



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL MISC APPL. NO. 24 OF 2016**

**PROF. PETER ANYANG'I NYONG'O & OTHERS...DECREE HOLDERS**

**-V E R S U S -**

**HON. ATTORNEY GENERAL.....JUDGMENT DEBTOR**

**RULING**

1) The decree holders/Applicants herein, took out the originating motion dated 15.12.2015 whereof they sought for the following orders:

***1. THAT this honourable court be leased to adopt for execution of the certificate of costs issued by the East African Court of Justice in EACJ Taxation Reference no. 5 of 2010 sitting in Arusha in the sum of united States Dollars two hundred and fifty six thousand eight hundred and two cents twenty four (USD 256,802.24) plus interest at the rate of fourteen (14%) percent per annum for the period commencing 223<sup>rd</sup> February 2011 till full satisfaction of the certificate of costs.***

***2. THAT this honourable court be pleased to issue a certificate pursuant to Section 21 of the Government Proceedings Act Cap 40 Laws of Kenya against the honourable Attorney General of the Republic of Kenya directing him to pay forthwith Messrs Oregon and Odhiambo Company Advocates on behalf of the Decree Holders the sum of Unites States Dollars two hundred and fifty six thousand eight hundred and two cents twenty four (USD 256,802.24) plus interest at the rate of fourteen (14%) percent per annum for the period commencing 23<sup>rd</sup> February 2011 till full satisfaction of the certificate of costs.***

***3. THAT costs of this motion be provided for.***

2) The originating motion is supported by the affidavit sworn by T. J. Kajwang. When served with the originating motion the Honourable Attorney, the judgement debtor/respondent, filed the replying affidavit of Christopher Siro to oppose the same. In response to the aforesaid replying affidavit, the applicants filed a further affidavit sworn by Fredrick Orego. When the originating motion came up for interpartes hearing, learned counsels recorded a consent order to have the application disposed of by written submissions.

3) I have considered the grounds stated on the face of the originating motion plus the facts deponed in the affidavits filed in support and against the application. I have further considered the rival written submissions. The applicants are basically arguing that the East African Court of Justice has made a final and binding decision and subsequently issued a certificate of costs against the Hon. Attorney General in the sum of USD.256,802/24 plus interest vide EACJ Taxation Reference no. 5 of 2010. The taxation

reference arose out of Taxation Cause no. 2 of 2010. The applicants aver that this court has a duty under Section 21 of the Government proceedings Act Cap. 40 Laws of Kenya to issue out a certificate in the prescribed form against the respondent herein in execution of the decree. It is also argued that the Registrar of this Court has the authority under the law to record the ruling and certificate of costs and issue the relevant certificate in execution thereof.

4) The respondent opposed the application arguing that the applicants' award was satisfied when they were paid a sum of ksh.232,166,378/40 in the year 2012. It is stated that the sum of USD.2,797,064/80 was settled by the respondent vide the discharge voucher dated 14<sup>th</sup> August 2012. The respondent submitted that the discharge voucher discharged the respondent in full and final settlement of the claim, costs and interest arising from Misc. Application no. 173 of 2011.

5) The applicants objected to the respondent's averments terming the same as misleading. It is stated that the payments the respondent is referring to is in respect of a totally different claim. It is said that the outstanding amount as at 15.08.2015 inclusive of interest which was in the sum of USD.2,797,064/90 which amount was paid in full in respect of costs awarded in Reference no. 1 of 2006 arising from Taxation Cause no. 6 of 2008.

6) After considering the two divergent arguments, I am convinced that the correct position is that stated by the applicants that there were two Taxation Causes that ensued. First, is that, the Decree Holders filed Taxation Cause no. 1 of 2006, where the Decree Holders were awarded costs in the sum of USD.2,033,164/99 and the ruling on taxation and the certificate thereof are annexed to the affidavit of T. J. Kajwang.

7) Secondly, is that, the Decree Holders later filed Taxation cause no. 2 of 2010 for costs awarded in Application no 4 of 2009 by the court of the first Instance Division and Application no. 1 of 2010 by the Appellate Division after the two applications were dismissed. Therefore the amount in issue claimed vide this originating motion is the sum of USD256,802/24 and which was awarded in respect of costs in Application no. 4 of 2009 before the court of 1<sup>st</sup> Instance Division and Application NO. 1 of 2010 before the Appellate Division. I find the applicants originating motion to be well founded.

8) Under Article 44 of the Treaty for the Establishment of the East African Community which Treaty the Republic of Kenya domesticated through the enactment of the Treaty for the Establishment of the East African Community Act, Act no. 2 of 2000 and in particular under Rule 74 of EACJ rules of procedure, the execution of judgments of EACJ is governed by the rules of Civil Procedure in force in the partner state which execution is to take place.

9) In the end, the originating motion is found to be meritorious, it is allowed as prayed with costs to the applicants.

Dated, Signed and Delivered in open court this 24<sup>th</sup> day of March, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant