



Menelik House Limited v Osodo (Environment and Land Miscellaneous Application E043 of 2022) [2022] KEELC 2544 (KLR) (14 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2544 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E043 OF 2022
SO OKONG'O, J
JULY 14, 2022

BETWEEN

MENELIK HOUSE LIMITED PLAINTIFF

AND

FRANCIS ODUMBE OSODO DEFENDANT

RULING

1. The Plaintiff (hereinafter referred to as “the Respondent”) and the Defendant (hereinafter referred to as “the Applicant”) were involved in a civil suit before this court namely, ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo which was determined in favour of the Applicant on July 29, 2021 by Komingoi J. The Applicant was awarded the costs of the suit. The Applicant filed a bill of costs dated August 10, 2021 in that matter which was taxed by the Deputy Registrar Hon. Diana Orago on February 16, 2022 at Kshs. 163,232/-
2. What is now before this court is the Applicant’s application brought by way of Notice of Motion dated March 8, 2022 under Sections 48 and 51 of the *Advocates Act*, Chapter 16 Laws of Kenya seeking an order that judgment be entered in his favour against the Respondent in the sum of Kshs. 163,232/- in terms of the certificate of taxation issued by the Deputy Registrar on February 16, 2022. The Applicant has sought a further order that the Respondent be ordered to pay the judgment amount within 7 days.
3. The application was served upon Ojienda & Company Advocates. I have noted that Ojienda & Company Advocates represented the Respondent in ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo. Ojienda & Company Advocates is not representing the Respondent in this application. It is not clear to me why the firm was served with the present application. Ojienda & Company Advocates had no obligation to appear for the Respondent in the present application as this is not an appeal. I had a problem with the manner in which the present application was brought which I found very unusual. When the application came up for hearing on April 28, 2022, I sought an explanation from the Applicant’s advocate why the Applicant did not file



the present application in ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo where he was awarded costs and his bill was taxed. The explanation I got was that the Applicant decided to file the present application as a Miscellaneous Application because there were still other proceedings going on in ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo.

4. I have perused the court file for ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo. I have noted that what the advocate for the Applicant told the court was not true. That suit was struck out with costs to the Applicant, the Applicant filed his bill of costs and the same was taxed. The file was thereafter closed. It is my finding that the Applicant's application was irregularly filed. The same being an application for the recovery party/party costs, it ought to have been filed in ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo where costs were awarded to the Applicant and taxed. I have also noted that the application has been brought as if it is Menelik House Limited which is claiming the costs which is not the case. I do not understand why the advocates on record for the Applicant decided to change the position of the parties in the heading of their application. I believe that the application was intended to be filed in ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo but was filed as a new application by mistake. The Applicant's advocates should have owned up to this error.
5. I would have ignored these irregularities if the Respondent was served with the application which is not the case. As mentioned earlier, the application was served on a firm of advocates which had no obligation to appear for the Respondent in this matter. I am of the view that it is not too much to ask the Applicant to do things the right way.
6. Due to the foregoing, I find the manner in which these proceedings were commenced irregular which irregularity is likely to cause injustice to the Respondent if the court sustains the application before it. Consequently, the Notice of Motion dated March 8, 2022 is struck out. Let the Applicant file the application for judgment for his taxed costs in ELCC No. E003 of 2021(O.S), Menelik House Limited v Francis Odumbe Osodo. There shall be no order as to costs.

DELIVERED AND DATED AT NAIROBI THIS 14TH DAY OF JULY 2022

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Rabala for the Applicant

N/A for the Respondent

Ms. C. Nyokabi-Court Assistant

