



REPUBLIC OF KENYA



**Asati Anyona & Company, Advocates v Mwangi (Miscellaneous Application
E011 of 2023) [2024] KEELC 7230 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7230 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
MISCELLANEOUS APPLICATION E011 OF 2023
EM WASHE, J
OCTOBER 31, 2024**

BETWEEN

ASATI ANYONA & COMPANY, ADVOCATES APPLICANT

AND

IGNATIUS CHEGE MWANGI RESPONDENT

RULING

1. The Respondent (hereinafter referred to as “the Applicant”) filed a Notice of Motion Application dated 16.08.2024 (hereinafter referred to as “the present application”) against the Applicant (hereinafter referred to as “the Respondent”) seeking the following Orders; -
 - a. That the application be certified urgent and service of the same be dispensed with in the first instance. (Spent)
 - b. That pending the hearing and determination of the Applicant’s Appeal being Kisumu Court of Appeal Civil Appeal No E192 of 2024, this Honourable Court do stay taxation proceedings and its ruling scheduled to be delivered on the 22nd day of August 2024 in relation to the Bill of Costs dated 19th day of July 2024 and any other proceedings herein.
 - c. Costs of this Application to be provided for.
2. The grounds adduced in support of the above prayers can be summarised as follows; -
 - i. The Deputy Registrar/Taxing officer is due to give a Ruling on a Bill of Costs dated 19.07.2024.
 - ii. The value of the subject matter in the Bill of Costs dated 19.07.2024 is premised on a Valuation Report dated 22.11.2019 which the Applicant herein disputes its contents.



- iii. Consequently therefore, if the Deputy Registrar/Taxing Officer proceeds to rely on the disputed Valuation Report dated 22.11.2019 and assess the pending Bill of Costs dated 19.07.2024, then it will render the pending Appeal nugatory.
 - iv. The Applicant stated that there is a pending substantive Appeal before the Court of Appeal which raises arguable and triable issues hence the assessment of the Bill of Costs dated 19.07.2024 should be stayed pending the hearing and determination of the said Appeal.
 - v. Similarly, the Applicant raised a point of law to the effect that the Bill of costs dated 19.07.2024 was heard without issuance of a Notice of Taxation and hence those proceedings were devoid of jurisdiction.
3. The present Application was indeed served on the Respondent who opposed the same through their Replying Affidavit dated 30.08.2024 on the following grounds; -
- i. The present Application was overtaken by events as there is no pending Bill of Costs before the Deputy Registrar/Taxing Officer as relates to the present file.
 - ii. The Respondent pleaded that the Bill of Cost which had been filed in relation to the present file had been assessed long time ago and a Certificate of Costs issued on the 01.08.2024 was produced before this Court.
 - iii. In essence, the Respondent stated that there was no Bill of Costs before the Deputy Registrar/Taxing Officer capable of being stayed as prayed for by the Applicant.
 - iv. The Respondent informed the Court that according to their knowledge, there has been no Appeal filed against the said Ruling and if any was ever filed, then the same was filed out of time and has no chance of success.
 - v. The Respondent in conclusion pleaded that the Applicant had not advanced any good reasons as to why the orders sought herein should be granted and urged the Court to dismiss the present Application.
4. The Court has indeed perused the present Application together with the Replying Affidavit and identify the following issues for determination herein.
1. Which are the proceedings pending in this file before the deputy registrar/taxing officer?
 2. Has the applicant provided any sufficient grounds for this court to stay any pending taxation before the deputy registrar/taxing officer as sought in the present application?
 3. Is the applicant entitled to the prayer sought in the present application?
 4. Who bears the costs of the present application?
5. The Court having identified the above issues for determination, the same will now be discussed hereinbelow.

Issue No 1 - which are the proceedings pending in this file before the deputy registrar/taxing officer?

6. The first issue for determination is whether or not there is any proceeding before the Deputy Registrar/Taxing Officer pending for ruling as alleged by the Applicant.



