



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. APPLICATION NO. 60 OF 2018

JONAS MISTO VINCENT KUKO.....PETITIONER/OBJECTOR

VERSUS

INDEPENDENT ELECTORAL BOUNDARIES

COMMISSION.....1ST RESPONDENT

STANELY KIPKOSGEI KIPKORE.....2ND RESPONDENT

RETURNING OFFICER SABOTI CONSITUENCY.....3RD RESPONDENT

HON. CALEB AMISI LUYAL.....4TH RESPONDENT

J U D G M E N T

1. The application dated 3rd December, 2018 by the Applicant herein seek the following orders;-

(a) The costs allowed by the Deputy Registrar of this court on taxation of the 1, 2 and 3rd Respondent in the sum of Kshs 3,143,750 and for the 3rd Respondents in the sum of Kshs 2,925,000 be set aside

(b) The bill dated 4th May, 2018 filed by J.K. Kaptich & Associates be struck out.

(c) This Honourable court be pleased to retax the bill or remit with appropriate directions to a taxing officer as the court shall deem fit for reconsideration.

(d) Costs

2. This application has come by way of a reference under the provisions of Order 11 of the Advocates Remuneration order. The affidavit of Jonas Misto Vincent Kuko sworn on 3rd December 2018 states that he was the loser in the Election Petition No. 3 of 2017. According to him the trial Judge ordered that he pays costs capped at Kshs 2 million to the 1st, 2nd and 3rd Respondents and further Kshs 2 Million to the 4th Respondent.

3. When the matter went before the taxing master, the sum increased to Kshs 3,143,750/= in favour of the 1, 2 and 3rd Respondent and Kshs 2,925,000/= for the 4th Respondent.

4. He has therefore argued that the increase from the sum captured by the trial Judge was erroneous and that the taxing master misdirected herself.

5. The 1st and 2nd Respondents through the replying affidavit by Joseph Keptich Songok sworn on 24/1/2019 alludes to the fact that the taxing master did not misdirect herself but followed the laid down procedures Principles and facts in arriving at the appropriate decision. He further contents that there were no sufficient grounds to impeach the taxing master findings as the same was not based on error, biasness or an application of wrong legal principles.

6. The 3rd Respondent did file grounds of opposition as well as the replying affidavit dated 21/1/2019. He generally contended that the Instruction fees was capped at Kshs 2 million and not the incidental costs and thus the taxing master was correct to consider the same when taxing the bill.

7. I have read the written submissions on record by the parties herein together with the attached authorities. It is now accepted across the board that the principles set out in **Premchand Raichand Ltd and Another Vs Onary Services of East Africa Ltd & Another (No. 3) E ALR (1972) EA at Pg 162** ought to be considered when dealing with the question of costs. The court of Appeal stated the same as follows;

“ The Court must consider the following principles;

That costs be not allowed to rise to such a level as to confine access to the costs to the wealthy; that a successful litigant ought to be fairly reimbursed for the costs he has had to incur;

That the general level of remuneration of advocates must be such as to attract recruits to the profession; and that so far as practiced there should be consistency in the awards made;

The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party;

In considering bills taxed in comparable cases an allowance may be made for the fall in value of money; “

8. It appeared that the major issue at hand is whether the sum of Kshs 2 million awarded by the trial court was the full amount or simply instruction fees. According to the Applicant, the same was for the total amount, arguing that the honourable Judge considered those factors in arriving at his decision.

9. On the other hand the Respondents contend that the Kshs 2 million was just instruction fees and not other disbursements. That if the trial court wanted so, it would have expressed itself.

10. The trial court on the question of costs rendered itself as follows:

“ Having taken all the relevant factor into account, I order that instructions fees for each party shall be capped as follows; Kshs 2,000,000/= for the 1st and 2nd Respondent and Kshs 2,000,000/= for the 3rd Respondent. “

11. She went further to state that;

“ (iii) The costs shall be taxed and the total costs certified by the Deputy Registrar of this Court.”

The reading of Judge's judgment on costs dealt in my view with instruction fees only. The Judge capped the Instruction fees and not the other disbursements.

Prior to this the Honourable Judge stated at page 49 that;

“ In deciding what would be the appropriate order on costs in this Petitioner, I have taken into account the pleadings, the applications heard and the submissions as well as the time taken in preparing for trial. In reaching the cap, I have also considered the time spent on research and the input made by the parties in the course of the trial as well as the proposals made by the Respondents.”

12. Clearly, the question of disbursements etc was not considered by the trial court. The plaintiff's reading of the decision was only capping the instruction fees. I suppose that is why the Deputy Registrar was mandated to tax the costs.

13. It would have been in my view different if the trial court had ordered that the entire costs be capped at Kshs 2 million respectively and not instruction fees.

14. In the premises I do not find any merit in the above argument. The sum of Kshs 2 million related to instruction fees. The Deputy Registrar therefore was right in taxing the other costs. If there was any dispute on the same I have not been furnished with a copy of the bill or at least the findings of the taxing master.

15. I further state so because one of the grounds raised by the Applicant is to do with an heading on mileage. Respectfully, I do not know; neither have I been furnished with any such evidence. I cannot thus comment.

16. The application is otherwise dismissed for the above reasons.

Costs shall be in the cause.

Delivered, signed and dated at Kitale this 3rd day of April , 2019.

H.K. CHEMITEI

JUDGE

3/04/19

In the presence of:

Parties Absent

Court Assistant – Kirong

Judgment read in open court.