



**Outa v Okello & 3 others (Petition (Application) 6 of 2014)
[2024] KESC 2 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KESC 2 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 6 OF 2014
W OUKO, SCJ
FEBRUARY 16, 2024**

BETWEEN

FREDRICK OTIENO OUTA APPELLANT

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT**

JARED ODOYO OKELLO 2ND RESPONDENT

RETURNING OFFICER NYANDO CONSTITUENCY 3RD RESPONDENT

ODM PARTY 4TH RESPONDENT

*(Being an application seeking to revoke the Certificate of Costs
issued by Hon. Kasavuli, Deputy Registrar, on 9th October 2023)*

Effect of mixing up the names by a party taking out bill of costs where the final bill of costs contained the proper names

The application sought the revocation of the certificate of costs signed and issued by the Deputy Registrar. The court noted that the appellant when taking out the bill of costs inadvertently mixed up the names, by calling the 1st respondent "Jared Otieno Odoto". However, the final certificate of costs, which was the formal conclusive expression of the court's decision correctly named the 1st respondent as Jared Oduyo Okello. The court thus held that the application lacked substance and that that was a case under the slip rule that did not have to take the course therein employed by the 1st respondent.

Reported by Kakai Toili

Civil Practice and Procedure – bill of costs - mixing up the names by a party taking out bill of costs - what was the effect of mixing up the names by a party taking out bill of costs where the final bill of costs contained the proper names.



Brief facts

The application sought the revocation of the certificate of costs signed and issued by the Deputy Registrar on October 9, 2023 and that the certificate be corrected on the name of the 1st respondent to read Jared Otieno Odoto. The 1st respondent claimed that the appellant in its bill of costs named the 1st respondent as Jared Otieno Odoto who was a stranger to the proceedings and that the appellant did not move the court to have the name amended or altered. The 1st respondent further claimed that the Deputy Registrar delivered his ruling on taxation having the appellant's bill of costs taxed against Jared Otieno Odoto and that thereafter, the matter proceeded on a reference on taxation before a single judge of the court. It was averred that the single judge in his ruling of September 22, 2023, maintained the names in the appellant's bill of costs.

The 1st respondent stated that on October 9, 2023, the Deputy Registrar issued a certificate of costs pursuant to the ruling of the single judge with the 1st respondent's name in the taxation proceedings changed to Jared Odoyo Okello and that that action was without a formal order and without notice and participation of the 1st respondent.

Issues

- i. What was the effect of mixing up the names by a party taking out bill of costs where the final bill of costs contained the proper names?

Held

1. The judgment of the court rendered on July 3, 2014 was in respect of the 1st respondent, named specifically as Jared Odoyo Okello and the appellant, Fredrick Otieno Outa. Those ought to have been the names in the subsequent taxation proceedings. The appellant when taking out the bill of costs inadvertently mixed up the names, by calling the 1st respondent "Jared Otieno Odoto". However, the final certificate of costs, which was the formal conclusive expression of the court's decision issued on October 9, 2023, correctly named the 1st respondent as Jared Odoyo Okello representing the true reflection of the judgment of the court rendered on July 3, 2014.
2. The application lacked substance and was frivolous, vexatious and made in bad faith. That was a case under the slip rule that did not have to take the course therein employed by the 1st respondent.

Application dismissed; 1st respondent to bear its costs.

Citations

Statutes

1. Supreme Court Act (cap 9B) — section 3A, 10(2), 21(2)(4); 21A(a); 23(2)(e) & (i) — Cited
2. Supreme Court Rules, 2020 (cap 9B, Sub Leg) — rule 62(2) — Cited

Advocates

Ms. Okaka for Appellant

Ms. Adika h/b for Mr. Nyanga for 1st Respondent/Applicant

RULING

Representation:

Ms Okaka for the appellant

(Otieno, Yogo, Ojuro & Co Advocates)

Ms Adika h/b for Mr Nyanga for the 1st respondent/applicant (Ben Aduol Nyanga & Co. Advocates)

