

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISCELLANEOUS CIVIL CASE NO. 77 OF 2018

JOHN MWANGI NDETHI.....APPLICANT

VERSUS

GITHAMBO TEA FACTORY.....RESPONDENT

RULING

1. The applicant obtained judgment against the respondent in *Murang'a Chief Magistrates Civil Case No. 139 of 2017*. He then lodged a pleading titled *party and party bill of costs* at the High Court.
2. When he attempted to tax the bill before the Taxing Master, the respondent raised a preliminary objection on jurisdiction. The Taxing Master declined to hear the objection and referred it to the judge.
3. The issue for determination is whether the bill of costs can be entertained at the High Court. The preliminary objection is dated 1st February 2019 and is straightforward: That the costs ought to be *assessed* in the magistrate's court under Schedule 7 of the *Advocates (Remuneration) (Amendment) Order 2014*.
4. Both parties filed written submissions on 13th May 2019 and 20th May 2019 respectively. On 12th April 2021, I heard brief arguments from learned counsel for both parties.
5. My answer to the issue that I set out in paragraph 3 above is in the *negative*. The primary suit was heard and determined by the magistrate's court. The order for costs emanates from that court. There has been no suit or any order for costs by the High Court. This Miscellaneous Cause is not a reference to the High Court from a decision of the Taxing Master upon taxation.
6. The proper course for the applicant is to have his costs *assessed* by the magistrate's court. I am in complete agreement on that point with my learned sister, *Aburili J*, in *Nyamogo & Nyamogo Advocates v Pan African Assurance Ltd & Another*, High Court at Nairobi, Misc. Civ. Appl. 1121 of 2013 [2016] eKLR. See also *Peter Njuguna Njoroge v Julius Naranklak Olopolomot*, High Court at Nakuru, Civ. Appl. 40 of 2006 [2010] eKLR.
7. I uphold the preliminary objection. The applicant's *party and party bill of costs* dated 19th November 2018 filed before the High Court is struck out with no order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 27th day of April 2021.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Ms. Macharia holding brief for Mr. Mbue for the applicant instructed by Mbue Ndegwa & Company Advocates.

No appearance by counsel for the respondent.

Ms. Dorcas Waichuhi & Susan Waiganjo, Court Assistants.