



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

ELECTION PETITION NO. 2 OF 2017

SULEIMAN KASUTI MURUNGA.....PETITIONER

-VERSUS-

THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT

MOSES MUNYESI-RETURNING OFFICER, KIMILILI CONSTITUENCY...2<sup>ND</sup> RESPONDENT

DIDMAS WEKESA BARASA alias DIDYMAS MUTUA.....3<sup>RD</sup> RESPONDENT

RULING

This ruling relates to 2 applications dated 25<sup>th</sup> October, 2019 preferred by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and another dated 16<sup>th</sup> January, 2020 by the 3<sup>rd</sup> respondent.

The two applications seek similar prayers; that is;

- a. The honourable court be pleased to review the Taxation Ruling delivered on the 25<sup>th</sup> October 2018 in the Bill of Costs dated 25<sup>th</sup> June, 2018.
- b. The honourable court be pleased to alter appropriately the Bill of Costs dated 25<sup>th</sup> June, 2018 to incorporate the High Court's finding in the Judgement dated 10/7/2019.
- c. Costs of the application.

The facts relevant to the application are that a Ruling on the 1<sup>st</sup> and 2<sup>nd</sup> respondents' Bill of Costs was delivered on 25/10/2018 by the Deputy Registrar where he awarded Kshs 800,000/= as Instructions Fees.

Dissatisfied with the award, the 1<sup>st</sup> and 2<sup>nd</sup> respondents preferred a Reference to the judge wherein judgement was delivered on 10/7/2019. The learned judge set aside the award of Kshs 800,000/= and substituted it with Kshs 3,000,000/= as instructions fees and left the other items in the bill undisturbed.

The applicants now contend that there is an error with regard to this Ruling in that as per Schedule 6 Paragraph 2 of the Advocates Remuneration Order, 2014, getting up fees should not be less than a third of the Instructions Fees.

That it follows therefore that if the instructions fees are assessed at Kshs 3, 000,000/=, getting up fees should be Kshs 1, 000,000/=.

Schedule 6 paragraph 2 of the Advocates Remuneration Order, 2014, states;

**In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation.**

The order sought to be reviewed by this court was delivered on 10<sup>th</sup> July, 2019 in the following terms;

**The judge in capping the costs took into account the nature of the claim, effort made by the parties, complexity of the matter and research involved to arrive at the instructions fees and therefore the judge having capped the instructions fees, it was not available for the Deputy Registrar to revise the same downwards as it had been settled by the trial judge. The instructions fees of Kshs 800,000/= is hereby set aside and replaced with Kshs 3,000,000/=. The rest of the items in the Bill of Costs remain undisturbed.**

The court in its order was very specific as it was only the instructions fees which was set aside. All the other items in the bill remained the same. I find no error in the order made to warrant a review by this court. The applications are found without merit and are hereby dismissed with costs. Orders accordingly.

**DATED AND DELIVERED AT BUNGOMA THIS 22<sup>ND</sup> DAY OF JUNE, 2021**

**S.N RIECHI**

**JUDGE**