

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 50 OF 2009

IN THE ESTATE OF ANDREW OBEDIA DECEASED

BETWEEN

BERNARD OTHIENO ODUOR PETITIONER/APPLICANT

AND

BONVENTURE OCHIENG OGOLA RESPONDENT

RULING

BONVENTURE OCHIENG OGOLA , the respondent herein filed an objection to taxation, dated 30th June 2015. His objection was premised on the following grounds:

1. That the petitioner filed an application for grant in person and after the grant was issued to him, he had no capacity to engage an advocate in this matter and he should therefore bear the advocate's fee himself.
2. The advocate who prepared the bill of costs is wrongly on record and that the bill is wrongly before the court.
3. That the bill of costs is prematurely before court contrary to Order 51 Rule 11(2) of the Civil Procedure Rules.

The objection has been challenged.

In his first ground , the respondent contended that the petitioner was not entitled to hire the services of an advocate after the grant was issued. This is misconceived. Any party is entitled to retain the services of an advocate at any stage of proceedings. He cannot be heard to challenge the costs awarded in this court. If he was aggrieved by the award, he ought to have appealed. This ground lacks merit.

In the case of **PRISCILLA VUGUTSA KAMALIKI V MARY RUNYANYI OCHIENG [2016] eKLR** Hon. Judge Nekoye Sitati observed as follows:

The first issue for this Court to determine is whether the instant application is properly before the Court. The application is expressed to be brought under Section 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act Order 40 Rule 4 and Order 51 Rule 1 of the Civil Procedure Rules. It is worth noting that the Law of Succession Act is a self-contained Act and provisions of the Civil Procedure Act, unless specifically imported into it are not applicable. A look at Rule 63 of the

Law of Succession Act reveals that the provisions under which the present application is brought are not some of the provisions imported into the Law of Succession Act. What this means therefore is that the instant application is incompetent for want of form and is therefore fit for striking out.

Order 51 of the Civil Procedure Rules is inapplicable in Probate and Administration cases. The objection to the bill of costs therefore lacks ground to stand on. The same is dismissed with costs.

DELIVERED and SIGNED at BUSIA this 17th day of July, 2017

KIARIE WAWERU KIARIE

JUDGE