



Obuon v Onyango & another (Environment and Land Miscellaneous Application 17 of 2022) [2024] KEELC 4321 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 17 OF 2022**

E ASATI, J

MAY 23, 2024

BETWEEN

CHARLES OMONDI OBUON APPLICANT

AND

MICHAEL ORWA ONYANGO 1ST RESPONDENT

SIMON OUKO 2ND RESPONDENT

RULING

1. This ruling is in respect of the Chamber Summons application dated 13th June, 2022 expressed to be brought pursuant to the provisions of Rule 11 of the *Advocates (Remuneration) Order* 2014 and Order 21 Rule 9D of the *Civil Procedure Rules* 2010 (Revised 2020). The application seeks for orders that;
 - a. the Honourable court be pleased to set aside the decision of the taxing officer dated 8th June, 2022 in which the Respondent was awarded costs in the sum of Kshs.243,215/-.
 - b. the Honourable court be pleased to remit the Bill of Costs dated 14th February 2022 to the executive officer for fresh taxation, with directions that the taxation be in compliance with the provisions of Schedule 7 of the *Advocates Remuneration Order*, 2014 and Order 21 Rule 9D of the *Civil Procedure Rules* 2010 (Revised 2020).
 - c. The costs of the application be provided for.
2. The grounds upon which the application was brought are that the Bill of Costs dated 14th February, 2022 was not taxed as per scale under the provisions of Schedule 7 of the *Advocates Remuneration Order*. That the taxing officer proceeded to tax the Bill of Costs dated 14th February, 2022 without considering the Applicant's submissions dated 16th May, 2022. That the Applicant's submissions dated 16th May, 2022 and filed in court on the same date were not included in the court file despite being filed by the Applicant. That court officers in the Chief Magistrate's court Registry or Hon. Cheruiyot's



court deliberately omitted to place the submissions in the file to deny the Objector/Applicant an opportunity to a fair taxation and hearing. That the taxing officer's decision in respect of the Bills of Costs is made in ignorance of the Applicant's submissions and is thus erroneous as the sum awarded of Kshs.243,215/- exceeds the scale fee provided in schedule 7 of the Advocates Remuneration Order 2014. And that Order 21 Rule 9D of the Civil Procedure Rules 2010 (Revised 2020) provides that in awarding costs, the court shall be guided by schedule 7 of the Advocates Remuneration Order 2014. That the taxing officer's decision was made in ignorance of these provisions.

3. The application was supported by the contents of the Supporting Affidavit sworn by the Applicant, Charles Omondi Obuon, on 13th June, 2022 and the annexures thereto namely; copy of the Applicant's submissions dated 16th May, 2022 and copy of Notice of Objection dated 13th June, 2022.
4. The application was not opposed. Affidavit of Service sworn by Elly Okello Mbata on 12th July, 2022 shows that on 24th June, 2022, the Respondent Advocate were served with the Certificate of Urgency dated 13th June, 2022, Chamber Summons and Supporting Affidavit of even date and Court Order dated 22nd June, 2022. Annexed to the Affidavit of Service were copies of the Court Order and application duly received by the Respondent's Advocates.
5. The Applicant's case is that the taxation of the Bill of Costs arising from the Kisumu Chief Magistrate's Court Environment & Land Case No.374 of 2018 was erroneous as pointed out in the grounds of the application.
6. In support of the application, Counsel for the Applicant filed written submissions dated 13th February, 2024. Counsel submitted that the single issue for determination is whether the court should remit the Bill of Costs dated 14th February, 2022 to the Executive officer for fresh taxation with directions that the taxation be in compliance with the provisions of Schedule 7 of the Advocates Remuneration Order 2014 and Order 21 Rule 9D of the Civil Procedure Rules 2010 (Revised 2020).

That the taxing officer did not take into account the submissions dated 16th May, 2022. That the failure to consider the said submissions was tantamount to condemning the Applicant unheard which is against the rules of natural justice. Counsel relied on the case of Egal Mohammed Osman v Inspector General of Police and 3 Others [2015]eKLR to support the submissions.

7. Counsel submitted further that court officers failed to place the submissions in the court file and consequently the taxing officer rendered the ruling on the Bill of Costs as drawn without considering the submissions by the Objector, violating the principles of natural justice and the right to fair hearing as envisaged in article 50(1) of the Constitution of Kenya 2010. Counsel relied on the case of Judicial Service Commission v Gladys Boss Shollei & another [2014]eKLR and Justice Amraphael Mbogholi Msagha v Chief Justice & 7 Others, Nairobi HCMCA No.1062 of 2004 to support the submissions.
8. Counsel submitted further that the Bill of Costs contravenes the provisions of Schedule 7 of the Advocates Remuneration Order, 2014, that items 15 to item 32 of the Bill of Costs were unfounded as they were charged in respect of the Respondent's application which was dismissed with costs to the Objector/Applicant. That the Respondent was not entitled to charge costs under items 25 through to items 29 of the Bill of Costs as the court was not sitting and there is no such provisions in the Advocates Remuneration Order, 2014.
9. I have considered the application and the submissions made in support thereof. I have perused the Plaintiff's Bill of Costs dated 14th February, 2022 drawn at Kshs.243,215. I have also perused the 1st Defendant's (Applicant here) submissions dated 16th May, 2022 in respect of the Plaintiff's bill of Costs dated 14th February, 2022. The said submissions were received in court on 16th May, 2022 and



served upon the Plaintiff's (Respondent herein) Advocates on 17th May, 2022. The submissions raised objection to various items of the Bill of Costs.

It is apparent that the taxing officer's ruling that allowed the Bill of Costs as drawn did not take into account the submissions filed on behalf of the Applicant. It is clear that the submissions were filed well before the date of the ruling and no reason is given why the same were not considered. For this reason and to allow the Applicant the opportunity to be heard, I find that the application has merit.

The application is hereby allowed as follows:

- i. The taxation and/or assessment of the Plaintiff's Bill of Costs as contained in the ruling dated 8th June, 2022 in which the Respondent was awarded costs in the sum of Kshs.243,215/- is hereby set aside.
- ii. The Plaintiff's Bill of Costs dated 14th February, 2022 is hereby remitted to the Executive Officer, Chief Magistrate's Court, Kisumu for fresh taxation/assessment.
- iii. The taxation to be in compliance with the provisions of Schedule 7 of the Advocates Remuneration Order, 2014 and Order 21 Rule 9D of the Civil Procedure Rules 2010 (Revised 2020).
- iv. Costs of the application to the Applicant.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 23RD DAY OF MAY, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Wachira holding brief for Koki Mbolu for the Applicant.

No appearance for the Respondent.

