



REPUBLIC OF KENYA



KENYA LAW
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Ogutu t/a Vision Gate Eye Care Consultant v JP Makokha & Company Advocates (Civil Appeal E034 of 2025) [2025] KEHC 15208 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E034 OF 2025
WM MUSYOKA, J
OCTOBER 23, 2025**

BETWEEN

**DR VINCENT OGUTU T/A VISION GATE EYE CARE
CONSULTANT APPELLANT**

AND

JP MAKOKHA & COMPANY ADVOCATES RESPONDENT

(Appeal from ruling and orders of Hon. Kassim Akida, Deputy Registrar, in Busia HCMisc. No. E067 of 2022, of 6th May 2025)

JUDGMENT

1. This appeal arises from orders that were made by Hon. K. Akida, Deputy Registrar, of 6th May 2025. Hon. Akida was handling a review application, dated 11th December 2024, which was challenging orders that had been made on 23rd July 2024, by Hon. TA Madowo, Deputy Registrar. The ruling that Hon. Madowo had delivered was on taxation of an Advocate-Client bill of costs, which she taxed by the said ruling, following a ruling that I had delivered on 2nd February 2024, on a reference by the appellant herein.
2. That reference, which gave rise to the ruling of 2nd February 2024, turned on, among other issues, a sum of Kshs. 30,000.00 and another of Kshs. 141,712.00; which had allegedly been paid by the appellant to the respondent. I directed, in that ruling of 2nd February 2024, for a re-taxation of the Advocate-client bill. Hon. Madowo did that, by her ruling of 23rd July 2024.
3. On the sum of Kshs. 30,000.00, I had ruled, on 2nd February 2024, at paragraph 27, of that ruling, that the trial court could re-visit the same in a re-taxation. That was done, in the ruling of 23rd July 2024, for Hon. Madowo directed that the sum of Kshs. 30,000.00 be subtracted from the taxed amount. That settled that issue.



4. Regarding the sum of Kshs. 141,712.00, the appellant had raised issues about having paid that money to the respondent. I dealt with that matter, in the ruling of 2nd February 2024, at paragraph 26, where I ruled that I could only see evidence from an MPesa Statement, of payment of Kshs. 70,000.00, but I could not tell whether that payment related to the bill in Busia CMCC No. 178 of 2018, which was the subject of these proceedings, or to other suits, for the respondent was acting for the appellant in several suits. My conclusion was that, that payment for Kshs. 70,000.00, could not relate to Busia CMCCC No. 178 of 2018, for reasons that I recorded, and I ruled that it could be of relevance in Busia HCCA No. 6 of 2019 or Busia E004 of 2021.
5. It would appear that my ruling of 2nd February 2024 did not settle that issue, for the appellant still placed it before Hon. Madowo. The amount, that he raised issue with, was a payment of Kshs. 171,000.00. Out of the Kshs. 171,000.00, Hon. Madowo dealt with Kshs. 30,000.00, which was subtracted from the taxed amount. However, regarding the balance of Kshs. 141,000.00, the ruling of Hon. Madowo was silent.
6. The appellant sought review of the orders by Hon. Madowo, and determination of that review application fell upon Hon. Akida, who had taken the place of Hon. Madowo, as Deputy Registrar and taxing master. The appellant raised the issue of Kshs. 171,000.00, saying that it was disregarded. Hon. Akida ruled, on 6th May 2025, that Hon. Madowo had found that there was no proof of that amount.
7. I had partially dealt with the sum of Kshs. 171,000.00, in my ruling of 2nd February 2024. I say partially because the figure placed before me was Kshs. 141,000.00, and not Kshs. 171,000.00. Whereas it is clear how the sum of Kshs. 141,000.00 comes about, that of Kshs. 171,000.00 is unelaborated. Kshs. 141,000.00 appears to comprise of Kshs. 30,000.00, Kshs 70,000.00 and Kshs. 41,000.00.
8. I disposed of the component of Kshs. 30,000.00, in paragraph 27 of my ruling of 2nd February 2024, which Hon. Madowo addressed, and disposed of, in her ruling of 23rd July 2024. That left the balance of Kshs. 111,000.00, out of the Kshs. 141,000.00, which had been placed before me, and which Hon. Madowo did not address. The sum of Kshs. 111,000.00 has 2 components, of Kshs. 70,000.00 and Kshs. 41,000.00. There was evidence, on the payment of Kshs. 70,000.00, according to paragraph 26 of my ruling of 2nd February 2024, and it did not appear to relate to Busia CMCCC No. 178 of 2018, for reasons that I gave in that paragraph.
9. The amount of Kshs. 41,000.00 was not supported by any evidence, as at 2nd February 2024, when I delivered my ruling. It appears to have been raised, for the first time, when the matter was placed before Hon. Madowo. I see, from the MPesa Statement, in the record of appeal, that a payment of Kshs. 41,000.00 was made on 17th January 2021. I would go by my reasoning, in paragraph 26 of my ruling of 2nd February 2024, that that payment had nothing to do with Busia CMCCC No. 178 of 2018, which is the subject of these proceedings, as it was made in 2021, while Busia CMCCC No. 178 of 2018 was concluded in 2018 or 2019. It must have related to another or other suits, and there would be no justification for it to be considered in the bill herein, the subject of Busia CMCCC No. 178 of 2018.
10. Kshs. 141,000.00 has been accounted for above. However, the appellant claimed, before Hon. Madowo, Kshs. 171,000.00, and not Kshs. 141,000.00. After accounting for Kshs. 141,000.00, we would be left with Kshs. 30,000.00, unaccounted for. This second amount of Kshs. 30,000.00 appears to be unrelated to the other Kshs. 30,000.00, that Hon. Madowo dealt with, in her ruling of 23rd July 2024. However, whereas there was evidence that the amount that Hon. Madowo addressed, was indeed paid, the appellant did not provide any proof of payment of the other amount of Kshs. 30,000.00. As there was no evidence to support it, there would have been no basis for Hon. Madowo to take it into account, or to address it in her ruling.



11. In view of what I have stated above, there can be no merit in the appeal herein. I hereby dismiss the same, with costs. Orders accordingly.
12. One last thing. The appellant ought not to have filed an appeal, against the decision of Hon. Akida. Hon. Madowo and Hon. Akida sat as officers of the High Court, in their capacity as Deputy Registrars. They did not sit as magistrates. The decisions they made, in a High Court matter, in Busia HCMisc. No. E067 of 2022, were made by them as decisions of the High Court. A decision of the High Court cannot be challenged before the same High Court, on appeal. It is for that reason that the law provides for a reference rather than an appeal, and that reference should have been filed in Busia HCMisc. No. E067 of 2022, given that that file already existed. All these proceedings should have been handled in the same file. There was, therefore, absolutely no need to file an appeal in separate proceedings.
13. A decision of the Deputy Registrar is challengeable before a Judge of the High Court, by way of a reference, given that a Deputy Registrar occupies a position, in the High Court hierarchy, subordinate to that of a Judge, but a decision of the Judge would be subject to appeal, at the Court of Appeal, for it cannot be challenged at the High Court, where the Judge sits.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 23RD DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Dr. Vincent Ogutu, the applicant in person.

Advocates

Mr. Makokha, instructed by JP Makokha & Company, Advocates for the respondent.

