

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 166 OF 2009

DODOMA TRANSPORT AGENCY LTDAPPELLANT/RESPONDENT

VERSUS

MUSAU MUTHOKA(Suing as the administrators of the estate of the late)

MUTISYA MUSAU (DECEASED).....RESPONDENT/APPLICANT

RULING

This is a Notice of Motion dated 12th February, 2020 seeking judgment based on taxed costs and that the respondent/applicant be authorised to execute the decree. The application is supported by grounds set out on the face of the application and a supporting affidavit sworn by the respondent/applicant. The application is opposed and there is a replying affidavit sworn by the advocate for the appellant.

The only contest in this matter is whether or not the bill of costs was taxed on the appointed dates. The advocate for the appellant states that from her records, they were never served with any hearing notice to the taxation of bill of costs.

I have perused the court file. There is a return of service filed on 10th March, 2016 showing that the notice of taxation was served upon the appellant's advocate. That affidavit of service has not been disputed. More importantly however, there is a certificate of taxation dated 28th April, 2017 which has not elicited any dispute from the appellant. I say so because, any party aggrieved by the order on the taxation of a bill of costs is at liberty to file a reference to the High Court. As it is, that certificate of taxation has not been disputed.

Going by the record therefore, the application dated 12th February, 2020 is allowed as drawn with costs to the respondent/applicant.

Dated and delivered at Nairobi this 25th day of February, 2021.

A.MBOGHOLI MSAGHA

JUDGE