



**Ong’udi v Odhiambo (Environment and Land Appeal  
E013 of 2020) [2023] KEELC 17517 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17517 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND APPEAL E013 OF 2020  
SO OKONG’O, J  
MAY 18, 2023**

**BETWEEN**

**HEZEKIA ONG’UDI ..... APPELLANT**

**AND**

**DANIEL OJJO ODHIAMBO ..... RESPONDENT**

**RULING**

1. This appeal was allowed with costs to the Appellant on May 31, 2022. The Appellant filed a party and party bill of costs for taxation on June 3, 2022. The Appellant’s bill of costs dated June 3, 2022 which was drawn in the sum of Kshs 434,728/- was taxed at Kshs 209,534/- on November 24, 2022 and a certificate of costs for the said amount was issued on November 30, 2022. The bill was taxed in the absence of the Respondent’s advocates who were said to have been served with the bill of costs and notice of taxation but did not turn up for the taxation of the bill on November 9, 2022.
2. What is now before me is the Respondent’s application brought by way of a Notice of Motion dated December 14, 2022 brought under Orders 45 and 51 of the *Civil Procedure Rules* and sections 3 and 3A of the *Civil Procedure Act*. In the application, the Respondent has sought the following orders;
  1. That the certificate of costs dated November 24, 2022 and issued on November 30, 2022 be reviewed, set aside and substituted with an order by the court(sic).
  2. That the costs of the application be provided for.
3. The Respondent’s application which is supported by the affidavit of the Respondent’s advocate, Peter Odhiambo sworn on December 14, 2022 is brought on the ground that the Respondent’s advocates were not served with the bill of costs and the notice of taxation and as such the taxation on the basis of which the said certificate of costs was issued proceeded in their absence. The Respondent’s said advocate has averred that substantial loss would be occasioned to the Respondent unless the said certificate of costs is reviewed.



4. The application is opposed by the Appellant through a replying affidavit sworn by his advocate, Cecil Kouko on January 11, 2023. The Appellant has contended that the Respondent's advocates were served with the bill of costs and the notice of taxation through their known e-mail addresses in accordance with the provisions of the Civil Procedure Rules. The Appellant has contended that the Respondent is mischievous and has brought the application before the court in bad faith with the intention of delaying the Appellant from enjoying the fruits of his judgment. The Appellant has urged the court to dismiss the application as an abuse of the process of the court.
5. The application was argued on February 2, 2023. In their submissions, the advocates for the parties merely reiterated the contents of their respective affidavits in support of and in opposition to the application. It is not necessary to rehearse the same here. I have considered the application together with the affidavit filed in support hereof. I have also considered the Appellant's replying affidavit in opposition to the application. Finally, I have considered the respective submissions by the advocates for the parties.
6. The jurisdiction to tax bills of cost is conferred upon the Deputy Registrar under paragraph 11 of the Advocates Remuneration Order (hereinafter referred to as "ARO"). This court only intervenes in the taxation of costs in limited circumstances provided for in the ARO. Paragraph 13A of the ARO gives the Deputy Registrar (hereinafter referred to only as "the taxing officer") full power to deal with all the issues that may arise during the taxation of bills of cost. The instances when this court can intervene in the taxation of a bill of cost are first; when an objection is raised to a decision of the taxing officer under paragraph 11 of the ARO and secondly, where with the consent of the parties, the taxing officer refers any matter in dispute arising out of taxation of a bill of cost for the opinion of the court under paragraph 12 of the ARO.
7. The present application is not before the court either under paragraph 11 of the ARO or paragraph 12 of the ARO. As I mentioned at the beginning of the ruling, the court has been moved under Orders 45 and 51 of the Civil Procedure Rules and sections 3 and 3A of the Civil Procedure Act. I am not persuaded that this court has power under Order 45 of the Civil Procedure Rules that deal with the review of orders and decrees to review an order or decision made by a taxing officer on the taxation of a bill of costs. A review of the nature provided for under Order 45 of the Civil Procedure Rules can only be undertaken in the instant case by the taxing officer who made the order sought to be reviewed and not by this court.
8. In my view, any party aggrieved by a decision of the taxing officer has only one remedy before this court namely, to file a reference under paragraph 11 of the ARO. What is before me is not a reference but an application for review. I am of the view that if the Respondent was aggrieved with the ex parte proceedings of November 9, 2022 on the ground that he was neither served with the bill of costs nor notice of taxation, he should have filed an application before the taxing officer for the setting aside of the proceedings of that date and the subsequent ruling of November 24, 2022. The powers granted to the taxing officer under paragraph 13A of the ARO are wide enough to cover the setting aside of ex parte proceedings and orders. If the Appellant wished to have the ruling of November 24, 2022 set aside by this court, he ought to have moved the court by way of a reference under paragraph 11 of the ARO. This court is therefore not properly seized of the application before it.
9. I have said enough to show that this court has no jurisdiction to deal with the Appellant's application. Consequently, the Notice of Motion dated December 14, 2022 is struck out. Each party shall bear its own costs of the application since the application has failed for want of jurisdiction an issue that was raised by the court on its own motion.

**DELIVERED AND SIGNED AT KISUMU ON THIS 18<sup>TH</sup> DAY OF MAY 2023**



**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Appellant

Mr. Odhiambo for the Respondent

**Ms. J.Omondi-Court Assistant**

