



**Wangai v Mugambi & another (Civil Appeal 597 of 2012)
[2023] KEHC 27158 (KLR) (Civ) (22 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 597 OF 2012

AN ONGERI, J

DECEMBER 22, 2023

BETWEEN

DR KIAMA WANGAI APPLICANT

AND

JOHN N MUGAMBI 1ST RESPONDENT

MUGAMBI & COMPANY 2ND RESPONDENT

RULING

1. The application coming for consideration in this ruling is the one dated 7/3/2023 brought under Rule 11(4) of the *Advocates Remuneration Order*, Section 1A, 3A and 63(e) of the *Civil Procedure Act*, Cap 21 Laws of Kenya seeking for the following orders;
 - i. That this honourable court be pleased to set aside in its entirety the ruling delivered by Honourable F. Rashid (as he then was) delivered on the 31st May 2018.
 - ii. That this honourable court be pleased to order that the respondent's bill of costs be re-taxed by the Deputy Registrar of this honourable court.
 - iii. That this honourable court be pleased to strike out the two certificate of taxation dated 7th June 2018, which were erroneously extracted and issued to the respondent herein.
 - iv. That in the alternative, this honourable court be pleased to strike out the second certificate of taxation dated 7th June 2018, which was erroneously extracted and issued to the respondent herein.
 - v. That the honourable court be pleased to order the full refund of the money paid out and/or deposited in court in terms settling the taxed costs.



- vi. That the costs of this application be borne by the respondent in any event.
2. The application is based on the following grounds;
- i. That the honourable Deputy Registrar misdirected himself in taxing two bills filed by the respondent herein both dated 12th October 2017.
 - ii. That the honourable Deputy Registrar misinterpreted the provisions of the *Advocates Remuneration Order*, 2006 while taxing item one of the bill of costs thereby arriving at an erroneous figure as the instruction fees.
 - iii. That therefore, it is necessary that the bill of costs is re-taxed by a different Deputy Registrar to subvert the prejudice that has already befallen the applicants herein.
 - iv. That without prejudice to the foregoing, the applicants herein did institute a suit against reliefs as one single unit, to which the same has since undergone various stages of the trial process resting with the dismissal of the appeal with costs to the respondent on the 6th October 2017 an appeal that was filed and was being prosecuted as a single claim against the applicant herein and by one firm of advocates.
 - v. That upon dismissal of the instant appeal with costs, the respondent herein out of misdirection, ignorance of the law and total disregard of the rules of procedure decided to separate the parties to the present suit by filing two separate bill of costs for assessment as against one John N. Mugambi & Company advocates as a separate unit, all with the sole aim of deriving a benefit unjustly and unfairly.
 - vi. That the two separate bill of costs were presented in court before the taxing master Hon. F. Rashid (as he was then was) for purposes of taxation and to whom upon accurate consideration of the two bills, a ruling date was reserved and delivered on the 31st May 2018 allowing the taxed costs at kssh.94,425/= as a single taxation, and the amount has since been fully paid.
 - vii. That upon payment of the taxed costs, the respondent brought in a fresh misguided claim for an additional payment of similar costs arising from the same case and in turn applied for committal of the 1st applicant to civil jail for not complying with the orders of the court directing him to settle the taxed costs arising from the two sets of bill of costs.
 - viii. That it is not clear how the respondent herein was able to extract two certificates of costs of even date (7th June 2018) when there was in place one set of ruling delivered; which again raises a lot of suspicion as to how it was acquired, and in turn now seeks enforcement and payment over the same unjustly and illegally.
 - ix. That the certificates of taxation being erroneously and illegally extracted ought to be struck out in their entirety.
 - x. That the dismissal of the appeal with costs did not anticipate that the respondent herein would file separate bill of costs against each respondent and call for taxation of the both separately as against each and every individual when it was clear that the appellants were one and the same person, litigating under the same title, seeking similar reliefs and through the use of the same firm of advocates and as against the same party.
 - xi. That the dismissal order of 6th October, 2017 was very categorical as to payment of costs by the appellants as the court did recognize that it was dealing with one single appeal brought by two parties litigating under the same title as against the respondent herein. Moreover, the two



parties filed one single set of pleadings drawn and filed by one firm of advocates, Gachie, one Bill and only taxed the other or in the alternative would have directed the respondent to file one bill.

- xii. That owing to these glaring irregularities in the taxing of the two bills filed by the respondent herein, it is only just and fair that the ruling of the taxing officer is set aside the certificates of taxation are struck out from the record and the bill of costs is re-taxed by the Deputy Registrar of this honourable court.
- xiii. That it is therefore in the interest of justice and fairness that this reference is allowed as prayed.
- 3. The application is supported by the affidavit of John Mugambi sworn on 7/3/2023 which reiterates the grounds herein.
- 4. The parties filed submissions which I have duly considered.
- 5. I find that it is not in dispute that the Taxing Master taxed two bills of costs.
- 6. I set aside the 2nd certificate of taxation dated 7/6/2018.
- 7. The amount deposited in court be refunded to the appellant.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF DECEMBER, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the 1st Respondent

..... for the 2nd Respondent

