

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
(Coram: Lenaola, SCJ)

PETITION NO. 18 OF 2015

BETWEEN

PETER ODIWUOR NGOGE

T/A O.P NGOGE & ASSOCIATES.....APPLICANT

AND

JOSEPHINE AKOTH ONYANGO.....1ST RESPONDENT

SIMON OTIENO ONYANGO.....2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS

DEPARTMENT.....4TH RESPONDENT

SEHIT INVESTMENTS LIMITED.....5TH RESPONDENT

KENYA COMMERCIAL BANK LIMITED.....6TH RESPONDENT

(Being an application for review and/or setting aside of the Ex-parte Taxation Proceedings of 23rd May 2022 and Orders of the Supreme Court (B. Kasavuli, Hon. Deputy Registrar) delivered on 27th June 2022)

RULING OF THE COURT

[1] UPON reading the Notice of Motion by the applicant dated 1st July 2022 and filed on 4th July 2022, brought pursuant to Rule 62 of the Supreme Court Rules, 2020 seeking orders that:

1. *The decision of the Taxing Officer Hon. Kasavuli rendered against the applicant/advocate on the 27th June 2022 together with ex-parte taxation proceedings conducted on the mention date scheduled on*

the 23rd May 2022 plus all consequential orders thereupon be reviewed and/or set aside.

- 2. The applicant's Amended Notice of Motion on record dated 8th June 2022 be admitted for hearing and allowed as prayed; and*

[2] UPON considering the grounds in support of the application, the averments contained in the supporting affidavit sworn by Peter Ngoge on 1st July 2022, and the submissions wherein he contends that the Deputy Registrar, Hon. Kasavuli, lacked jurisdiction to conduct a taxation hearing on 23rd May 2022 when the matter was scheduled for a mention to give a ruling on an oral application by the applicant to stay the taxation on the submission that the Deputy Registrar lacked jurisdiction to tax the 1st, 2nd and 6th respondents' Bills of Costs while the applicant's **Reference No. 46 of 2021** challenging the judgment of this court in this matter was still pending before the East African Court of Justice; and

[3] NOTING the 1st and 2nd respondents' grounds of objection and submissions wherein they contend that the application is incurably defective, incompetent and bad in law as it offends Section 27 of the Civil Procedure Act and the established principle in law that litigation must come to an end (**I must note that this Act is not applicable to proceedings before this Court**). They also submit that this application is amongst the numerous applications the applicant has filed against them in this court while not keen on prosecuting any of them by absconding Court on numerous occasions and that his actions amount to an abuse of the court process. **FURTHER NOTING** their reliance on ***Satya Bhamu Gandhi vs. Director of Public Prosecutions & 3 Others*** [2018] eKLR in support of that assertion; and

[4] FURTHERMORE NOTING the 6th respondent's replying affidavit sworn by Kevin Mbogo on 21st July 2022 wherein he avers that the applicant failed to attend

Court on 23rd May 2022 when the matter was scheduled to be mentioned despite being aware of it; that on the same day, the Court directed the 1st, 2nd and 6th respondents to file submissions in support of their respective Bills of Costs and scheduled the ruling for the same on 27th June 2022; that vide a Notice of Motion dated 26th May 2022 as amended on 8th June 2022, the applicant sought a review of the decision of the Taxing Officer rendered on 23rd May 2022; and that in a ruling delivered on 20th June 2022, the Court dismissed the said application; consequently, the Court delivered its ruling on the 1st, 2nd respondent's and 6th respondent's Bills of Costs on 27th June 2022 as scheduled. The 6th respondent also submits that the applicant has not raised justifiable grounds for review of the ruling delivered by the Deputy Registrar on 27th June 2022 and that the proceedings of 23rd May 2022 were therefore properly conducted; and

[5] Having considered the application, responses, and submissions before me, I **NOW OPINE** as follows:

- i. The hierarchy of the Courts in Kenya is as provided for under Article 162 (1) of the Constitution which lists the Superior Courts as the Supreme Court, the Court of Appeal, the High Court and the courts established under Article 162(2) of the Constitution, with the Supreme Court being the apex court. The submission by the applicant that the East African Court of Justice stands supreme to the Supreme Court is therefore, and with respect, unfounded. The filing of proceedings before that court, as has been done by the applicant, cannot also *ipso facto* be the basis for staying proceedings before this Court. In addition, the jurisdiction of East African Court of Justice is found in Article 27 of the Treaty for the Establishment of the East Africa Community. That jurisdiction does not confer on that court any appellate mandate as regards decisions of this court.

- ii. The roles of the Registrar of this court are provided for under Section 10(1)(c) of the Supreme Court Act provides which provides that:

“The Registrar shall be responsible for-

(c)taxing costs of any proceedings before the Court as between the parties.”

The powers exercised by the Deputy Registrar are delegated powers from the Registrar and as such, while acting in exercise of those delegated powers, Hon.Kasavuli, Deputy Registrar, proceeded to tax the Bills of Costs in this matter and rendered his decision condemning the applicant to pay costs to the 1st, 2nd and 6th respondents. I consequently find that the Deputy Registrar had the requisite jurisdiction to tax the Bills of Costs in contention.

- iii. Though the applicant has exercised his right to seek a review of the decision by the Registrar as provided for under Section 11 of the Supreme Court Act as well as Rule 62 of the Supreme Court Rules, I decline to exercise discretion to review that decision as none of the exceptional circumstances set out in ***Fredrick Otieno Outa v. Jared Odoyo Okello & 3 others***; SC Petition No. 6 of 2014; [2017] eKLR have been demonstrated by the applicant.
- iv. In the circumstances, I find that the Notice of Motion dated 1st July 2022 seeking review and/or setting aside of the taxation proceedings of 23rd May 2022 and Court orders of 27th June 2022 does not meet the criteria set in ***Fredrick Otieno Outa (supra)***. I also find the applicant’s prayer for admission of the amended Notice of Motion dated 8th June 2022 unmeritorious as the same was properly determined with by this Court and I see no reason to revisit it.

[6] **HAVING** found the application unmeritorious, I order as follows:

a. The Notice of Motion dated 1st July 2022 is hereby dismissed.

b. The applicant shall bear the costs of this application.

[7] It is so ordered.

DATED and DELIVERED AT NAIROBI this 7th Day of **October 2022**

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

REPUBLIC OF KENYA