



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Royal Media Services Limited & another v Telkom Kenya Limited & 13 others (Miscellaneous Civil Suit 15 of 2000) [2022] KEHC 14188 (KLR) (21 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
MISCELLANEOUS CIVIL SUIT 15 OF 2000**

**A MABEYA, J
OCTOBER 21, 2022**

BETWEEN

ROYAL MEDIA SERVICES LIMITED 1ST PLAINTIFF

S.K. MACHARIA 2ND PLAINTIFF

AND

TELKOM KENYA LIMITED 1ST DEFENDANT

COMMUNICATIONS COMMISSION OF KENYA 2ND DEFENDANT

KENYA BROADCASTING CORPORATION 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

NICHOLAS ETYANG 5TH DEFENDANT

DANIEL MUSAU 6TH DEFENDANT

FRANCIS WANGUSI 7TH DEFENDANT

DANIEL WATURU 8TH DEFENDANT

J. N. KAMUNGE 9TH DEFENDANT

PHILIP N. KAMANGA 10TH DEFENDANT

GEORGE KHOJALA 11TH DEFENDANT

MUSA ETIKO 12TH DEFENDANT

HENRY WEST 13TH DEFENDANT

KAREN LANGATA DISTRICT ASSOCIATION 14TH DEFENDANT



RULING

1. The plaintiffs filed a Notice of Motion dated 23/8/2021 brought under sections 1A, 13 and 3A of the Civil Procedure Act, Order 22 Rule 22 and Order 49 Rule 5 of the Civil Procedure Rules and Section 51(2) of the Advocates Act.
2. In the Motion, the plaintiffs sought to set aside the Warrant of Attachment Of Immovable Property In Execution of Decree for Money dated 20/8/2021 and Warrant Sale Of Property In Execution Of Decree For Money, dated 20/8/2021.
3. The application was based on the grounds that on 30/7/2021, the Deputy Registrar gave a breakdown on the 3rd defendant's bill of costs dated 6/10/2005 at Kshs.20,297,050/- and that the plaintiffs' taxation reference was set down for mention before this court on October 14, 2021.
4. That there had been no application for adoption of the certificate of costs as a judgment of the court as mandated by section 51 of the Advocates Act; that in contravention of the law, the 3rd defendant applied for warrant of attachment of immovable property in execution of a decree for money and a warrant of sale of property in execution of decree for money to be issued to Ms. Chador Auctioneers for the said sum of Kshs.20,297,050/.
5. The plaintiffs pleaded that the said warrants were subsequently issued but prematurely thus making the execution process illegal, null and void.
6. The plaintiffs feared that unless the said warrants were set aside, the 3rd defendant will execute them and they will suffer irreparable damage due to the nature of the 1st plaintiff's business.
7. In opposition, the 3rd defendant lodged a replying affidavit sworn on 15/9/2021 by its managing director.
8. He averred that the application is a misapprehension of the principles governing party and party costs and is merely designed to rob the defendant of the fruits of its judgment; that on 27/4/2021, the Deputy Registrar delivered her ruling on item 1 of the 3rd defendant's party and party bill of costs dated 6/10/2005, awarding Kshs. 20,128,000/- as instruction fees, following re-taxation pursuant to a reference that had been filed and determined in favour of the defendants.
9. That on 24/7/2021, the plaintiffs filed a reference challenging the taxed costs. However, there was no stay of execution of the taxed costs and the lodging of a reference does not amount to an automatic stay of execution.
10. That there was an order dismissing the suit for want of prosecution with costs to the 3rd defendant. That that order taken together with the certificate of costs are deemed as a decree therefore a further decree is not required to be extracted for the sake of execution.
11. Further, he averred that the 3rd defendant had duly made an application for execution of the certificate of costs and the warrants were validly issued thus the execution was legal and proper. That the present dispute before Court was a party and party bill of costs and cannot be subjected to section 51(2) of the Advocates Act.
12. Having carefully considered the pleadings and submissions filed in this matter, the issue for determination is whether the certificate of costs dated 18/8/2021 ought to be converted into a judgment before execution.



13. Vide a certificate of taxation dated 18/8/2021, the deputy registrar certified that the 3rd defendant's bill of costs dated 6/10/2005 was taxed as between party and party and allowed against the plaintiffs in the sum of Kshs.20,297,050/-.
14. The plaintiffs submitted that there is no application for adoption of the aforementioned certificate of costs as a judgment as stipulated under section 51 of the *Advocates Act* therefore the warrants issued from them are a nullity.
15. The plaintiff relied on various authorities in its submissions to back its standing that a certificate of costs has to be adopted as a decree by the court before it can be executed.
16. On the other hand, the 3rd defendant argued that the provision of the *Advocates Act* and the case law relied on by the plaintiffs are not relevant as they relate to advocate-client costs as opposed to the party and party bill of costs.
17. I agree with the submissions of the defendant in that, the authorities quoted in the plaintiffs' submissions all relate to advocate-client costs whereby a certificate of costs has to be adopted first before the advocate can enforce payment of his costs.
18. In this case, the bill of costs arose from the present suit which was dismissed for want of prosecution on November 24, 2005 with costs awarded to the defendants.
19. In *Nyamira County Government v Local Authorities Provident Fund* [2020] eKLR, the court held: -

“As for his argument that the certificate of costs was not converted into a judgment, it is my finding that the bill of costs being one for party & party need not have been so converted in order to be executed. Section 51 of the *Advocates Remuneration Act* upon which Mr. Madara puts his reliance states: -

‘(1) Every application for an order for the taxation of an advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

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 judgement be entered for the sum certified to be due with costs.’

That section which from a reading of subsection one refers to advocate/client costs emphatically states that the certificate of costs is final as to the sum of costs unless set aside by the court. The section also bestows upon the court discretion to make such order in relation thereto including an order that the judgment be entered for the sum certified to be due with costs save where the retainer is disputed. In my view the section does not make entry of judgment a condition precedent in matters of party and party costs.”

...

If a decree means the formal expression of an adjudication, then the certificate of costs is the formal expression of the ruling of the court on certified costs and same can be enforced. (See *Francis Kimani Kiige v National Hospital Insurance Fund* [2017] eKLR). Indeed, in the Court of Appeal Rule 108 of the Court of Appeal Rules now stipulates: -



“(2) For the purpose of execution in respect of costs, the decision of the court directing taxation and the certificate of the taxing officer as to the result of such taxation shall together be deemed to be a decree.”

20. I concur with the above rendition of the law. The certificate of costs in the instant matter was in respect to a party and party bill of costs in respect of which section 52 of the *Advocates Act* does not apply.
21. Further, in a party and party bill of costs, the certificate of costs is the formal expression of the ruling of the court on certified costs and it can be enforced as is. A practice seen in the Court of Appeal. There is no need to stop the execution process merely because a decree from the certificate of costs has not been obtained by the decree holder.
22. The reference filed by the plaintiffs against the certificate of cost does not operate as a stay of execution against execution of the certificate.
23. In this regard, I find no merit in the application dated 23/8/2021 and the same is dismissed with costs to the 3rd defendant. The status quo order made herein is hereby set aside.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

A. MABEYA, FCIArb

JUDGE

3

