



**Onkoba v Omwoyo & 2 others (Election Petition (Application)
E014 of 2023) [2024] KECA 783 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KECA 783 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
ELECTION PETITION (APPLICATION) E014 OF 2023
HA OMONDI, JA
JULY 5, 2024**

BETWEEN

DOLPHINE NYANGARA ONKOBA APPLICANT

AND

MICHELLE KEMUMA OMWOYO 1ST RESPONDENT

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 2ND
RESPONDENT**

JUBILEE PARTY 3RD RESPONDENT

*(Being an application from the Judgment of the High Court of Kenya at
Nyamira (Njuguna, J.) dated 29th May 2023 in Election Petition Appeal
No. E001 of 2022 as consolidated with E001 of 2023 and E003 of 2023)*

RULING

1. By the Chamber Summons application dated 5th February 2024, the applicant seeks that: the ruling of the learned Taxing Master dated 25th January 2024 be set aside in its entirety; this Court does award the 1st respondent reasonable costs for defending this appeal; in the alternative, the 1st respondent's Party and Party Bill of Costs dated 25th October 2023 be referred to a different Taxing Master for fresh taxation; and costs of this application and interest thereon be awarded to the 1st respondent. The application is supported by the affidavit of Michelle Kemuma Omwoyo.
2. By the ruling of this Court delivered on 24th October 2023, the appellant's appeal was struck out with costs to the 1st and 2nd respondents. The 1st respondent filed her Party and Party Bill of costs dated 25th October 2023. By the ruling of the learned taxing master delivered on 25th January 2024, the learned Deputy Registrar allowed the 1st respondent's Party and Party Bill of Costs to the tune of



Kshs.322,3000/-. The applicant contends that the earned taxing master did not exercise his discretion judiciously, and improperly disregarded factors which he ought to have considered.

3. The applicant laments that the costs awarded were manifestly low, and failed to appreciate that election petition appeals by their very nature are complex, technical and high-stake cases.; that the Election Petition Appeal which was the subject of this reference proceedings cannot be said to have been a straight forward one as contended by the learned taxing master in his ruling; and this Court ought to interfere with the decision.
4. In opposing the application, the respondent submits that taxation of costs is not a mathematical exercise; and the Taxing Master is enjoined to adopt a flexible and sensible approach to the task of striking the balance while taking into account the particular features of the case. Further, that in principle, costs are awarded, having regard to such factors as:
 - a. The difficulty and complexity of the issues;
 - b. the length of the trial;
 - c. value of the subject matter and
 - d. other factors which may affect the fairness of an award of costs.
5. Basically, what the applicant seeks is for setting aside of the findings by the taxing master, and that is not a matter for a single judge. I therefore decline to make any orders in relation to the application; and direct that it be listed before and such is for a full bench.

DATED AND DELIVERED AT KISUMU THIS 5TH DAY OF JULY, 2024.

H. A. OMONDI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

