



J. J. Chesaro & Company Advocates v Walegwa & 2 others (Environment & Land Miscellaneous Case 40 of 2017) [2023] KEELC 271 (KLR) (25 January 2023) (Ruling)

Neutral citation: [2023] KEELC 271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE 40 OF 2017
NA MATHEKA, J
JANUARY 25, 2023**

BETWEEN

J. J. CHESARO & COMPANY ADVOCATES APPLICANT

AND

MARGARET WALEGWA 1ST RESPONDENT

BENSON LUSWETI WANYONYI 2ND RESPONDENT

PAUL KIZUMBI & 155 OTHERS 3RD RESPONDENT

RULING

- 1 The application is dated November 15, 2021 and is brought under section 57 51(2) of the *Advocates Act* and order 51 rule 1 of the *Civil Procedure Rules*, section IA, 1B, 3, 314 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 applicant for the total costs which were assessed by the taxing master at Kshs 21,363,934.56 together with interest at 14% per annum.
 2. That the respondent bear the cost of this application.
- 2 It is based on the grounds that a certificate of costs was issued on October 1, 2021 and the same has not been challenged, disputed, set aside or altered. That the party and party bill of costs dated October 7, 2017 was heard to its logical conclusion and a ruling on the same delivered on April 1, 2021 as against the respondents. 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 November 15, 2021 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