No appearance for the 2nd to 4th respondents (Ben Aduol Nyanga & Co Advocates)



1. Upon perusing this motion brought pursuant to the provisions of sections 3A, 10(2), 21(2) & (4), 21A(a) and 23(2)(e) & (i) of the Supreme Court Act and rule 62(2) of the Supreme Court Rules, 2020 and the third schedule on Taxation of Costs, seeking that the certificate of costs signed and issued by the Deputy Registrar on October 9, 2023 be revoked; that the said certificate be corrected on the name of the 1st respondent to read Jared Otieno Odoto; and costs of this application; and
2. Upon perusing the affidavit sworn by the 1st respondent on November 24, 2023, in support of the motion as well as the submissions by the 1st respondent dated November 24, 2023, to the effect that the appellant in its Bill of Costs named the 1st respondent as Jared Otieno Odoto who is a stranger to the proceedings; that the Bill of Costs was served upon the 1st respondent more than 8 years after it was lodged; that the appellant did not move the court in any way to have the name amended or altered; that subsequently, the Deputy Registrar delivered his ruling on taxation on June 9, 2023 having the appellant's Bill of Costs taxed against Jared Otieno Odoto; that thereafter, the matter proceeded on a reference on taxation before Ouko, SCJ, who in his ruling of September 22, 2023, maintained the names in the appellant's Bill of Costs; that on October 9, 2023, the Deputy Registrar issued a Certificate of Costs pursuant to the ruling of the single Judge with the 1st respondent's name in the taxation proceedings changed to Jared Odoyo Okello; that this action was without a formal order and without notice and participation of the 1st respondent; and that the change of name was unprocedural and not aligned with the ruling of the Judge and is an attempt to review the decision of the Judge; and
3. Noting that the appellant in his submissions and replying affidavit both filed on January 10, 2024, is opposed to the application on the grounds that: by the provisions of rule 62(2) of the Court's rules the decision of a single Judge on a reference on taxation is final, therefore, the court lacks jurisdiction to entertain any further applications; further, that the 1st respondent as named in the petition of appeal is Jared Odoyo Okello who has participated in the proceedings all along; that even though the name in the Bill of Costs was erroneous, it does not change the identity of the 1st respondent; and that this application has no basis, is unknown in law and the same ought to be dismissed with costs; and

In view of the foregoing, I, now opine as follows:

4. Bearing in mind that the taxation in dispute arose from an election petition in which Fredrick Otieno Outa, the appellant, was found to have been properly elected Member of Parliament for Nyando Constituency in the 2013 General Elections, and that his costs in the High Court, Court of Appeal and in this court were to be borne by Jared Odoyo Okello, the 1st respondent. There is no contest that the two main candidates in the elections of the year in question were Jared Odoyo Okello and Fredrick Otieno Outa, who ended up in the High Court and thereafter, moved their grievance to the Court of Appeal and finally to this court. The judgment of this court rendered on July 3, 2014 was in respect of the 1st respondent, named specifically as Jared Odoyo Okello and the appellant, Fredrick Otieno Outa. Those ought to have been the names in the subsequent taxation proceedings. Clearly, from this obvious background, the appellant in taking out the Bill of Costs, inadvertently mixed up the names, by calling the 1st respondent "Jared Otieno Odoto". However, the final Certificate of Costs, which is the formal conclusive expression of the Court's decision issued on October 9, 2023, correctly named the 1st respondent as Jared Odoyo Okello representing the true reflection of the judgment of this court rendered on July 3, 2014.
5. Consequently, and for all the reasons explained, this application lacks substance and is, in my view, frivolous, vexatious and made in bad faith. This was clearly a case under the slip rule that did not have to take the course herein employed by the 1st respondent.



- 6. The application, for these reasons, must fail and is hereby dismissed with an order that the 1st respondent shall bear its costs as costs are awarded at the discretion of the court.
- 7. Accordingly, I order that:
 - i. The motion dated November 24, 2023 be and is hereby dismissed; and
 - ii. The 1st respondent shall bear the costs of this motion.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY 2024.

.....

W. OUKO

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

