



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. CIVIL APPLICATION NO. 106 OF 2013

WILFRED MBOYA MUSYOKA PLAINTIFF/RESPONDENT

VERSUS

1. PETER MWOLOLO NTHENGE

2. JOHN MULWA MAITHYA.....DEFENDANTS/APPLICANTS

R U L I N G

1. The application dated 29/5/2013 is expressed to be under **Order 50 rule 6** of the **Civil Procedure Rules 2010** and **rule 11 (4)** of the **Advocates Remuneration Order** and all other enabling provisions of law. The application seeks orders that the court do enlarge time within which the Defendants/Applicants can object to the decision of the Taxing Officer for issuing the Certificate of Costs dated 2/4/2013. Secondly, that the court be pleased to compel the Taxing Master to give reasons for his decision to issue the Certificate of Costs dated 2/4/2013.

2. According to the affidavit in support and a further affidavit sworn by the Applicant, the Respondent did not file a bill of costs as required under paragraph 70 (sic) of the **Advocates (Remuneration) Order 2009** and **Order 21 rules 5 & 8** of the **Civil Procedure Rules**. It is averred that the Applicant was not aware of the assessment of costs as the same was done *ex parte*.

3. In opposition to the application, the Respondent filed a replying affidavit. It is averred that no bill of costs is filed in the lower court and parties only request for assessment. That no reasons for the delay have been given and that in any event this application ought to have been filed before the court where the objection proceedings ought to have been filed.

4. The application was canvassed by way of written submission which I have duly considered.

5. The Certificate of Costs that is the subject of this application is dated 2/4/13. The application relates to the assessment of costs in the lower court. Under **Order 21 rule 9 (2)** of the **Civil Procedure Act 2010**, after costs have been ascertained, a Certificate of Costs is issued by the magistrate. The Applicant ought to have gone back to the same court to make any other applications that he deemed necessary. The provisions of the **Advocates Remuneration Order** on taxation do not apply to the subordinate court. My view of the matter is that in the absence of any specific provisions in the **Civil Procedure Rules** and the **Advocates Remuneration Order**, the Applicant ought to have gone back to the same court for the setting aside and/or for a review of the assessed costs. The application for the extension of time ought to have been filed in the same court.

6. With the foregoing, I find the application incompetent and strike out the same with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 3rd day of October 2014.

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B. THURANIRA JADEN

JUDGE