



Kangori and Company Advocates v Ndwaro (Environment & Land Miscellaneous Case E029 of 2021) [2024] KEELC 5515 (KLR) (17 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E029 OF 2021
MN GICHERU, J
JULY 17, 2024**

BETWEEN

KANGORI AND COMPANY ADVOCATES PLAINTIFF

AND

ANN NJERI NDWARO DEFENDANT

RULING

1. This ruling is on the chamber summons dated 30/11/2023. The summons which is brought under Order 49 rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 50 of the *Advocates Act* and rule 11 of the *Advocates Remuneration Order* seeks the following orders.
 1. The finding of the Deputy Registrar of this court that the advocate/applicant bill of costs be taxed at Kshs. 354, 395/- in this matter be set aside.
 2. The order of the Deputy Registrar that the instruction fee (item no. 1) and getting up fees (item number 2) be taxed at Kshs. 50, 235,000/- and Kshs. 16, 700/- respectively or any other sum be set aside and this court do make a fresh determination on these two items.
 3. Costs of this application be provided for.
2. This summons is based on five (5) grounds and it is supported by an affidavit sworn by Kevin Onyango Omondi which has two (2) annexures. The gist of the affidavit and the grounds is as follows. Firstly, the applicant represented the respondent in Kajiado ELC Case No. 524 of 2016 which was also Nairobi ELC Case No. 718/2016 and later CMCC ELC Case No. 85 of 2018 at Ngong Law Courts. Secondly, the dispute between the respondent and Moly Credit Limited and others related to L.R. Ngong/Ngong/48250 which had been sold for Kshs. 4 million by Moly Credit Limited to Wiskam Limited after the respondent defaulted in paying a loan of Kshs. 198, 000/-. Thirdly, the Deputy Registrar in assessing the costs awarded Kshs. 50,000/- instead of Kshs. 300,000/- as instruction fees. The applicant objects to the entire bill since the learned Deputy Registrar did not comply with the



Advocates Remunerations Order but assessed below the scale in the 7th schedule of the Advocates Act. Fourthly, the trial court was unable to ascertain the value of the subject matter which was Kshs. 10 million as per the documents availed in court. Finally, the learned Deputy Registrar relied on the wrong schedule 7 to arrive at her decision.

For the above and other reasons, the applicant filed this summons and prays for the orders as above.

3. The summons is unopposed because the respondent though served did not file a response.
4. I have carefully considered the summons in its entirety and I find that the following issues arise.
 - i. Whether schedule 7 was the applicable one in this case.
 - ii. Whether any error has been demonstrated on the part of the learned Deputy Registrar.
 - iii. Whether setting up fees is awarded in trials in the Lower Court.
5. I make the following findings on the above identified issues. On the first issue, I find that schedule 7 of the Advocates Remuneration Order is the one applicable in this case. When I asked for Case File No. 524 of 2016, I was informed that it was transferred to Ngong Magistrates Court. The ruling on costs by the Learned Deputy Registrar dated 4/10/2023 clearly states at paragraph 1 that the advocate/client bill relates to CMCC 85 of 2018 at Ngong Law Courts. The trial having taken place at the Lower Court, the applicable schedule is 7 and not 6.

Secondly, Section 11 of the Civil Procedure Act provides as follows.

“Every suit shall be instituted in the court of the lowest grade competent to try it...”

There is no explanation in these proceedings as to why the suit giving rise to the summons herein was filed in the High Court contrary to Section 11 of the Civil Procedure Act.

6. On the second issue, I find that the learned Deputy Registrar made no error in assessing the costs in the manner that she did. She has given reasons for each and every item that she taxed and I find that she did so according to scale. The only error that I find on the part of the Learned Deputy Registrar was to tax the bill of costs in her capacity as the Deputy Registrar of this court when there was no trial in this court. She should have sent the file back to the Chief Magistrates Court at Ngong for taxation to avoid two parallel proceedings in respect of the same bill of costs.
7. On the final issue, I find that schedule 7 of the Advocates Remuneration Order has no provision for getting up fees and such fees is not awardable.

For the above stated reasons, I dismiss the summons dated 30/11/2023 with costs and order as follows.

- a. The advocates/client bill of costs dated 20/5/2021 to be taxed by the trial Court at Ngong in suit No. ELC 85 of 2018 Ann Njeri Ndwaru –versus- Molyn Credit and others.
- b. Case for mention before the Chief Magistrate Ngong on 30/7/2024.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 17TH DAY OF JULY 2024.

M.N. GICHERU

JUDGE

