



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 236 OF 2016

BETWEEN

BIO-MEDICA LABORATORIES LIMITED.....APPLICANT

VERSUS

PROF. FRED SIGOR, THE PRINCIPAL SECRETARY,

MINISTRY OF NATIONAL WATER SERVICES.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. Before this Court for ruling is a Notice of Motion application dated 3rd March, 2020 filed by the Applicant, Bio-Medica Laboratories Limited (hereinafter referred to as “the Applicant”) in which it was seeking the following orders:

- a) That the costs certified by the Honourable Deputy Registrar on 22nd March, 2018, be adopted as Judgment of the Court.
- b) That the Honourable Court do order the Respondent to pay the certified costs with interest at the rate of 14% from 24th May, 2016, until full payment, when an Order was made for the Ex-parte Applicant's Party and Party costs to be due and payable until payment.
- c) That the costs of this Application be borne by the Respondent.

2. The application is supported by the grounds therein and the annexed Affidavit sworn on 3rd March 2020 by Charles Njuru Kihara, an advocate of the High Court of Kenya and in the firm of C.N. Kihara & Company Advocates which has the conduct of this matter on behalf of the Applicant. The deponent averred that the Applicant filed a civil claim against the predecessor Ministry of Environment and Water Resources, now Ministry of Water and Irrigation, in **Nairobi HCC No. 43 of 2002, - Bio-Medical Laboratories versus The Attorney General**. He contended that after hearing of the main cause, the Court entered judgment in favour of the Applicant against the Respondent on the 5th July, 2012, wherein the Respondent was ordered to pay the *ex parte* Applicant a sum of Kshs. 8,225,000.00/= (Kenya Shillings Eight Million, Two Hundred Twenty-Five Thousand) together with interest thereon at prevailing commercial rate of 28% per annum from 1st January, 2002 until payment in full.

3. Further, that the Respondent ordered to pay the Applicant's costs of the suit with interest thereon at the rate of 14% per annum from the 5th July 2012, until payment in full. However, that after the Applicant made several demands for the aforesaid decretal sum and the Respondent repeatedly failed to make payment of the said decretal sum, the Applicant filed judicial review proceedings being Miscellaneous Application No. JR 235 of 2016 at Nairobi on 24th May, 2016.

4. The deponent further averred that after the hearing of the judicial review proceedings, the Court delivered a ruling in favour of the Applicant on 20th July, 2016, and amongst others made an order for costs in favour of the Applicant, who thereafter filed a bill of Costs seeking to have the same taxed by the Deputy Registrar. The ruling on taxation of the Bill of Costs was subsequently delivered by Honourable L.A. Mumassabba on the 22nd March, 2018, wherein the bill of costs was taxed at Kshs. 500,001.00/= , and that the Respondent has not made payment nor preferred a Reference or any kind of appeal against the ruling of the Deputy Registrar. The Applicant annexed a copy of the Certificate of Costs dated 12th November 2019.

5. The Applicant contends that the Respondent is unlikely to pay, unless this Court does enter and/or adopts the certified costs as its judgment in the Applicant Counsels' favour against the Respondent. Further, that despite the Respondent being aware of the Taxing Master's Ruling delivered on 22nd March, 2018, it has failed, refused and/or neglected to pay the Applicant's Certificate of costs. In conclusion the

Applicant asserted that the grant of orders sought in the instant application will not occasion any prejudice to the Respondent, who has had numerous opportunities but failed to settle the Applicant's certified costs. Therefore, that in the circumstances, it is only just and fair the orders sought herein be granted, so as to allow the Applicant to enjoy the fruits of taxation of its costs.

6. The Respondent did not file any response to, or oppose the said application, despite evidence provided that it was duly served.

The Determination

7. The issue for determination in the instant application is whether judgment should be entered against the Respondent for the taxed costs due to the Applicant. It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is if the same has been set aside or altered, or where there is an issue with retainer. Under section 51(2) of the Advocates Act, this Court has power to enter judgment on the taxed costs in the circumstances set out therein as follows:

“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 judgment be entered for the sum certified to be due with costs”.

8. This position has been upheld in the various cases cited by the Applicant, as well as in **Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited, (2007) e KLR**, **Dally and Figgis Advocates vs Homelex Limited (2013) eKLR** and **Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Ltd (2012) eKLR**. In addition, Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14 %, from the expiration of one month from the date of delivery of a bill of costs to a client.

9. The Applicant has brought evidence of the taxed costs of Kshs 500,001/= granted herein in its favour, and of the certificate of costs issued to it in this regard. The Respondent has not brought any evidence of any pending dispute as regards the amount of taxed costs. The finality of the taxed costs and Certificate of Costs issued to the Applicant is therefore not in dispute, and the Applicant is thus entitled to judgment.

10. In the premises I find merit in the Applicant's Notice of Motion dated 3rd March 2020, and grant the following orders:

I. Judgment is entered for the Applicant against the Respondent for the taxed costs of Kenya Shillings Five Hundred Thousand, and One (Kshs 500,001/=), as certified in the Certificate of Taxation issued on 12th November, 2019, with interest at 14% per annum from the date of taxation until payment in full.

II. The Applicant shall have costs of the Notice of Motion dated 3rd March 2020 of Kshs 10,000/=.

11. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MARCH 2021

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this ruling will be delivered electronically by transmission to the email addresses of the Applicant's and Respondent's Advocates on record.

P. NYAMWEYA

JUDGE