



**Satia & another v Sichangi & 9 others (Environment & Land  
Case 24 of 2021) [2022] KEELC 93 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 93 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 24 OF 2021**

**FO NYAGAKA, J**

**MAY 4, 2022**

**BETWEEN**

**RICHARD SATIA & PARTNERS ..... 1<sup>ST</sup> PLAINTIFF**

**JESTIMORE SIMWENYI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SAMSON SICHANGI ..... 1<sup>ST</sup> DEFENDANT**

**EMMANUEL CHONGE SICHANGI ..... 2<sup>ND</sup> DEFENDANT**

**RASMI WASILWA KICHOTI ..... 3<sup>RD</sup> DEFENDANT**

**MOHAMMED WEKESA ..... 4<sup>TH</sup> DEFENDANT**

**TOM SIRENGO ..... 5<sup>TH</sup> DEFENDANT**

**WILLIAM KIRWA ..... 6<sup>TH</sup> DEFENDANT**

**RONALD SICHANGI ..... 7<sup>TH</sup> DEFENDANT**

**NICK SICHANGI ..... 8<sup>TH</sup> DEFENDANT**

**JULIUS TIRIKOI ..... 9<sup>TH</sup> DEFENDANT**

**DAVIS BARASA ..... 10<sup>TH</sup> DEFENDANT**

**RULING**

1. The Application before this Court was brought by the Defendants jointly. It is dated 10/02/2022 and was filed on the same day. It seeks the following reliefs:

(1) ...spent

(2) ...spent



- (3) That all orders issued herein on 19/10/2021 and all other consequential orders be set aside
  - (4) That costs of the Application be provided for.
2. The Application was supported by the grounds on the face of it and the Affidavit of Emmanuel Chonge Sichangi, the 5<sup>th</sup> Defendant. The Applicants stated that on 07/10/2020, Hon. Kibunja J ruled that the Applicants herein were not parties to the present suit and the orders issued on 23/07/2014 were inapplicable to them. They then cited the ruling of Hon. Njoroge J delivered on 15/06/2021 stating that the Applicants were condemned to pay costs.
  3. Consequently, the Respondent in this Application filed a contested Bill of Costs. The Applicants contended that the Bill of Costs on the entire suit only befell the 1<sup>st</sup> Applicant who is now deceased and no substitution has been made to date on that behalf. The file was transferred from Eldoret to the ELC at Kitale Law Courts. An Application for consolidation of the matter with ELC No. 100 of 2018 was dismissed on 15/06/2011. The judge directed that costs appertained to the Application and not the entire suit. Therefore, there was no basis of instruction fees on the entire suit. It was also deposed that the Bill of Costs was never served upon the Applicants. The deponent lamented that parties were not given ample time to file submissions. Finally, the only costs payable were in respect to the Application for consolidation with ELC No. 100 of 2018.
  4. The Plaintiffs opposed the Application by way of Grounds of Opposition dated 16/02/2022 and filed on 22/02/2022. Pertinently, the Plaintiffs maintained that the Application had invoked the wrong provisions of the law. The argument was that the Applicants had failed to comply with Order 46 Rule 6 (2) of the Civil Procedure Rules. That the taxing master delivered a ruling on 19/10/2021 and the Applicants have not filed a Notice of Objection against that decision. They added that the Applicants had failed to either file a reference or seek enlargement of time to file the same thereby breaching the provisions of Paragraph 11 of the Advocates Remuneration Order and Section 94 of the Civil Procedure Act.

### **The Submissions**

5. The Defendants' submissions dated 14/02/2022 were filed on the same day. They reiterated the averments deposed in their Supporting Affidavit as well as the grounds espoused in their Motion Application.
6. The Plaintiffs filed their submissions on 22/02/2022. They reiterated the contents of the Application and the Grounds. They further added that the Applicants were required by law to file a reference against the decision of the taxing master rendered on 19/10/2021 within fourteen (14) days pursuant to Paragraph 11 (1) and (2) of the Advocates Remuneration Order. They beseeched this court to dismiss the Application with costs.

### **Analysis and Disposition**

7. I have considered the Application, the Supporting Affidavit and the Grounds of Opposition. I have also considered the respective written submissions by rival parties.
8. The Application is anchored on the proceedings before the taxing master on 19/10/2021. The Application seeks that these orders be set aside. On the said date, it appears from the coram that the Defendants' and Plaintiffs' Counsel were present in court. On the date, the Bill of Costs dated 10/08/2021 was the one that was due for taxation. While the parties were well represented, it appears that none of the parties addressed the court on matters appurtenant to the Bill. Consequently, the taxing master reserved the 16/11/2021 as the date of delivery of the Ruling on the Bill of Costs.



Ultimately, she delivered the Ruling on 30/11/2021, taxing the Bill of Costs at Kshs. 594,925.00, in the presence of parties' respective Counsel.

9. I must say that this is a rather bizarre Application before me. Firstly, the Applicants, through appointed Counsel, appeared before the taxing master on the date the impugned orders were granted. They participated in the proceedings. They even took part in the proceedings of the delivery of the Ruling. At no point in time did they raise objection to the proceedings in relation to the taxation. In fact, if their argument would be taken to be true, then they acquiesced actions of the taxing master. Had they raised objections, that would have addressed part of the reasons the present Application was filed. Secondly, the reasons put forth in support of the Application bear the attributes of a rather reasonable defence, as against the taxation, that would have been presented before the taxing master to make a determination on the same. All that has been raised before me are issues that lay squarely on the taxing master. To my mind, the present grounds would have been best placed before the taxing master so that when she retired, she would have considered all the objections and oppositions raised thereto. Thirdly, by the present Application, the Applicant seemed to be exercising unorthodoxy by inviting this Court to sit as a taxing master. As it stands, this Court has no jurisdiction to make a determination on a taxation. I have no tools of such a nature. I can only find some on appeal from the taxation by way of a reference. I mean to say that this Court can only exercise appellate jurisdiction over a taxation by way of a reference from the same. The Application is manifestly, clearly and indisputably one of jumping the gun and also arrogating jurisdiction which this Court does not have, if it were to be handled by this Court. Lastly, as things are, the Application has been overtaken by events. I state so because the taxing mater has already delivered her Ruling on the Bill of Costs. For that reason the Applicants ought to use the better avenue to challenge the order of 19/10/2021 if they are aggrieved by it.
10. As earlier said, this Application is atypical of competent ones. Its purpose defeats me. For the foregoing reasons, I find that the Application is incompetent, overtaken by events and lacks merit. Consequently, I strike it out with costs to the Respondents.

Ordered accordingly.

**DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 4<sup>TH</sup> DAY OF MAY, 2022.**

**DR. IUR FRED NYAGAKA**

**JUDGE, ELC, KITALE.**

NB:

The delivery of the Ruling via electronic mail was done as per the earlier directions of this Court pursuant to those given by the Chief Justice during the Covid-19 Pandemic hence in compliance with the Civil Procedure Rules.

