



George Ndungu Kimani G. N. Kimani & Co. Advocates v Njoroge (Environment and Land Miscellaneous Application 22 of 2022) [2023] KEELC 20624 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20624 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 22 OF 2022
A OMBWAYO, J
OCTOBER 5, 2023**

**BETWEEN
GEORGE NDUNGU KIMANI G. N. KIMANI & CO. ADVOCATES APPLICANT
AND
ROSEMARY WAMAITHA NJOROGE RESPONDENT**

RULING

1. George Ndungu Kimani, of G. N Kimani and Co. advocate has come to this court against Rosemary Wamaitha Njoroge praying that this Honorable Court do order that the entire matter ELC Misc No. 34 of 2021 Bill of Costs dated 3rd June, 2021 herein and the entire pleadings and proceedings be referred and transferred for hearing and determination to Naivasha High Court and be placed before Deputy Registrar, Naivasha High Court for directions and taxation as circumstances deserves. That the Honorable court do transfer the entire file to Naivasha High Court for processing, hearing and determination inter alia and that this matter be mentioned before Deputy Registrar, Naivasha for further directions. Any other order that may deem fit.
2. The application is based on grounds that on 30/03/2023, Hon. Rose Ombata in Misc ELC No. 35 of 2021 between George N. Kimani & Co., advocates versus How Kenya Limited reasonably and rightly observed that the right forum to hear the matter which is a lower court advocate/client Bill of Cost is Deputy Registrar Naivasha High Court and this position is uniform in this matter. That the applicant office despite protest was referred by staff at Naivasha High Court Registry to file this matter at Nakuru Court on basis that it was an administrative direction that land taxation causes be filed at High Court Land Office Deputy Registrar forum.
3. That the High Court has supervisory power to return this matter to Naivasha for determination in the circumstances. That the main lower court file is at Naivasha Magistrate Court and it islogistically effective to have this matter heard and determined in Naivasha High Court.



4. That it was an oversight for the officials at the Naivasha High Court Registry to insist that this matter be lodged at Nakuru Land Division in the first instance. The application is supported by the affidavit of George Ndungu Kimani who state that he is advocate of the High Court of Kenya and all the subordinate courts thereto practicing under name and style of G. N. Kimani & Co. Advocates.
5. He is the applicant herein and have capacity to swear this supporting affidavit. Previously the advocate/client bill of costs was presented at Naivasha High Court for filling but the officials declined to receive the same and insisted }that since this was a land matter Nakuru High Court land division was the oneseized with administrative Jurisdiction.
6. He avers that he protested this position but the registry officials declined to the lodging of the Bill of Costs at Naivasha High Court registry citing new administrative regulations. That o. n 30/03/2023, Hon. Rose Ombata in Misc ELC No. 35 of 2021 as a way of acknowledging the applicant position observed that it is only fair that further direction on transfer of the matter to High Court,Naivasha be made which he does support.
7. The applicant seeks an order that the entire file, pleadings and proceedings in this matter and Misc ELC No. 35 of 2021. George N. Kimani & Co. Advocates versus How Kenya Limited be laid before the Honorable Judge for directions on issue of further handling.
8. In opposition the applicants, Mr Mungai argues that the Deputy Registrar rightly declined to tax the matter because she has jurisdiction to only tax matter emanating from the High court and not the Chief Magistrate Court.
9. I have considered the application, rival submissions and do find that the court which presided over court proceedings is best placed to determine the costs and fees to the parties and their Advocates. The Deputy Registrar Environment and Land court has no power to tax a bill emanating from the lower court. The magistrate who handled the proceedings is the best suited judicial officer to assess the advocate's fees. Ultimately, this matter is transferred to the Chief Magistrates court Naivasha. Cost to be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF OCTOBER 2023.

A. O. OMBWAYO

JUDGE

