



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 93 OF 2013**

**MARY CHERONO CHEBABUN.....PLAINTIFF**

**VERSUS**

**WILSON RONO.....1<sup>ST</sup> DEFENDANT**

**JOSEPH RONO.....2<sup>ND</sup> DEFENDANT**

**DIRECTIONS**

1. The application dated 3/7/2019 which was filed in court on the same date has been brought by the plaintiff seeking the following orders:-
  1. ...spent
  2. That this court be allowed to set aside its ruling arising out of the respondent's taxation dated 7/2/2019 and hence allow the applicant to oppose the same.
  3. That the court be pleased to allow the applicant herein to take part in the assessment of costs arising thereto.
  4. Costs of this application be borne by the respondent.
2. The applicant has brought the application under *Order 22 Rule 7, Order 21 Rules 7, 8 and 9 and Order 51 (1) of the Civil Procedure Rules, Section 3A and 63(e) of the Civil Procedure Act.*
3. The grounds upon which the application is made are that the respondent's certificate of cost was taxed ex-parte at Kshs.92,775/= and the respondent did not at all bother to serve the applicant's advocate to take part in the taxation; that the matter is now scheduled for Notice to Show Cause on 4/7/2019; that the applicant is desirous of taking part in the taxation process and should thus be accorded an opportunity to do so and that in the circumstances, it is only fair and just that the principals of natural justice are promoted to the extent that this application is allowed as prayed.
4. The application is supported by an affidavit of the defendant dated 3/7/2019 which lays emphasis on the above grounds.
5. The defendants filed grounds of opposition dated 15/7/2019 and citing the following grounds:
  1. The plaintiff's application is incompetent, misconceived and defective for failing to comply with the mandatory provisions of the law.
  2. The application violates the provisions of Order 11 of the Advocates (Remuneration) Order of the Advocates Act Chapter 16 Laws of Kenya.
  3. The application is incompetent, untenable, bad in law and an abuse of the court process filed without any regard to the Advocates Act.
  4. This court has no jurisdiction to grant and/or entertain the prayers sought.
  5. The application is a nonstarter and an abuse of the due process of the law therefore should be struck out with costs.

6. I find that the application dated **3/7/2019** revolves around the issue of taxation and whether or not the applicant was served with the notice of taxation and the bill of costs before the taxing master taxed the bill. It is not a Reference as provided for by **Rule 11** of the Advocates (Remuneration) Order made under the **Advocates Act Chapter 16 of the Laws of Kenya**. I find that this is a matter ought to be determined by the Deputy Registrar who conducted the taxation and in the event that she is no longer attached to this station the Deputy Registrar for the time being in-charge. The application dated **3/7/2019** shall therefore be placed before the Deputy Registrar for hearing and final determination.

**Dated, signed and delivered at Kitale on this 30<sup>th</sup> day of September, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**30/9/2019**

Coram:

Before: Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bororio for Defendants/Respondents

Mr. Kisembe for Simiyu for Applicant

**COURT**

Directions issued in open court.

**MWANGI NJOROGE**

**JUDGE**

**30/9/2019**