



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC MISCELLANEOUS NO. E046 OF 2021**

**JOSEPHINE WAMBUI GITHINJI.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**PETER GACHENGA KIMUHU.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**LUCY WANJIRU RUTHARI.....2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO COUNTY.....3<sup>RD</sup> DEFENDANT**

**RULING**

This ruling is on the Chamber Summons dated 17<sup>th</sup> November, 2021 which seeks the following orders;

1. Setting aside of the Decision of the Taxing Master dated 27/10/2021
2. Re- taxation of the Plaintiff's bill of costs by a different Taxing Master.
3. In the alternative, this Court to exercise its inherent jurisdiction and tax the bill of costs afresh taking into consideration the applicant's submissions filed on 13<sup>th</sup> October, 2021.

Prayer 4 has already been granted.

The application which is brought under **Rules 2, 11(1) and (2)** of the **Advocates Remuneration Order 2009, Order 22 Rule 25, Order 42 Rule 6 Civil Procedure Rules 2010, Sections, 1A, 1B, 3A and 63( c) and ( e) of the Civil Procedure Act** and all enabling provisions of the law is premised on eight (8) grounds.

1. That the learned Deputy Registrar failed to consider the Applicant's Written Submissions dated 13/10/2021 and filed on 15/10/2021.
2. That the Taxing Officer disregarded the weight of evidence on record, acted contrary to the settled principles of law, misdirected himself on the principles of law applicable, made a ruling that had no basis in law, and exceeded and abused his discretion.
3. That the learned Deputy Registrar delivered a ruling on 27<sup>th</sup> October, 2021 in respect to the Plaintiff's Bill of Costs dated 10<sup>th</sup> May, 2021 wherein the same was taxed at Kshs. 1, 315, 733/- from Kshs. 1, 551, 549 thereby taxing off Kshs. 235,816 only from the said Bill of Costs.

the application is supported by an affidavit sworn by the first defendant in which he reiterates the grounds mentioned above and adds a few new issues.

When the applicant's Counsel requested to be furnished with reasons for taxation of items, 3, 10, 15 to 18, 22, 25, 28 to 36, 38 to 40, 42, 43, 58, 63, 66, 70, 75 to 79, 81 to 85, 87,88, 91to 93, 95, 97 to 109, 111 to 113 118, 122, 129 to 132, 136, 142 to 155, 129 to 132, 136, 142 to 155, 166, 167, 194- 199, 205, 207 to 209, 211 to 214, 217, 222, 226, 228, 238 and 244, the Taxing Officer did not give a comprehensive explanation only saying that he was guided by the Advocates Remuneration Order.

Finally, the Taxing Master allowed items 100, 103, 106, 150, 113 and 130 which related to air fare from United States of America yet they

were not proved and the Plaintiff had only attended the trial Court twice and not six times.

The Plaintiff/Respondent has filed four grounds of opposition to the application dated 17<sup>th</sup> November, 2021 namely;

1. That it is a non- starter, frivolous, vexatious and incompetent
2. That the same is bad in law because the Bill of Costs in question was drawn to scale and taxed in accordance with the law
3. That the ruling was guided by the Advocates Remuneration Order and
4. That it is fatally incompetent and lacks in merit and it is aimed at delaying and denying the Plaintiff the enjoyment of the fruits of her Judgment.

I have carefully considered the application in its entirety including the affidavit, the grounds and the entire record and I make the following findings;

Firstly, the Defendant/applicant was entitled to elaborate reasons as how each item of the Bill of Costs was taxed the way it was.

Secondly, on the items relating to airfare, the Taxing Master should have stated clearly the dates that the Plaintiff attended Court and air tickets numbers.

For the above reasons, I find that the application dated 17/11/2021 has merit and I allow it in its entirety.

I direct that the Bill of Costs be re-assessed by Hon. Irene Kahuya Principal Magistrate, Kajiado.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27<sup>TH</sup> DAY OF JANUARY, 2022**

**M.N. GICHERU**

**JUDGE**