



REPUBLIC OF KENYA



**Kitheka v Mwova & 3 others (Environment & Land Case 18 of 2021)  
[2023] KEELC 580 (KLR) (3 February 2023) (Directions)**

Neutral citation: [2023] KEELC 580 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
ENVIRONMENT & LAND CASE 18 OF 2021  
LG KIMANI, J  
FEBRUARY 3, 2023**

**BETWEEN**

**KILONZO KITHEKA ..... PLAINTIFF**

**AND**

**ALEXANDER MWENDWA MWOVA ..... 1<sup>ST</sup> DEFENDANT**

**LAND ADJUDICATION OFFICER-KYUSO ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT SURVEYOR-KYUSO ..... 3<sup>RD</sup> DEFENDANT**

**DISTRICT REGISTRAR (MWINGI) ..... 4<sup>TH</sup> DEFENDANT**

**DIRECTIONS**

1. These directions are issued in respect of the plaintiff's letter dated November 25, 2022 addressed to the Presiding Judge Kitui Law Courts. Since this is a matter that falls within the jurisdiction of the ELC, the same was referred to this court to deal. The said letter was a follow up to a letter from the plaintiff in person dated October 19, 2022 addressed to the Deputy registrar of this court and her response dated November 7, 2022.
2. In summary the background to the Plaintiff's complaint is that;
  - i) The plaintiff withdrew this suit and the court directed that he pays costs to the 1<sup>st</sup> defendant. On March 7, 2022 the plaintiff filed a Party and Party bill of costs while the plaintiff filed his bill of costs and written submissions dated April 27, 2022 and filed on the same date.
  - ii) The matter came up for mention on May 4, 2022 when the Deputy Registrar (DR) confirmed that all parties had filed submissions and gave June 15, 2022 as the ruling date.



- iii) Two weeks later the plaintiff states that he got information from his advocate that his bill of costs and submissions were plucked out of the court file and that the advocate had tried to reach the DR without success. That even on the ruling date he was unable to get the attention of DR.
  - iv) The plaintiff complained of delay in getting the ruling on taxation and that the court file went missing.
3. The DR responded by a letter dated November 7, 2022 and stated that the 1<sup>st</sup> defendant filed a bill of costs dated March 4, 2022. The 1<sup>st</sup> defendant filed submissions dated April 28, 2022 and a ruling was delivered on June 15, 2022. The DR noted that upon perusal of the court file, no other bill of costs was pending taxation and further that the court file had not been reported missing. She further noted that the annexure to the plaintiff's letter were not in the court file and the plaintiff was urged to take a mention date for directions.
4. A mention date was taken before this court on December 7, 2022. In the meantime, the plaintiff wrote the letter to the Presiding judge dated November 25, 2022 expressing his dissatisfaction with the response made by the DR and requesting a review of the 1<sup>st</sup> respondent's bill of costs by alternative DR and an audit by the court on the circumstances surrounding this complaint.
5. When this matter came up for mention on December 7, 2022 in the presence of the counsel for the plaintiff and 1<sup>st</sup> defendant, it was agreed that the issues raised in the complaint be investigated and that since Mr. Mwendwa Advocate was on record for the plaintiff that he writes a letter explaining the nature of the complaint. Mr. Mwendwa wrote the letter from D. M. Mutinda & Co. Advocates dated December 7, 2022 and stated that on March 4, 2022 the court allowed him to file and serve his bill of costs and submissions and the 1<sup>st</sup> respondent was directed to file submissions.
6. He stated that he filed submissions and bill of costs on April 27, 2022 and served on April 28, 2022. The 1<sup>st</sup> defendant filed submissions on May 4, 2022. That on the mention date April 4, 2022 both parties confirmed filing submissions and DR gave a ruling date of June 15, 2022. That before the ruling their clerk Gladys was called by one of the court staff Mr. Mohammed and he handed her the original copies of their Party & Party Bill of Costs and the submissions. Counsel went personally to the registry to find out why the documents were returned but Mohamed said he did not know the reason. He stated that he sought audience with the DR but the DR instead through her Court Assistant Rachel stated that she had not given instructions for filing submissions. Further, on the date of ruling June 15, 2022 he asked the DR to clarify her directions before delivering the ruling but she stated that the ruling would be delivered and Counsel would know what to do if he had issues.
7. Thereafter, Counsel stated that he went to re-file his party & party Bill of Costs but the file could not be traced. Counsel claimed that the response by the Deputy Registrar dated November 7, 2022 was not honest since she denied having the documents in the court file whereas by then, the documents had already been re-filed.
8. I do confirm that this matter has been investigated and presentations made by the Deputy Registrar and all officers of the court registry mentioned in the letters by the plaintiff and his Advocates. I have also perused the court file and note the following: -
  - i. The 1<sup>st</sup> defendant filed his bill of costs dated March 4, 2022 on March 7, 2022.
  - ii. On 23/3/2022 the matter was listed before the Deputy Registrar for directions. The plaintiff was given 14 days to file and serve submissions; the defendant/applicant was given 14 days to file further response.



