



**Amboka v Opondo & 2 others (Miscellaneous Application E005 of 2023)
[2024] KEELRC 13609 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13609 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
MISCELLANEOUS APPLICATION E005 OF 2023
MA ONYANGO, J
NOVEMBER 28, 2024**

BETWEEN

JESCAH GATAKAA AMBOKA PETITIONER

AND

CHARLES OPONDO 1ST RESPONDENT

MARGARET SUWAI 2ND RESPONDENT

**THE BOARD OF MANAGEMENT AIC KAPSITWET SECONDARY
SCHOOL 3RD RESPONDENT**

RULING

1. Vide an application by way of chamber summons dated 29th November, 2023 the Applicant seeks the following orders:
 1. That there be reference to this court from the taxation by the Deputy Registrar as Taxing Master of this Court, and this court be pleased to hear the objection by the appellant on the taxation of the Party and Party Bill of Costs and make an order that the Bill of Costs as filed by the 1st respondent in Kitale Cmccc No. 6 Of 2017, do apply to all the three defendants therein, and the taxed costs be apportioned among the three defendants equally, so that the 1st respondent be entitled to only one third of the taxed costs.
 2. Costs of this reference be provided for;
2. The application is based on the following grounds:
 - a. The Deputy Registrar as the Taxing Master erred in law when the failed to consider and take into account that the 1st respondent and two others were jointly represented by one advocate known as Katama Ngeywa & Co. Advocates up to conclusion of the trial.



- b. The 1st respondent went his separate way only after the Judgment had been delivered.
 - c. The Deputy Registrar erred in principle when she after taxing the Party and Parry Bill of Costs dated 7th July 2023, presented by the 1st respondent failed to hold that the 1st respondent is entitled to only one third of the taxed costs.
 - d. The Deputy Registrar as Taxing Master erred in principle when she failed to apportion the Taxed Costs among the three defendants/respondents.
 - e. The failure to apportion the taxed costs among the three defendants will result in prejudice to the appellant.
 - f. The failure to take into account that the Party and Party Bill of Costs filed by the 1st respondent ideally applied to all the defendants will unjustly enrich the respondents as each of them, shall file separate Party and Party Bill of Costs for taxation
 - g. If each of the defendants/respondents presents a separate Party and Party Bill of Costs for taxation the appellant shall end up paying three times the costs allowable.
3. The application is further supported by the affidavit of the Jescah Gatakaa Amboka, the Applicant in which she deposes that she was the Appellant in the suit in respect of which the Bill of costs that is the subject of the application herein was drawn and reiterates the grounds on the face of the application.
 4. The Bill of Costs which is annexed to the affidavit in support of the application and marked as “JGA-1” is titled as follows

Party To Party Bill Of Costs

(Being 1st Defendant’s/Applicant’s Party & Party Bill of Costs in relation to CMC. NO. 2020 (sic) at Kitale which was dismissed with costs in High Court Civil Appeal Case No. 37 of 2019-Kitale by Hon. Justice A. C. Mrima in April, 2023)
 5. In the replying affidavit of Charles Opondo, the 1st Respondent, he attached a copy of Plaintiff which was filed in the Chief Magistrate’s Court at Kitale in Civil Case No. 6 of 2017 in respect of a defamation suit. It is the decision of the trial magistrate in the defamation suit that was the subject of the appeal before Mrima J.
 6. In the plaint the parties are described as follows:
 1. The plaintiff is a female adult of sound mind residing in Kitale Town and working for gain at Wamuini Secondary School.
 2. The 1st defendant is a male adult of sound mind residing and working for gain in Trans-Nzoia County.
 3. The 2nd defendant is a male adult of sound mind residing and carrying on business in Trans-Nzoia County.
 4. The 3rd defendant is female adult of sound mind residing and working for gain in Trans-Nzoia County.
 5. The 4th defendant is a legal person duly constituted under the provisions of the [Basic Education Act](#).
 6. At all material times the 1st defendant was and is the principal of A.I.C Kapsitwet Secondary School in Trans-Nzoia County.



7. At all material times the 2nd Defendant was and is the chairman of the Parents Association (PA) of A.I.C Kapsitwet Secondary School in Trans-Nzoia County.
 8. At all material times the 3rd defendant was and is a Member of Board of Management of A.I.C Kapsitwet Secondary School in Trans-Nzoia County.
 9. The 4th defendant is a Board of Management duly constituted as per the provisions of the [Basic Education Act](#) to manage the affairs of the school.
7. There is no employer-employee relationship between the parties as described in the plaint. Both the plaint and the appeal were heard as civil suits and not as employment and labour relations matters. The circumstances described in the plaint as giving rise to the cause of action therein do not emanate from an employment or labour relations dispute and therefore does not fall within the jurisdiction of this court.
 8. It is not clear to me why the instant application was filed in this court when the appeal in respect of which the Bill of Costs which is the subject of the application was not an employment or labour relations matter.
 9. I thus find that that the application was filed in the wrong court and that this court has no jurisdiction to hear the same.
 10. I accordingly transfer the application to the High Court at Kitale where the application should have been filed, for hearing and determination.
 11. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 28TH DAY OF NOVEMBER, 2024

MAUREEN ONYANGO

JUDGE

