



REPUBLIC OF KENYA



Engel Gisela t/a Engelcop Tours & Safaries v Mgandi & 4 others (Environment & Land Case 212 of 2012) [2023] KEELC 251 (KLR) (25 January 2023) (Ruling)

Neutral citation: [2023] KEELC 251 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 212 OF 2012
NA MATHEKA, J
JANUARY 25, 2023**

BETWEEN

ENGEL GISELA T/A ENGELCOP TOURS & SAFARIES PLAINTIFF

AND

SHABU HAMISI MGANDI 1ST DEFENDANT

SHEIKH ALI TAIB 2ND DEFENDANT

THE COMMISSIONER OF LANDS 3RD DEFENDANT

MUNICIPAL COUNCIL OF MOMBASA 4TH DEFENDANT

ETHICS & ANTI CORRUPTION COMMISSION 5TH DEFENDANT

RULING

- 1 The application is dated June 22, 2022 and is brought under section 51(2) of the *Advocates Act* and Order 51 Rule 1 of the *Civil Procedure Rules*, section IA, 1B, 3, 3.4 of the *Civil Procedure Act* (chapter 21 of the Laws of Kenya) seeking the following orders;
 1. That Judgment be and is hereby entered in favour of the applicants for the total costs which were assessed by the taxing master at Kshs. 454,426.28 together with interest at 12% per annum.
 2. That the Respondents bear the cost of this Application.
- 2 It is based on the grounds that a Certificate of Costs was issued on August 19, 2021 and the same has not been challenged, disputed, set aside or altered. That the Party and Party Bill of Costs dated May 7, 2019 was heard to its logical conclusion and a ruling on the same delivered on September 19, 2019. That it is in the interests of justice, fairness and equity that this Honourable Court be pleased to allow this Application.



3 I have perused the application and find that this Honourable Court lacks jurisdiction to hear and determine the said application as it offends the provision of section 51 (2) of the Advocates Act since the taxation was not in relation to Advocate-Client Bill of Costs. The said section provides:

The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

4 The plaintiff's Notice of Motion Application dated June 22, 2022 is therefore incurably defective, bad in law and is incompetent and the Applicant ought to follow the normal execution procedures through the Deputy Registrar. The decision by the Deputy Registrar is final in a Party to party bill of costs unless set aside which is not the case in the instant case. The court cannot issue a judgement on party to party bill of costs as stated above. The application is not merited and is dismissed with no orders as to costs as the same is undefended.

5 It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JANUARY 2023.

N.A. MATHEKA

JUDGE

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