



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC APPEAL NO. 94 OF 1999

ANERIKO W. SIMIYU.....APPELLANT

VERSUS

REDEMPTOR N. SIMATI.....RESPONDENT

22/09/2021

Coram: Hon. B. N. Olao J

(In Chambers)

RULING

I have before me for directions a Notice of Motion dated 6th September 2021 and filed under Certificate of Urgency. It is predicated under Sections 3, 3A and 63(1) of the Civil Procedure Act and Order 45 Rules 1, 2 and 3 of the Civil Procedure Rules. The Applicant therein seeks the following orders: -

1. Spent
2. Spent
3. That it please the Honourable Court to review the order of the Deputy Registrar in the ruling made on 30th August 2021 taxing the Bills of Costs dated 8th November 2020 and 10th May 2021 and set aside the whole ruling.
4. That costs herein be provided for.

The application is premised on the grounds set out therein and supported by the affidavit of ANERIKO MASIKA SIMIYU the Applicant herein.

It is clear that the Applicant herein is aggrieved with the decision of the taxing master as convened in his ruling dated 30th August 2021 and delivered on the same day. He has stated as follows in grounds N. 1 and 2 of the Notice of Motion: -

1: “The Deputy Registrar erred to tax instruction fees on an application of Kshs. 5,000.”

2: “The Deputy Registrar erred in taxing two bills in one suit with two instruction fees all accumulating to Kshs. 73,710/= which is grossly exaggerated and onerous.

And in paragraph 5 of his supporting affidavit, the Applicant has averred as follows: -

5 “That the Honourable Deputy Registrar then assessed costs on my Preliminary Objection to the bill plus the bill on an application at Kshs. 73,710 which was onerous, excessive and unjustifiable.”

There is no doubt therefore that the Applicant is objecting to the taxation of the bill herein. It is clear however from Paragraph 11 of the Advocates (Remuneration) Order that a party objecting to the decision of the taxing Officer may, within 14 days after the decision give notice in writing to the taxing office of the items of taxation to which he objects. If the party is not satisfied with the reasons given by the

taxing Officer, then a reference shall be filed to the Judge.

The Applicant has not filed any reference to this Court to challenge the decision of the taxing Officer **HON E. N. MWENDA** dated 30th August 2021. He has instead moved to this Court by way of review under **Order 45** of the **Civil Procedure Rules** and **Sections 3, 3A** and **63 (1)** of the **Civil Procedure Rules** invoking this Court's inherent jurisdiction. That is not the proper procedure of ventilating such a grievance. In **MACHIRA & COMPANY ADVOCATES .V. ARTHUR K. MAGUGU 2012 eKLR**, the Court of Appeal stated that such a party is required to approach the Judge under **Order 11** of the **Advocates Remuneration Order**. It said: -

“Rule 11 thereof provides for ventilation of grievances from such decisions through reference to a Judge in Chambers. The effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not be loosely used.”

The Court went on to add: -

“In our view the Rules Committee intended to avoid all that and provide for a simple and expeditious mode of dealing with decisions on advocates bill of costs through reference under Rule 11 to a Judge in Chambers.”

Consequently, therefore, there is no proper application before me for consideration.

The Notice of Motion dated 6th September 2021 is hereby struck out.

BOAZ N. OLAO.

J U D G E

23RD SEPTEMBER 2021.

RULING DATED, SIGNED AND DELIVERED AT BUNGOMA BY ELECTRONIC MAIL THIS 23RD DAY OF SEPTEMBER 2021 IN KEEPING WITH THE COVID – 19 PANDEMIC GUIDELINES.

BOAZ N. OLAO.

J U D G E

23rd

September

2021.