



REPUBLIC OF KENYA



**KENYA LAW**  
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**Romboisa v Murunga & 5 others (Environment & Land Case  
15 of 2018) [2024] KEELC 7444 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7444 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE 15 OF 2018  
EC CHERONO, J  
NOVEMBER 7, 2024**

**BETWEEN**

**CHARLES KITUI ROMBOISA ..... PLAINTIFF**

**AND**

**SILAS SIMIYU MURUNGA ..... 1<sup>ST</sup> DEFENDANT**

**PHAUSTINE NAMALWA SIMIYU ..... 2<sup>ND</sup> DEFENDANT**

**FREDRICK KUNDU WAMALWA ..... 3<sup>RD</sup> DEFENDANT**

**ZAINABU ASETI MURUNGA ..... 4<sup>TH</sup> DEFENDANT**

**SELLAH MARY AKINYI BARASA ..... 5<sup>TH</sup> DEFENDANT**

**PAUL NYONGESA MUSABI ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. By a Notice of motion Application dated 19<sup>th</sup> of June, 2024 brought under Article 159 (2) (d) of *the Constitution*, Section 1A, 1B, 3A & 63 (e) of the Civil Procedure Rules, 2010 and all enabling provisions of the law, the Applicant seeks the following orders;
  - a. Spent
  - b. Spent
  - c. That the Honourable court be pleased to set aside the ex-parte ruling on the bill of costs made on 15/05/2024 and all consequential orders, and order for the fresh taxation of the Bill of costs.
  - d. That upon grant of prayer (c ) hereinabove, the Respondents be ordered to serve the Bill of costs upon the Applicant herein and leave be granted upon the Applicant to file a response to the Bill of Costs out of time.



- e. That the costs of this application be borne by the Respondent.
2. The application is premised on grounds apparent on the face of the said application supported by the affidavit of Charles Kitui Romboasa-the applicant herein.
  3. It is the applicant's case that he is the judgment debtor in this matter after judgment was delivered on 12/10/2023 with costs in favour of the Respondents herein. The Applicant deposed that he disagreed with his advocate then on record M/S Ateya & Company Advocate and he took possession of his file. That when the bill of costs was filed by the Respondents, he was not aware and neither was he served. He averred that he became aware of the said bill of costs through a proxy and that he only got to attend the court for the proceedings on 31/01/2024 when he notified the court of his position and an order was issued for the bill of costs to be served upon him so that he may respond. The Applicant contends that the bill of costs was never served upon him and the taxing master went ahead and delivered her ruling. He averred that his non-participation in the taxation proceedings were not intentional and that he had a good response capable of tilting the assessment of the drawn bill of costs.
  4. In opposition to the application, the Respondents filed a replying affidavit dated 8<sup>th</sup> July, 2024 sworn by Fredrick Kundu Wamalwa-the 3<sup>rd</sup> respondent. The said Fredrick Kundu deposed that the impugned bill of costs alongside the orders of 6<sup>th</sup> November, 2023 which gave directions for service and disposition of the application were served upon the firm of Ateya & Company Advocate who was then on record for the applicant. It was argued that the Applicant has not filed a Notice of change of advocate or notice to act in person. It was stated that proper service was effected upon firm of M/S ATEYA & COMPANY ADVOCATES leading to the eventual taxation of the bill of costs on 15<sup>th</sup> May, 2024 at Kshs. 302,300/= and 30 days stay of execution was granted. It was argued that the applicant was present in court when the bill of costs was fixed for ruling. That the Plaintiff deliberately failed to participate in the proceedings of the taxation and only became active when the auctioneers came knocking in a bid to execute for the taxed costs. The respondents urged the court to dismiss the application with costs.

### **Legal Analysis And Decision**

5. I have considered the material placed before me and the arguments by both parties as well as the applicable law. The Applicant contends that he was not served with the bill of costs for purposes of responding to it while the Respondents contend that service was effected to the Applicants counsel on record. The Respondents have attached various affidavits of service which prove that indeed service was effected upon the firm of Ateya & Company Advocates which firm of advocates the Applicant contends he cut ties with and retrieved his file. However, as correctly pointed out by the Respondents, the law under Order 9 Rule 9 require the Applicant to file an application seeking leave to act in person or file a consent with the firm of Ateya & Company Advocates allowing him to act in person.
6. The Applicant claimed that when he attended court on 31/1/2004, the taxing master directed the Respondents to serve him with the bill of costs. However, despite that order, the Respondents did not serve him with the bill of costs, leading the taxing master to deliver her ruling while he awaited service of the same. It is notable that the Applicant has not attached the court proceedings from that date to support these assertions. Additionally, this court observes that, according to the law, the firm of Ateya & Company Advocates remains the legal agent for the Applicant and was duly served with multiple taxation notices.
7. This court takes cognizance of the fact that every person to be affected by such determination is by law entitled to a fair hearing in terms of Article 50(1) of *the constitution* which is the cornerstone of administration of justice and must be respected at all times. The Court in *Ameli Inyangu & Partners Advocates v Abdulgader Sharrif Saleh & another* [2019] eKLR held as follows;



‘The object and purpose of setting aside an order made on default is to make right what has gone wrong on account of inadvertence, error, mistake or just impropriety. Where there was effective service and notice on the person seeking to set aside, the court has discretion to be convinced that the failure to act in time was justifiable or excusable. However where there was never service at all or effective service then the court has no discretion to set aside but must set aside a default Order as of right.’

8. Guided by the principles set out in the above decision, this Court finds that the Applicant was duly served with the bill of costs and all other processes but he made no effort to establish the status or progress of the bill of costs from his counsel. The bill of costs in issue came up for mention on two other occasions i.e on 14/2/2024 and 3/4/2024 before a ruling was delivered and neither of these occasions did the Applicant appear before the taxing master to complain that he had not been serviced. Notably on all these occasions, the firm of Ateya & Company Advocates was duly served with the taxation notices.
9. In my view, no material has been placed before me to exercise my discretion in granting the prayers sought, particularly regarding service of the bill of costs. Based on the above findings and given that the Applicant’s request for re-taxation of the bill of costs is hinged on the issue of service, I find that the application must therefore fail.
10. Ultimately, the application dated 19<sup>th</sup> June, 2024 is devoid of merit and the same is hereby dismissed with costs.
11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 07<sup>TH</sup> DAY OF NOVEMBER, 2024.**

.....

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of

1. M/S Masengeli for the 1<sup>st</sup>-6<sup>th</sup> Respondents.
2. Plaintiff-present.
3. Bet C/A.

