



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
(Coram: Ouko, SCJ in Chambers)

PETITION (APPLICATION) NO. 6 OF 2014

— BETWEEN —

FREDRICK OTIENO OUTA.....APPELLANT

-AND-

JARED ODOYO OKELLO.....1ST RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION.....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)

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

RULING OF THE COURT

[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 9th October 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 24th November 2023, in support of the Motion as well as the submissions by the 1st respondent dated 24nd November 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 9th June 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 22nd September 2023, maintained the names in the appellant's Bill of Costs; that on 9th October 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 10th January 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 3rd July 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 9th October 2023, correctly named the 1st respondent as Jared Odoyo Okello representing the true reflection of the judgment of this Court rendered on 3rd July 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 24th November 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.

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W. OUKO
JUSTICE OF THE SUPREME COURT

**I certify that this is a true copy
of the original**

REGISTRAR
SUPREME COURT OF KENYA