7. The Applicant in the present Application pleads that there is a pending Taxation before the Deputy Registrar/Taxing Officer which relates to a Bill of Costs dated 19.07.2024 which is scheduled for Ruling on the 22.08.2024.
8. According to the Applicant, this Court should exercise its discretionary powers and arrest the said Ruling scheduled for 22.08.2024 as there is an Appeal before the Court of Appeal known as Kisumu Court of Appeal Civil Appeal No E 192 of 2024 which will be rendered nugatory if the Deputy Registrar/Taxing Officer will determine the Bill of Costs dated 19.07.2024 on the 22.08.2024.
9. On the other hand, the Respondent denies the existence of any pending Bill of Costs dated 19.07.2024 which is to be assessed on the 22.08.2024 by the Deputy Registrar/Taxing Officer.
10. The Respondent pleaded that the Bill of Costs which was filed in the present file was duly taxed and a Certificate of Taxation issued on the 01.08.2024.
11. In other words, the Respondents informed the Court that there was no Bill of Costs currently pending before the Deputy Registrar/ Taxing Officer as alleged by the Applicant.
12. The Court in deciding this issue has perused the present Application and notes that the Applicant did not attach the alleged Bill of Costs dated 19.07.2024 which the Deputy Registrar/Taxing Officer is to assess through a Ruling scheduled for 22.08.2024.
13. Similarly, the Court has perused the present file and did not find any pending Bill of Costs dated 19.07.2024 pending before the Deputy Registrar/Taxing Officer.
14. According to the proceedings in the present file, the Respondent filed a Bill of Costs dated 28.07.2023 which was duly assessed and/or taxed on the 24.08.2023 at Kshs 2,166,291.3/-.
15. Thereafter, a Certificate of Costs for the said amount of Kshs 2,166,291.3/- was duly issued on the 01.08.2024.
16. In essence, taxation and/or assessment of the Bill of Costs dated 28.07.2023 was concluded on the 01.08.2024 and there is no other pending Bill of Cost dated 19.07.2024 before the Deputy Registrar/ Taxing Officer capable of being assessed and/or taxed on the 22.08.2024 as alleged by the Applicant herein.

Issue No 2 - Has the applicant provided any sufficient grounds for this court to stay any pending taxation before the deputy registrar/taxing officer as sought in the present application?

17. The second issue for determination is whether or not there is sufficient ground and/or reasons for this Court to grant a stay of the Ruling scheduled for 22.08.2024 in relation to the alleged Bill of Costs dated 19.07.2024.
18. The Applicant pleaded that the reason this Court should stay the Ruling scheduled for the 22.08.2024 appertaining to the Bill of Costs dated 19.07.2024 is due to the pending Appeal known as Kisumu Court of Appeal Civil Appeal No E192 of 2024.
19. According to the Applicant, if the Deputy Registrar/Taxing officer proceeds to deliver his/her Ruling in the Bill of Costs dated 19.07.2024 on the 22.08.2024, then the entire Appeal before the Court of Appeal will be rendered nugatory.
20. The Applicant duly placed a Memorandum of Appeal dated 1st August 2024 together with the payment Receipts issued by the Court of Appeal registry in Kisumu.



21. The Respondent in his Replying Affidavit dated 30.08.2024 denied knowledge of the said Appeal before the Court of Appeal.
22. The Respondent further pleaded that if such an Appeal was ever filed, then it was filed outside time and has no chance of success before the Court of Appeal.
23. The core issue is to establish whether actually an appeal exists before the Court of Appeal or not.
24. To resolve this aspect, the Court has keenly looked at the attached Memorandum of Appeal in the supporting affidavit of the Applicant dated 16.08.2024.
25. The Memorandum of Appeal contained in the Supporting Affidavit dated 16.08.2024 is one that seeks to appeal this Court's Ruling and Orders issued on the 18.07.2024 in the Reference known as Kilgoris Reference No E001 of 2024.
26. Clearly therefore, the Appeal before the Court of Appeal in Kisumu relates to a different and distinct file known as Kilgoris Reference No E001 of 2024 and not the present file before this Court.
27. In fact, in this present file, the Applicant does not have any pending dispute against the Respondent which is yet to be determined and/or is on appeal before any Court of Appeal save for the objection proceedings filed by one Susan Nyawira Munene and Ezekiel Munene Chege.
28. In essence, this Court is of the considered opinion and/or finding that there is no Appeal emanating from this proceeding that can justify the issuance of any orders sought for in the present Application.

Issue No 3 - Is the applicant entitled to the prayer sought in the present application?

29. Based on the findings contained in Issue No 1 & 2, this Court declines to issue any Orders sought for in the present Application by the Applicant.

Issue No 4 - Who bears the costs of the present application?

30. Lastly, Costs follow the event and in this particular application, the Applicant will compensate the Respondents with costs as the present application is not merited.

Conclusion

31. In conclusion, this Court hereby issues the following Orders as regards the Notice of Motion dated 16.08.2024; -
 - A. The Notice of Motion application dated 16.08.2024 is not merited and therefore dismissed forthwith.
 - B. The applicant will pay the costs of the present application to the respondent.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 31ST OCTOBER 2024.

EMMANUEL M. WASHE

JUDGE

In the presence of:

Court Assistant: Mr. Ngeno

Advocates for the Applicant: Mr. Samoita (N/A)



Advocates for the 1st Respondent: Mr. Anyona

Mr. Kalwa for Objector/Interested Party

