



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**MISC. CIVIL APPLICATION NO. 275 OF 2011**

IN THE MATTER OF A REFERENCE TO THE HIGH COURT OF THE SENIOR RESIDENT  
MAGISTRATE’S DECISION (OF THE 28<sup>TH</sup> NOVEMBER 2011) ON THE ASSESSMENT OF THE  
ADVOCATES/CLIENT BILL OF COSTS

AND

IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 OF THE LAWS OF KENYA

**NATES & ASSOCIATES ..... APPELLANT/APPLICANT**

VERSUS

**1. HARRISON MULWA**

**2. MAGDALINE MULWA ..... RESPONDENTS**

**RULING**

1. The application dated 7/12/2011 seeks the following orders:-
  1. **“That the Senior Resident Magistrate’s decision on the issue of Advocate/Client fees made on 28<sup>th</sup> November 2011 be set aside.**
  2. **That this Honourable Court be pleased to re-assess and review the Advocate/Client bill of costs dated the 28<sup>th</sup> November 2011.**
  3. **That costs of this application be provided for.”**
2. According to the affidavit in support the bill of costs filed before the Magistrate’s Court was assessed at Kshs.76,000/= which was excessive and not assessed in accordance with the provisions of the applicable **Advocates Remuneration Order**.
3. The application is opposed. It is averred in the replying affidavit that the application is incompetent and should be struck out. It was further stated that the fees charged are in accordance with the law.
4. The application was canvassed by way of written submissions which I have duly considered.
5. **Rule 11 (2) of the Advocates Remuneration Order 2009** which the Applicant’s counsel relied upon or any other **Advocates Remuneration Order** does not make any provision for the assessment of costs in the lower court. Under **Order 21 rule 9 (2)** costs in the lower court are assessed by the magistrate. There is no provision in the **Advocates Remuneration Order** for the filing of a reference to the High Court on costs assessed by the lower court. Consequently, the Applicant ought to have gone back to the same court to have the same set aside and/or reviewed.
6. With the foregoing the application is incompetent and I strike out the same with costs.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 30<sup>th</sup> day of September 2014.**

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**B. THURANIRA JADEN**

**JUDGE**