



**Noorani v Ochieng & another (Environment & Land Case
319 of 2008) [2023] KEELC 19282 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19282 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 319 OF 2008**

**LN MBUGUA, J
JULY 27, 2023**

BETWEEN

AHMED NOORANI PLAINTIFF

AND

JOYCE AKINYI OCHIENG 1ST DEFENDANT

**ONESMUS G GITHINJI T/A ONESMUS GITHINJI & CO
ADVOCATES 2ND DEFENDANT**

RULING

1. The 2nd Defendant's Chamber Summons application dated May 2, 2023 is for determination. He seeks orders that this Honourable court be pleased to set aside the ruling delivered by Hon. Mary Osoro (Learned Deputy Registrar) on March 16, 2023 on the party and party bill of costs dated November 11, 2022 in its entirety and that it be remitted to a different Deputy Registrar for taxation other than Hon. Mary Osoro. He also seeks costs of the application.
2. The application is based on the 2nd Defendant's supporting affidavit sworn on May 2, 2023. He avers that on April 25, 2023, the Hon Deputy Registrar I.N Barasa delivered a ruling on the Plaintiff's party and party bill of costs dated 9.9.2022 where she taxed the bill at ksh.557,100/=.
3. He further avers that the said ruling was rendered per incuriam contrary to the orders of this Honourable Court issued on 7.12 2022 directing that costs be calculated from May 14, 2013 thus awarding the Plaintiff costs incurred prior to May 14, 2013, hence unjustly enriching him.
4. The application is opposed by the Plaintiff vide grounds of opposition dated June 21, 2023 stating that the application is incompetent as it is a challenge on the decision of the taxing officer, which can only be filed by way of a reference.



5. The Plaintiff also filed a replying affidavit sworn on June 23, 2023. He avers that there is no record of a ruling delivered by Hon. Mary Osoro (Learned Deputy Registrar) as indicated by the 2nd Defendant in his chamber summons application as well as a party and party bill of costs dated November 11, 2022, thus the orders sought are incurably defective.
6. He points out that the bill of costs in contention is dated September 9, 2022 and the ruling in contention was delivered on April 25, 2023 by Honourable I.N Barasa (DR).
7. He avers that the 2nd Defendant failed to give a notice in writing to the taxing Officer, of the items of taxation that he would be objecting therefore contravening the provisions of Rule 11 of the Advocates Remuneration order.
8. He also avers that the orders of the court issued on December 7, 2022 were delivered later in time, after the Plaintiff had already drawn and filed his party and party bill of costs dated September 9, 2022, and that the judgment delivered on May 12, 2022 was entered for the Plaintiff jointly and severally.
9. The defendants did not file any submissions, while those of the plaintiff were filed outside the given timelines.
10. The orders sought herein being to set aside the ruling delivered by Hon. Mary Osoro (Learned Deputy Registrar) on March 16, 2023 on the party and party bill of costs dated November 11, 2022 are defective as there is no such ruling on record.
11. Further, the 2nd Defendant did not comply with the procedure for filing a reference as outlined under Rule 11 of the Advocates Remuneration order. He did not file a notice as the rules contemplate. The said procedure was summarised by the court in *Elijah Njuguna Njoki v Peter Muriu Njuguna & 4 others* [2021] eKLR as follows;
 - a. The aggrieved party issues a notice within 14 days on the items objected.
 - b. The Taxing Officer shall forthwith give reasons for his decision.
 - c. Upon receipt of the reason, the objector shall within 14 days file an application to the High Court setting out grounds for objection.
 - d. If dissatisfied with the High Court, the objector shall with leave of court appeal to the Court of Appeal.”
12. Nevertheless, I have taken into account the import of the provisions of Article 159 of *the Constitution* and the fact that the current application was filed within 14 days from the date of the Taxing officer’s ruling (the one dated 25.4.2023). I will therefore proceed to determine the application on its merits.
13. I discern that on December 7, 2022, the Defendants were jointly and severely condemned to pay the Plaintiff interest plus costs with a rider that the same be calculated from May 14, 2013. The bill of costs was filed earlier as it is dated September 9, 2022. The applicant avers that the ruling of the Deputy Registrar has been rendered incuriam in view of the court’s ruling of December 7, 2022.
14. However, it is noted that the Deputy Registrar in her ruling of April 25, 2023 did take into account the ruling of this court dated December 7, 2023 in the following words;

“The court entered judgment in the suit on the May 12, 2022 directing the defendants to pay the costs of the suit. On the December 7, 2022, the court varied the decree issued on the 12th



May 2022 and directed that the defendants pay the interest on the decretal sum at the rate of 14% together with costs to be calculated from May 14, 2013. Consequently, Items 4 to 18, 41 to 72, 119 to 130, 139 to 158 and 187 to 203 in the plaintiff's party and party bill of costs are disallowed."

15. In light of the foregoing findings, I find that there was no error in the ruling of the Deputy Registrar, noting that by year 2013, the case was underway hence the instruction and getting up fees ought to be factored in the bill of costs.
16. The end result is that the application dated May 2, 2023 is found to have no merits, the same is hereby dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Michuki for Plaintiff

Kabugu for 2nd Defendant

Court Assistant: Eddel

