



**Waruhiu & 2 others v Waruhiu (Civil Suit 2 of 2008)  
[2025] KEHC 13819 (KLR) (Family) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13819 (KLR)

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

**FAMILY**

**CIVIL SUIT 2 OF 2008**

**SN RIECHI, J**

**OCTOBER 3, 2025**

**IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA**

**IN THE MATTER OF PARTY AND PARTY BILL OF COSTS**

**BETWEEN**

**SAMUEL NJOROGE WARUHIU ..... 1<sup>ST</sup> APPLICANT**

**ESTHER NYAMWERU MUNENE ..... 2<sup>ND</sup> APPLICANT**

**SOLOMON NGANGA MUNENE ..... 3<sup>RD</sup> APPLICANT**

**AND**

**GEORGE KANG'ETHE WARUHIU ..... RESPONDENT**

**RULING**

1. Before me for determination is a Chamber Summons Application dated 3<sup>rd</sup> April 2025 seeking the following orders;
  - a. That this Court be pleased to set aside in its entirety the ruling of the Deputy Registrar issued on 20<sup>th</sup> March 2025 dismissing the Applicants Party and Party Bill of Costs dated 27<sup>th</sup> October 2023;
  - b. That this Court finds that there was an express order in the Court of Appeal judgment dated 8<sup>th</sup> May 2019 allowing the claim as prayed in the Plaint, which included costs;
  - c. That the Court taxes the Applicant's said Bill of Costs;
  - d. That the costs of this Application be borne by the Respondent.



2. The Application is premised upon the following grounds;
  - a. That the Deputy Registrar erred in principle in dismissing the Plaintiff's Party and Party Bill of Costs despite the Court of Appeal allowing the Appeal and granting the Appellant's claim as prayed in their Pleint at the trial Court;
  - b. That the decision of the Deputy Registrar is erroneous as it disregards an express order by the Court of Appeal;
  - c. It is manifest that the Deputy Registrar not only erred in principle but also exercised his discretion improperly and therefore the ruling should be set aside.
3. The Respondent filed an Affidavit in reply dated 9<sup>th</sup> July 2025. The gist of the said reply is that the Applicants seek to inequitably recover unjust costs against the Respondent because their costs had already been taxed by the Taxing Officer of the Court of Appeal, coupled with the fact that in his view there was no express order for costs incurred at the trial Court from the Court of Appeal.
4. The Application was canvassed by way of written submissions. In their submissions dated 8<sup>th</sup> August 2025 the Applicants argued that the Court of Appeal judgment entitled them to their costs at the trial Court, and that the Deputy Registrar misdirected himself both in principle and in discretion in holding otherwise.
5. The Applicants also submitted that this Court has the jurisdiction to set aside the decision of the Deputy Registrar where it is demonstrated that they acted on a wrong principle or for an improper exercise of their discretion.
6. The Respondent in his submissions dated 22<sup>nd</sup> September 2025 argued that there was no error in principle on the part of the Taxing Master and that in its judgment dated 8<sup>th</sup> March 2019, the Court of Appeal did not issue any orders as regards the costs of the trial proceedings.
7. From the totality of the pleadings and submissions by the parties, the issue falling for determination is ; Whether the Taxing Master erred in principle by dismissing the Applicants' Bill of Costs dated 27<sup>th</sup> October 2023.
8. It is not in dispute that the Applicants preferred an appeal against the decision of the High Court, and were successful in the Court of Appeal. It is also not in dispute that the Taxing Officer of the Court of Appeal awarded the sum of Kshs. 895,828.50.
9. The issue in contention therefore is whether the Applicants, having succeeded in their appeal, are entitled to recover their costs at the trial Court.
10. The Law governing the issue of costs in suits is set out under Section 27 of the [Civil Procedure Act](#) which provides as follows;
  - " 1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers; provided that the costs of



any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct”.

11. It is also a general principle with respect to taxation of costs is that a successful litigant ought to be fairly reimbursed for the costs that he has had to incur (See Premchand Raichand Limited and Another vs Quarry Services of East Africa Limited and Another (1972) EA 162).
12. In its judgment the Court of Appeal allowed the Applicant’s entire claim against the Respondent as prayed before the High Court.
13. It follows, therefore, that costs must follow this event. And although the Taxing Master has discretion not to award costs, the said discretion must be exercised for good reason.
14. To my mind, the ruling of the Deputy Registrar delivered on 20<sup>th</sup> March 2025 does not disclose any good reason why the Applicants being the successful parties in the suit should not be reimbursed for the trouble taken in prosecuting their case.
15. The Supreme Court’s decision in Rai & 3 others v Rai & 4 others [2014] KESC 31 (KLR) is instructive on the issue at hand, as follows;

“....Costs were a means by which a successful litigant was recouped for expenses to which he had been put in fighting an action.

The vital factors in settling the preference was the discretion of the court accommodating the special circumstances of the case and being guided by ends of justice. Further claims of public interest, motivations and conduct of parties during litigation process were also relevant factors.

There was no prescribed definition of any set of good reasons that can justify a court’s departure, in awarding costs, from the general rule, costs-follow-the-event. In the classic common law style, the courts have proceeded on a case-by-case basis, to identify good reasons for such a departure. An examination of evolving practices on that question show that, as an example, matters in the domain of public-interest litigation tend to be exempted from the award of costs.”

16. That the Court of Appeal did not expressly make an order for costs at the trial Court cannot suffice as a ‘good reason’ for which a party should not be entitled to their costs, and in so finding the Taxing Master erred in principle.
17. Accordingly, I make the following orders;
  - i. That the ruling of the taxing master dated 20<sup>th</sup> March 2025 is hereby set aside in its entirety.
  - ii. That the matter be referred back to another taxing master other than L. Ogombe for taxation of the Applicants’ Party and Party Bill of Costs dated 27<sup>th</sup> October 2023.
  - iii. There shall be no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

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**S. N. RIECHI**

**JUDGE**