- iii. The plaintiff filed his submissions and a bill of costs dated April 27, 2022 and filed on the same date.
  - iv. It appears from the explanations given that for some reason the Plaintiffs submissions and bill of costs were not placed in the court file on the date of filing.
  - v. When the matter was mentioned before the Deputy Registrar on May 4, 2022 Counsel confirmed that they had filed submissions and the matter was reserved for ruling on June 15, 2022.
  - vi. When the documents were presented to the Deputy to place on the court file after the matter was reserved for ruling the same were not accepted and instead were returned to the advocates for plaintiff.
  - vii. The submissions were not considered at the time of taxation of the 1<sup>st</sup> defendant's bill of costs.
9. Considering the totality of the complaint by the plaintiff and his Counsel and the explanation given with regard to the plaintiff's submissions and bill of cost, I am satisfied that the plaintiff did file his written submissions and Party & Party Bill of Costs on April 27, 2022 which was outside of the time given by the DR. The issue of late filing was not raised by any of the parties when the matter came up for mention on April 4, 2022 and it was not addressed by the court at the time of reserving the matter for ruling. I have noted that the Plaintiffs submissions were returned to Counsel for the Plaintiff and were not taken into account when the Deputy Registrar was taxing the 1<sup>st</sup> Defendant's bill of costs dated 4<sup>th</sup> March, 2022. That failure to consider the submissions already filed was unfair and unjust and prejudicial to the plaintiff. The plaintiff seeks a review of the 1<sup>st</sup> defendant's bill of costs and the taxation thereof. He further seeks appointment of an alternative Deputy Registrar to tax his bill of costs and institution of an internal audit on the circumstances surrounding this matter with a view to averting similar occurrences.
10. In the circumstances of this case, I find that there was no good reason for not considering and taking in account the Plaintiffs submissions that had been properly filed before the matter was reserved for ruling. I therefore invoke this court's supervisory jurisdiction under article 165(6) and (7) of the Constitution of Kenya 2010 which provides:
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court
  - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice
11. Under the above mentioned jurisdiction I have called for the proceedings leading to the taxation of the 1<sup>st</sup> defendant's bill of costs dated March 4, 2022 and the ruling thereof and direct as follows;
- i. That the orders of taxation of the 1<sup>st</sup> defendant's bill of costs dated March 4, 2022 be and are hereby reviewed and/or set aside.
  - ii. The bill of costs be remitted back to the Deputy Registrar ELC for re-taxation, taking into consideration the written submissions by both Counsel.
  - iii. The matter be mentioned on February 22, 2023 before the Deputy Registrar for directions on re-taxation and taxation of the plaintiff's bill of costs.



- iv. From the presentations made to me I have not found any good reason to appoint a different Deputy Registrar to preside over the re-taxation and/or taxation of the plaintiff's bill of costs.

**DELIVERED, DATED AND SIGNED AT KITUI THIS 3<sup>RD</sup> DAY OF FEBRUARY 2023.**

**HON. L. G. KIMANI**

**ENVIRONMENT AND LAND COURT JUDGE**

Directions issued and read in open court in the presence of-

Moses Court Assistant

Mwendwa for the Plaintiff

N/A for other Respondents

