



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 320 OF 2001

**IN THE MATTER OF ESTATE OF ISAAC M'THURANIRA M'IKWINGA ALIAS THURANIRA IKWINGA ALIAS
M'THURANIRA M'IKWINGA (DECEASED)**

FAITH NDUMBA GIKUNDA.....APPLICANT/INTERESTED PARTY

VS

DANIEL MWITI.....PETITIONER/RESPONDENT

ERASTUS MUTUMA RUGUARA.....RESPONDENT

RULING

Application dated 19th June 2015 seeks that the court reviews and/or revises the decision of the DR dated 10th March 2015 and that the bill of costs dated 12th February 2015 be taxed afresh. The applicant sought for an order enlarging of time for filing reference. It was prayed that the court issues a certificate of costs payable to the Respondent.

The applicant grounds are that the reasons for the decision taxing the bill at Kshs 159,371/= were issued on 28.4.2015 and the taxation was done on 12.2.2015 and it took considerable time to reach the applicants advocate who had to seek instructions by which time the 14 days period had lapsed. It was also argued the sum of Kshs 159,371/= was too excessive considering that this was an auxiliary application. It was argued that the DR misdirected himself on the applicable law as a result whereof arriving at an altogether an untenable and unconscionable result. The application is also supported by an affidavit sworn by applicants advocate.

The letter dated 28th April 2015 is signed by the Executive Officer giving reasons for taxing the bill of costs as shown in certificate of costs dated 10th March 2015. Taxation was done by Hon D.O. Onyango – DR . Mr Mutura appeared for Respondent, whereas there was no appearance for applicant on account of an affidavit of service the Dr taxed the bill only discounting 10,000/= on 2 items for transport 17(a) and 20(a). On the body of the bill there is nothing to show whether taxation was done except for taking out alleged costs of transport.

In the ruling it is not indicated whether the DR considered that the Respondents counsel only came into the cause because of the application only and not because of the entire cause.

The applicant filed an application on 23rd October 2013 and the Respondent Daniel Mwititi respondent in R.A filed on 20.11.2013. 2nd Respondent also filed R.A.

The Respondents counsel also filed a Notice of preliminary objection dated 30th April 2014. A further Replying affidavit was also filed on 12th May 2014 annexing an attachment. Submissions in support of P.O was also filed on 30.10.2014.

The applicants' application was subsequently withdrawn without being argued and the preliminary objection was overtaken by events. The bill of costs was therefore to be taxed on account of the application which was withdrawn and not the entire cause and should have been limited to that extent. The instructions fees should be limited to the application which was withdrawn and not the entire cause and should consider cost of value of estate as at time of filing.. The application is therefore allowed and the order of DR is reviewed returning the bill to be taxed afresh putting into consideration that the bill should be confined to the application only. The application is allowed.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 21st DAY OF JUNE 2018.

IN THE PRESENCE OF:

C/A:

Applicants:-Ms Nyagah holding brief for Mokuu for applicant.

Petitioner:- Mr Carl Peters Mbaabu for Respondent.

HON. A.ONG'INJO

JUDGE