appeal No. 328 of 2017 [2019] eKLR states as follows: " It seems to us quite plain that the basis for determining the subject matter value for purposes of instructions fees is wholly dependent on the state at which the fees are being taxed where it happens before judgment, it is the pleadings that form the basis for determining the subject value. Once judgment has been entered and for what seems to us to be obvious reason, recourse will not be to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court". 14. In the instant matter, it is apparent the taxing officer relied on the pleadings to determine the value of the subject matter. The taxing officer considered the figures of the already deleted impugned loan accounts to compute and tax the Bill of Costs. 15. A careful perusal of the judgment will reveal that this court took into account the Respondents' own evidence, acknowledged and held that the two impugned loan accounts were deleted on 21/8/2015, a date that is prior to the filing of the suit. 16. I am convinced that the alleged loan figures were not the plaintiff's property hence their value cannot be used as the subject matter's value to calculate costs as against him in favour of the Respondents. The deletion of the impugned non-existent entered before filing of the suit effectively make the subject matter's value unascertainable and making reliance to the impugned loan figures that were aggregated to Ksh 158,799,731/= and Ksh 191,770,809/=

improper. 17. In the circumstances the taxing officer erred in principle therefore her decision on assessing instructions fee must be set aside. It is the judgment and not the pleadings that the taxing officer had recourse to determine the subject matter value for purposes of instructions fees since the matter had conclusively been heard and adjudged. 18. It is important to point out that the taxing officer based her assessment of costs on already expunged entries. The taxing officer was obligated to revert to the pleadings to assess the value since the judgment dismissed the suit without assessing the value. However, it would appear the taxing officer took into consideration the plaintiff's pleadings but failed to read and take into account the defendants' pleadings/responses to come up with unbiased verdict informed by entire pleadings of all the parties. 19. Had the taxing officer taken into account the fact that the two impugned loan accounts had been deleted by the Respondents even before the filing of the suit then she would not have come up with the impugned taxed amounts that were based on already expunged entries. 20. As regards reference to special damages I am persuaded by the submissions of the plaintiff/applicant that the taxing officer fell into error when she relied on an unratified special damages pleaded and itemized as Ksh 32,939,278. It is important to take note of the fact that the court in its judgment rejected the claim for special damages as unproven. 21. The taxing officer therefore fell into an error of principle in aggregating and quantifying total subject value defended in the suit by the Respondent by applying the unproven special damages. 22. Consequently, the rulings or taxation delivered on 11 th August, 2023 and 10 th December, 2023 are set aside. The party and Bill of Costs dated 10 th December, 2023 and the other dated 11 th August, 2023 to be taxed afresh before another taxing officer other than Hon. Christine Menya. 23. Each party to meet their own costs. DATED, SIGNED AND DELIVERED THIS 1 ST DAY OF SEPTEMBER, 2026 AT NAKURU. J. K. SERGON JUDGE In presence of: Ruto C/A Okiro for the Plaintiff Alale holding brief for 1 st Respondent Karanja holding brief for Opondo for 2 nd Respondent

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Prepared on 29 October 2026 · Esheria