



**Muchugia v Ayallo (Civil Miscellaneous Application 159 of 2017)
[2024] KEHC 11690 (KLR) (Civ) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11690 (KLR)

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

CIVIL

CIVIL MISCELLANEOUS APPLICATION 159 OF 2017

AN ONGERI, J

SEPTEMBER 24, 2024

BETWEEN

EDWIN MUCHUGIA APPLICANT

AND

MAY AYALLO RESPONDENT

RULING

1. The application coming for hearing is the one dated 17/8/2023 brought under Rule 11 of the [Advocates Remuneration Order](#) seeking the following orders;
 - i. That the Ruling of Hon. Tessa Marienga, Deputy Registrar, delivered on 11th August 2023 pursuant to the Respondent's Party and Party Bill of Costs dated 22nd November 2022 taxing the Bill in the sum of Kshs 69,000/-be set aside in its entirety and/or vacated.
 - ii. That the decision of the Deputy Registrar as evidenced in the ruling delivered on 11th August 2023 with respect to the Party and Party Bill of Costs be remitted back for taxation before any other taxing officer other than Hon. Tessa Mariga or be taxed afresh by another taxing officer
 - iii. That Costs be provided for.
2. The application is based on the following grounds;
 - i. That the Deputy Registrar erred in principle in taxing the Bill of Costs
 - ii. That the Deputy Registrar failed to consider the ruling on the Applicant's application for enlargement of time to file the Memorandum of Appeal whereby Hon. Lady Justice B. Thurairaja Jaden on 7th March 2019 gave orders inter-alia that costs of the Application be in the cause.



- iii. That the Deputy Registrar failed to appreciate that the Honourable Court delivered a judgment on 8th May 2023 directing that each party bear their own costs of the appeal as it was partially successful.
 - iv. That the Deputy Registrar did not take into consideration the Applicant's (Respondent therein) submissions dated 19th June 2023.
 - v. That the Deputy Registrar reached an erroneous decision.
 - vi. That the Deputy Registrar failed to take into account the nature of the matter and the fact that the appeal was partially successful.
3. The application is supported by the affidavit of the respondents which states that the Taxing master erred in taxing the bill of costs in view of the court's determination that each party bears its own costs of the appeal.
 4. The respondent filed a replying affidavit opposing the application dated 17/8/2023.
 5. The parties filed brief written submissions which I have duly considered.
 6. The sole issue for determination is whether the taxing officer ought to have taxed the bill in view of the court's judgment that each party bears its own costs of the appeal.
 7. The respondent filed the bill of costs herein dated 20/11/2022 seeking costs awarded to her in Misc. 159 of 2017.
 8. The appellant subsequently filed HCCA No 132 of 2019 and a judgment was delivered on 8/5/2023 in the said appeal where the court stated as follows;

“ Since the appeal succeeded partially, each party to bear its own costs of the appeal”
 9. The applicant had filed the bill of costs dated 22/11/2022 in respect of the costs awarded in Misc. 159 of 2017 which bill was taxed at Kshs 69,000 on 11/8/2023.
 10. The respondent subsequently filed the current application dated 17/8/2023 seeking to set aside the party and party bill of costs taxed at Kshs 69,000/=.
 11. I have considered the submissions by the parties. The applicant stated in his submissions that the taxing officer acted contrary to the judgment delivered on 8/5/2023 which stated that each party should bear its own costs.
 12. The respondent said that the judgment did not mention HC Misc suit No 159/2017 where the application dated 20/3/2017 was allowed.
 13. I have perused HC Misc No 159 of 2017 and the respondent was granted costs of the application dated 20/3/2017.
 14. Upon perusal of the Misc. 159 of 2017, it is evident that the respondent was granted costs of the application dated 20/3/2017 in the ruling delivered on 20/6/2018.
 15. The appellant then filed HCCA No 132 of 2019 which is a separate cause from Misc. 159 of 2017.
 16. The appeal judgment was delivered on 8/5/2023 and each party to bear its own costs.
 17. I find that HC Misc suit No 159/2017 was seeking stay of execution pending appeal and it is a separate cause which enabled the Appellant to file HCCA No 132 of 2019.



18. I find that the respondent is entitled to the costs awarded on 20/6/2018 in the application dated 20/3/2017.
19. The said issue was canvassed before the Taxing master and she found that the order of the court in HCCA No 132 of 2019 did not affect the costs granted in HC Misc. suit No 159/2017.
20. I dismiss the application dated 17/8/2023 with no orders as to costs.
21. The applicant is bound to settle the taxed bill of costs unless the parties agree otherwise.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

