



REPUBLIC OF KENYA



**Muindi & 2 others v Munyao (Environment and Land Miscellaneous Application E065 of 2021) [2023] KEELC 17622 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17622 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E065 OF 2021**

**A NYUKURI, J**

**MAY 17, 2023**

**BETWEEN**

**MUTINDA MUINDI ..... 1<sup>ST</sup> APPLICANT**

**MUNYAO MAWEU ..... 2<sup>ND</sup> APPLICANT**

**MUTUNGI MUTINDA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**BONIFACE MUINDE MUNYAO ..... RESPONDENT**

**RULING**

**Introduction**

1. Before court is a Notice of Motion dated November 17, 2021, filed by the Applicants seeking the following orders;
  1. This Honourable Court be pleased to transfer Tawa Melc Case NO. 226 of 2015 to the Environment and Land Court at Machakos for purposes of taxation.
  2. Costs of this application be provided for.
2. The application is anchored on the grounds on its face together with the affidavit of Mutinda Muindi, the 1<sup>st</sup> Applicant sworn on November 17, 2021. The Applicants' case is that Case No. Tawa MELC Case No. 226 of 2015 had initially been filed before this court before being transferred to Tawa Magistrates Court due to pecuniary and territorial jurisdiction. That the said case was dismissed with costs to the Applicants. The Applicants further stated that they filed a party and a party bill of costs against the respondent for assessment by the court and vide the court's ruling dated October 7, 2021, the taxing master ruled that items 1 to 8 of the bill of costs dated October 13, 2020 be filed before the Deputy Registrar Machakos High Court for taxation. He was of the opinion that no prejudice will be suffered by the Respondent if the orders sought are granted.



3. The application was opposed. Boniface Muinde Munyao filed a replying affidavit sworn on December 20, 2021. His case was that the bill of costs in issue was duly taxed in the sum of Kshs. 17,980/- which he paid in full. He conceded that items 1 to 8 of the bill of costs are to be filed before the Deputy Registrar of this court for taxation. He took the position that the Applicants should file a bill of costs for items 1 to 8 before the Deputy Registrar as ordered instead of asking for transfer of the case from Tawa as no valid reason has been advanced.
4. The application was canvassed by way of written submission. On record are the Applicants' submissions dated February 7, 2022 and the Respondent's submissions dated March 10, 2022; both of which this court has considered.

### **Analysis and Determination**

5. I have carefully considered the application, the supporting affidavit, the replying affidavit and submissions. The sole issue that arise for determination is whether the file in Tawa MELC No. 226 of 2015 ought to be transferred to this court for purposes of taxation of items 1 to 8 of the bill of costs dated October 13, 2020. section 3A of the *Civil Procedure Act* provides for this court's jurisdiction and inherent power to make any necessary orders for the ends of justice.
6. It is not in dispute that Tawa MELC No. 226 of 2015 was initially filed in this court, but later on transferred to the Magistrates Court in Tawa. It is also not in dispute that the Applicants' bill of costs dated 13<sup>th</sup> October 2020 was partially taxed, with the taxing master referring items 1 to 8 of the said bill for taxation by the Deputy Registrar of this court. That decision has not been set aside, reviewed or appealed against and therefore the same stands.
7. The Applicant herein has sought that the file at Tawa Law Courts be brought before this court so that the orders of the taxing officer made on October 7, 2021 may be complied with. The Respondent argues that the Applicants can file another bill of costs without transferring the lower court file to this court. However, it is my view that the taxation of the listed items being items 1 to 8 are in respect of proceedings and matters taken in the file before Tawa Law Courts, and taxation thereof would be properly done when the same file is before the Deputy Registrar. The Respondent has not stated any prejudice that he will suffer if the orders sought are granted and therefore it is my view that in the interest of justice, the Applicant deserves the orders sought.
8. However, for purposes of order and to avoid the file in issue having to be shuttled between Tawa Magistrates Court and this Court, it is my considered view that the file is brought to this court only for purposes of compliance with orders of the taxing officer made on October 7, 2021 and upon taxation of items 1 to 8, the file shall be returned to Tawa Magistrates Court for further proceedings including execution.
9. In the premises, I allow the Notice of Motion dated 17<sup>th</sup> November 2021 and make the following orders;
  - a. That Tawa MELC Case No. 226 of 2015 be and is hereby transferred to this court for purposes of taxation of items 1 to 8 of the bill of costs dated October 13, 2020 by the Deputy Registrar of this court.
  - b. That upon the taxation stated above the said file shall be returned to Tawa Magistrates Court for further proceedings including execution.
  - c. There is no order as to costs.
10. Orders accordingly.



**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 17<sup>TH</sup> DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the Presence of;

Mr. Mukula for Applicants

Mr. Boniface Munyao the Respondent in person

Ms Josephine – Court Assistant

