



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 125 OF 2015

MAJANJA LUSENO & COMPANY.....PLAINTIFF

VERSUS

LENAH KOINANGE.....DEFENDANT

RULING

1. The application before the Court is the Plaintiff's Notice of Motion dated **15th October 2015** and filed on **16th October, 2015**. It is expressed to be brought under the provisions of **Sections 1A, 1B and 3A** of the **Civil Procedure Act** as well as **Order 36 Rule 1 (a), and (2)** of the **Civil Procedure Rules**.
2. The Plaintiff sought for one main order that this Court be pleased to enter summary judgment in its favour against the Defendant as prayed in the Plaint. The Plaintiff also sought that the costs of the application and the entire suit be provided for.
3. The application is based on the grounds set out therein and is supported by the Affidavit sworn on **15th October, 2015** by STEVE LUSENO and his Further Affidavit sworn on **24th November, 2015**.
4. The Plaintiff averred that on 3rd September 2012, the Court issued them with a Certificate of costs against the Defendant for the sum of **Kshs. 4,519,688/-** following the taxation of an Advocate Client Bill of costs against the Defendant. It is therefore the Plaintiff's case that the Defendant is truly indebted to them in the sum of the said Kshs. 4,519,688/- as the Certificate of costs has never been set aside or varied. The Plaintiff further averred that their claim was too plain and in the circumstances the remedy of summary judgment was the most appropriate.
5. In opposition to the application, the Defendant filed her Replying affidavit sworn on **9th November, 2015**.
6. The Defendant's case as I understand it is that the Bill of costs leading to the Certificate of costs herein was remitted to a taxing officer for fresh taxation. She averred that following a number of applications from her Advocates on record culminating to a ruling dated **9th May, 2014** by Justice Musyoka, the purported order of the taxing officer dated **7th October, 2012** was set aside and the Judge ordered that the Bill of Costs be remitted to a taxing officer for fresh taxation.
7. The Defendant also alluded to the fact that she had paid the Plaintiff for all the work done and was therefore not indebted to the Plaintiff in any way.
8. I have considered the application, the affidavits in support and opposition thereto as well as the written submissions by Counsel. Having done so, I take the following view of the matter.
9. I have perused the ruling dated **9th May, 2014** by Justice Musyoka in **Miscellaneous Application**

No. 29 of 2012. The Defendant has relied on this ruling in arguing that the Judge remitted the Bill of Costs to a taxing officer for fresh taxation. The said ruling relates to a Bill of Costs dated **9th March, 2012** and taxed on **17th October, 2012** at a sum of **Kshs. 23,181,877/=**. From the foregoing, it is already obvious that the ruling of 9th May, 2014 has nothing to do with the Certificate of Costs herein dated **3rd September, 2012**. The order of the taxing officer set aside by the Court was made on **17th October, 2012** almost a month after the Certificate of Costs herein had been issued. In addition, the amounts taxed off in the said order that was set aside significantly vary from the amount in the Certificate of Costs in question. The Plaintiff in its further affidavit averred that the Certificate of Costs herein related to a taxation filed in Nakuru being Miscellaneous Application No. 92 of 2012. It further averred that the Defendant filed a reference against the said taxation which reference was dismissed by Justice Emukule. The Plaintiff attached the relevant pleadings and the said ruling dismissing the Defendant's reference.

10. In the circumstances, it is clear that the Certificate of Costs dated **3rd September 2012** has never been set aside or varied. **Section 51 (2)** of the **Advocates Act** provides that the Certificate of Costs issued by the taxing officer is final as to the amount of costs unless it is set aside or altered by the Court. The said section further provides that where a retainer is not disputed, the Court can order that judgment be entered for the sum certified therein. In the present application, the issue of retainer is not in dispute.
11. The Defendant's other argument was that she had paid all the legal fees due to the Plaintiff. It is however not enough for the Defendant to allege that she paid all the legal fees yet there is no proof for the payment of **Kshs. 4,519,688/-** arising from the Certificate of costs herein. It is trite law as provided for under **Section 107** of the **Evidence Act** that he who alleges must prove.
12. From the foregoing, it is clear that the Defendant has no defence to the Plaintiff's claim arising from the Certificate of Costs.
13. In view of the foregoing, it is my finding that the Plaintiff's Notice of Motion dated **15th October 2015** and filed on **16th October, 2015** is meritorious and is therefore allowed. Judgment is hereby entered for the Plaintiff in the sum of **Kshs. 4,519,688/= with** interest thereon at Court rates from the date of filing the suit until payment in full. The costs of the suit shall be for the Plaintiff.

OLGA SEWE

JUDGE

DATED SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF APRIL 2016

ERIC K.O. OGOLA

JUDGE