



**REPUBLIC OF KENYA**

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

**COMMERCIAL & ADMIRALTY DIVISION - MILIMANI**

**MISCELLANEOUS APPLICATION NOS. 440, 434, & 435 OF 2015**

**ARIMI KIMATHI CO. ADV..... PLAINTIFF**

**VERSUS**

**SATICO PETROLEUM PRODUCTS LTD .....DEFENDANT**

**RULING**

1. The matters before the Court relate to the taxation of a Bill of Costs. There were initially 3 separate files **Miscellaneous Application 434 of 2015, Miscellaneous Application 435 of 2015 and Miscellaneous Application No. 440 of 2015.** All three files were consolidated by an Order of this Court on 10<sup>th</sup> December 2015 for the purposes of enforcement.

2. In each matter the Applicant is Patrick Kimathi Muchena trading as Arimi Kimathi & Company Advocates, an Advocate and the Respondent is Sitico Petroleum Products Ltd, the Client. Each is an Application to enter Judgment based on the Certificate of Taxation issued by the Deputy Registrar of this Division.

3. In the first matter **Miscellaneous Application No. 434 of 2015**, the Bill of Costs is dated 15<sup>th</sup> October 2015 and was filed the next day. It states clearly on its face that it relates to the formation and incorporation of three Companies. The Taxation was due to take place at 9.00 am on 24<sup>th</sup> November 2015. A copy of the Taxation Notice was served on Mr. Joseph Stambolieh, the Managing Director of the Respondent Company at its offices on 5<sup>th</sup> Floor Laibon Centre, Lenana Road, Nairobi on 7<sup>th</sup> October 2015. Mr. Stambolieh signed a copy of the notice to signify receipt. The return of service was filed on 24<sup>th</sup> November 2015.

4. The Respondent did not enter an Appearance and the Taxation seems to have proceeded unopposed and ex-parte. The Bill sought payment of Kshs.314,552.00. That was taxed down and the certificate allows the sum of Kenya Shillings Two Hundred and ten thousand one hundred and fifty two only (Kshs.210,152/-)

5. The Application was brought under a Certificate of Urgency on the Grounds that the Applicant believes “*the Respondent Company is about to undergo liquidation.*” No evidence is filed on the facts and matters giving rise to that belief. It came before the court on 9<sup>th</sup> January 2015.

6. The Order made on the Certificate Ordered:

1. The Plaintiff do serve the Respondent forthwith,

2. List for Mention on 5<sup>th</sup> February 2015”.

7. The Return of Service was filed on 4<sup>th</sup> February 2015. It states that the Court Order was served at the same address as the Notice of Motion and Mention Notice. Again the Defendant has not entered an appearance. There is no Defence filed nor was there any attendance of 5<sup>th</sup> February to say that the Defendant wished to file a defence.

8. In the circumstances, I enter judgment for the Plaintiff in the sum of Kshs.210,152,00 on file Miscellaneous Application No. 434 of 2015.

#### **Miscellaneous Application 435 of 2015**

9. In the Second matter the Bill of Costs was dated 1<sup>st</sup> October 2015 and lodged on 2/10/2015. It sought of the sum of Kshs.568,429.60. (Five Hundred and sixty eight thousand, four hundred and twenty-nine shillings and sixty cents only). The Notice of Taxation shows that the taxation was fixed for Hearing on 24<sup>th</sup> November 2015. The Record shows that the Deputy Registrar was satisfied that the Notice was duly served on 7<sup>th</sup> October 2015.

10. The Record shows that the Bill was taxed down and the Certificate of Taxation was in the sum of Kshs.353,830/- (Three hundred and fifty three thousand eight hundred and thirty shillings only). It related to drafting an Agreement between the Defendant and Habib Oil.

11. Again there was no Appearance entered and no objection to the Bill. The Application for Judgment to be entered was again filed on 9<sup>th</sup> December 2015 and came before the Court on 10<sup>th</sup> December 2015. The matter was consolidated with **Miscellaneous Application 440 of 2015** and like directions were given.

12. On 16<sup>th</sup> December 2015 the Notice of Motion with Notice of Mention were served on Joseph Stamboulieh. The Return of Service was filed on 4<sup>th</sup> February 2016. As stated above the Order was served on 19<sup>th</sup> January 2016.

13. Again no Appearance was entered and no Defence filed.

14. In the circumstances I enter Judgment for the sum of Kshs.353,830/- (Three hundred and fifty three thousand eight hundred and thirty shillings only) on that certificate.

15. The Third file relates to a Bill of costs dated 1<sup>st</sup> October 2015 and lodged on 2<sup>nd</sup> October 2015. It relates to the provision of a legal opinion on a Joint Venture Agreement. The Bill was in the sum of Kshs.373,248.00. That Bill was taxed on 30<sup>th</sup> November 2015. The requirement for service having been complied with, the Deputy Registrar taxed the Bill and allowed the sum of Kshs.232,880/- (Two Hundred and thirty thousand eighty two thousand eight hundred and eighty shillings only). The Certificate is dated 8<sup>th</sup> December 2015. Again there was no challenge.

16. The Application for judgment was also made lender certificate on 9<sup>th</sup> December 2015 and came before this Court on 10<sup>th</sup> December, notwithstanding the Order of 10<sup>th</sup> December the Defendant has not entered an appearance or filed a defence. In the circumstances I enter Judgment for the sum of Kshs.232,880/- file **Misc Application 440 of 2015**.

17. The Defendant is therefore ordered to pay the Plaintiff the Total sum of Kshs.796,862/-.

18. Comprised of the following:

1. Kshs.210,152/-

2. Kshs.353,830/-

3. Kshs.232,880/-

**Total** Kshs.796,862/-

19. The sum of Kshs.796,862/- within 28 days of today.

20. The Defendant to pay the Plaintiff interest at the rate of 14% p.a from today's date until the date of payment on any sums outstanding.

**Orders accordingly.**

**FARAH S. AMIN**

**JUDGE**

Dated **16<sup>th</sup>** day of **February** 2016.

Signed and Delivered on **17<sup>th</sup>** day of **February** 2016.

Coram

Hon. Lady Justice F. Amin

CC Phoebe Suda

**In the presence of:**

Miss Munene Holding Brief for Mr. Kimathi for Applicant

No Appearance for the Respondent