



REPUBLIC OF KENYA



KENYA LAW
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**Kavuludi v Kisia (Environment and Land Miscellaneous Application
2 of 2024) [2024] KEELC 4958 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 2 OF 2024**

E ASATI, J

JUNE 13, 2024

**IN THE MATTER OF SECTION 44 OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA
AND THE ADVOCATES (REMUNERATION ORDER) AMENDMENT ORDER 2014**

AND

**IN THE MATTER OF PARTY AND PARTY COSTS PURSUANT
TO THE BILL OF COSTS DATED 30TH OCTOBER 2023.**

AND

**IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT HAMISI, MELC CASE
NO. 2 OF 2023; JAMIN MISIGO KISIA VS JOHNSTONE MAFENYI KAVULUDI**

BETWEEN

JOHNSTONE MAFENYI KAVULUDI APPLICANT

AND

JAMIN MISIGO KISIA RESPONDENT

RULING

1. This ruling is in respect of the reference brought by the applicant vide the Notice of Motion dated 30th January 2024 pursuant to the provisions of section 44 of the *Advocates' Act* Cap 16 Laws of Kenya, Schedule 6 of the Advocates Remuneration Order 2014, section 27 of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil procedure Rules 2010*. The application seeks for orders that: -
 - a. The decision of the learned Senior Principal Magistrate/Taxing Officer vide the ruling dated 5th January 2024 and any consequential orders arising therefrom in Hamisi SRM MEL Case No. 2 of 2023 be set aside/vacated.
 - b. The said Defendant's Party and Party Bill of costs dated 30/10/2023 be taxed/assessed a fresh by a differently constituted Magistrate.



- c. That in the alternative and in the interest of justice this court be pleased to assess/tax the costs contained in the said Defendant's Party and Party Bill of costs dated 30/10/2023 lawfully payable to the applicant.
 - d. Costs of this application.
2. The grounds of the application are inter alia that the trial court erred and misapprehended and misapplied the law in taxing the applicant's Party and Party Bill of costs dated 30/10/2023. That the trial court made an improper determination in holding that she had no jurisdiction to assess the applicant's cost. The reference was supported by the averments in the Supporting Affidavit sworn by the applicant on 30th January 2023 and the annextures.
3. I have considered the application, the Replying affidavit dated 11th March 2023 filed in opposition to the application and the submissions made. The matter was brought before this court as a reference from the ruling of a Taxing Master. Perusal of the court record shows that the applicant's costs were presented before the trial court for assessment thus resulting in the ruling the subject matter of these proceedings. It is clear that in handling the costs the trial court was not acting as a Taxing Master as provided for under the Advocate's Remuneration Order. There is no provision for taxation of or filing of references in respect to costs in the Magistrate's court. Costs in a Magistrate's court are assessed.
4. In the circumstances I find that the reference is improperly before this court and hereby strike it out with costs to the Respondent. The applicant has recourse to the Magistrate's court for review of or appeal against the ruling the subject of these proceedings.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 13TH JUNE, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

Nabasenge for the Applicant.

Malanda for the Respondent.

