



REPUBLIC OF KENYA



**Galot v Adera & another (Civil Appeal E1421 of 2023)
[2025] KEHC 2871 (KLR) (Civ) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1421 OF 2023

JN MULWA, J

MARCH 13, 2025

BETWEEN

MOHAN GALOT APPLICANT

AND

JOHNSON OTIENO ADERA 1ST RESPONDENT

TIEGO MAKOGONYA TITUS TIDAL TIEGO T/A TIEGO & CO.

ADVOCATES 2ND RESPONDENT

RULING

1. Before the court for determination is the Notice of Motion dated 2nd August, 2024 premised on the provisions of sections 1A,1B & 3A of the *Civil Procedure Act*, Order 2 Rules 15(1)(c) and (d) of the Civil Procedure Rules,2010, Section 48 of the *Advocates Act*, and upon grounds on its face and amplified in the supporting affidavit sworn by the Applicant.
2. By the motion the Applicant seeks an order to strike out the party and Party Bill of costs dated 12/6/2024 filed by the Plaintiff now the 1st Respondent in the appeal on the main reason that the Respondent did not file any documentations thereof or took any step in relation to the appeal.
3. It is instructive that the court notes that by an affidavit of service sworn on 13/1/2025, the court is satisfied that the 1st Respondent was duly served with the instant motion but as stated above, has not filed any responses or at all.
4. The Party and Party Bill of Costs sought to be struck out was filed after the Memorandum of Appeal dated 5/4/2024 was withdrawn. The Appellant, by its Notice of withdrawal of the Appeal added that the same was withdrawn with no orders as to costs.



5. Admittedly, there does not seem to have been much action since filing of the Memorandum of Appeal, by either party.
6. Ordinarily, issues pertaining to taxation of bills of costs are the preserve of the court's Deputy Registrars. The bill of costs must have been served upon the Applicant for it to take action.
7. Section 1A,1B and 3A of the Civil Procedure Act inform the objective of the Act, duty of the court and saving inherent powers of the court.
8. Order 2 Rules 15(1) and of the Civil Procedure Rules,2010 provides for striking out of pleadings, thus the court may order to be struck out or amended any pleading on the ground that (c) it may prejudice, embarrass or delay the fair trial of the action; (d) or it is otherwise an abuse of the process of the court.
9. Section 48 of the Advocates Act provides for the modes of bringing to court bills of costs between parties. Thus the court finds no fault with the Respondents bill of costs as filed.

“ 48.

- (1) Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause, to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before expiry of the period of one month.
 - (2). subject to sub-section (1) a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.
 - (3). notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of suit
10. Based on the foregoing, the court finds no reason to allow the motion dated 2nd August, 2024. The 1st Respondents is at liberty to progress or otherwise with its Party and Party Bill of Costs dated 12/6/2024 as it may deem appropriate.
 11. The motion dated 2/8/2024 is dismissed with no orders on costs.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH, 2025

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JANET MULWA.
JUDGE

