



**Ong’udi v Gor Construction & Hardward Ltd & another (Environment and Land Miscellaneous Application E034 of 2022) [2023] KEELC 21240 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21240 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E034 OF 2022  
E ASATI, J  
NOVEMBER 2, 2023**

**BETWEEN**

**EDITH ALUOCH ONG’UDI ..... APPLICANT**

**AND**

**GOR CONSTRUCTION & HARDWARD LTD ..... 1<sup>ST</sup> RESPONDENT**

**ONG’UDI OKUMU HEZEKIAH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is respect of the Chamber Summons application dated 27<sup>th</sup> July, 2022 brought by the applicant herein pursuant to the provisions of article 159 of *the Constitution* of Kenya 2010, section 3A of the *Civil Procedure Act*, Order 9 Rule 8 and Order 51 of the *Civil Procedure Rules* 2010 and Paragraph 11(1) and (2) and 4 of the *Advocates Remuneration Order*.
2. The application seeks for order that;
  - a. the ruling of the Deputy Registrar Hon. M. Shimenga in Kisumu ELC NO.E034 of 2022 dated 13<sup>th</sup> July, 2023 in the matter of the Bill of Costs dated 2<sup>nd</sup> February, 2023 be varied.
  - b. that in the alternative, the honourable court be pleased to exercise its inherent jurisdiction and re-tax the Bill of Costs dated 2<sup>nd</sup> February, 2023 and/or refer the Bill of Costs to another taxing officer for re-taxation or make directions for fresh taxation;
  - c. stay of execution of Certificate of Cost arising from the ruling of the Taxing Officer for payment of Kshs.237,482 pending the determination by the court.
  - d. that the applicant be served with the Bill of Costs dated 2<sup>nd</sup> February, 2023, be allowed to file her objection and/or submissions.



- e. there be stay of execution of the decree herein pending the hearing and final determination of the intended reference.
  - f. Costs of the application be provided for.
3. The grounds upon which the application sought are that a Bill of Costs herein was on 13<sup>th</sup> July, 2023 taxed against the applicant at Kshs.237,482/-. That the applicant was not aware of the suit or the taxed Bill of Costs. That the amount awarded in the taxation was manifestly excessive. That the applicant only learnt of the taxation and ruling through a friend as she was never served. That she has never given instruction to M/S Dima & Co. Advocate to file the suit on her behalf hence item No.1 on the Bill ought not have been allowed. That mistake of Counsel ought not be visited upon an innocent litigant. That the taxation was irregular, improper and malicious as the applicant was not aware of any case filed on her behalf and the Bill of Costs in respect thereof. That the application was brought without undue delay.
  4. The application was opposed vide the grounds of opposition filed by Sala and Mudany Company Advocates, dated 26<sup>th</sup> September, 2023.
  5. The application was argued orally on 28<sup>th</sup> September, 2023. The applicant submitted that the case she gave to M/S Dima & Co Advocates was NO.139 OF 2021 and that she knows nothing about the present matter. Counsel for the 1<sup>st</sup> Respondent relied on the grounds of opposition filed.
  6. The application before me is a reference under the Advocates Remuneration Order challenging the taxation of the Bill of Costs. The main grounds for challenging the taxation is that the applicant was never aware of the matter. That she never gave instructions to the firm of Dima & Associates Advocates to initiate or prosecute the matter and secondly that she was not served with the Bill of Costs.
  7. Perusal of the court record shows firstly; that this matter was initiated on 10<sup>th</sup> of November, 2022 on behalf of the applicant by the firm of Juliet Dima & Associates Advocates. It is not denied that the said Advocates are the Applicant's lawyers. The applicant submitted that she gave the said firm of Advocates instructions to act for her in Case No.139 of 2021 and not this particular matter. The court and the Respondents have no way of ascertaining this as that is a matter between Advocate and client; between the said firm of Advocates and the applicant. But what is clear from the court record is that the said firm of Advocates actively and diligently represented the applicant herein right from the date of initiating the matter. It is also clear from the annexures attached to the pleadings in the matter that the said firm of advocates had in their custody documents belonging to the applicant, inclusive of certificate of marriage, copies of pleadings in other cases involving the applicant and copy of green card and title deed for the suit land Kisumu/Karateng/1282. It has not therefore been demonstrated that the said law firm had no instructions in the matter.
  8. The other ground for the application is that the applicant was not served and hence did not participate in the taxation. The court record shows that on 24<sup>th</sup> April, 2023 when the matter came up for taxation, there was an Advocate by the name of Orego present for the applicant herein. He prayed for 14 days to file submissions on the Bill of Costs. The court granted him the 14 days and set the ruling for 13<sup>th</sup> July, 2023.
  9. The item 1 on the Bill of Costs and the awarded amount in the taxation has been challenged as being manifestly excessive. The value of the suit land was given in the Bill of Costs as Kshs.60 million. A sum of Kshs.450,000/- was claimed, the Taxing Officer taxed it and reduced it to Kshs.90,000/-.



10. In *Kipkorir, Tito & Kiara Advocates v. Deposit Protection Fund Board* [2005] eKLR the court stated as follows;

“On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”

11. No such error has been demonstrated or pointed out by the applicant. The main ground raised raised was that the Advocate who acted for the applicant had no instructions to act. This is an issue of representation that can only be sorted out between the advocate and client. I find no reason to interfere with the taxation.

The application is declined. No orders as to costs.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 2<sup>ND</sup> DAY OF NOVEMBER 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

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**E. ASATI,**

**JUDGE.**

**In the presence of:**

Maureen: Court Assistant.

No appearance for the Applicant.

Sala for the 1<sup>st</sup> Respondent.

No appearance for the 2<sup>nd</sup> Respondent

