

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Appli 820 of 2003

PETER ONYANGO BONYO T/A ONYANGO BONYO & ASSOCIATESAPPLICANT

VERSUS

PRONTO COMMUNICATIONS LTDRESPONDENT

R U L I N G

The respondent to the Bill of Cost has made an application dated 15th July 2004 brought under Order 9 B Rule 8 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all the enabling provisions of the Law.

The respondent seeks an order setting aside the certificate of taxation dated 26th day of September 2004 and that the respondent be allowed to participate in taxation.

When the Bill of Cost came up for taxation on 26th September 2003 the taxing master noted, that the applicant stated that the respondent was absent. The taxation proceeded where by the Bill was taxed as drawn.

I have looked at the affidavit of service filed in court on 26th September 2003, which indicated that the respondent's secretary was served with Notice of Taxation, which she signed, and the deponent stated that the signed Notice of Taxation was annexed to the affidavit.

I have looked at that affidavit and I failed to find a Notice of Taxation signed and annexed thereof.

It is therefore not surprising that the respondent alleges that he was not served with the notice nor the bill and it is on that basis that he seeks an order to set aside that taxation.

When this application came up for hearing the applicant's counsel did not attend even though this date was taken by consent in court.

The applicant has also not filed any papers in opposition to the application.

I am of the view that the application is deserving of the exercise of my discretion and accordingly I grant the following orders: -

- 1) That the taxation, which took place on 26th September 2003, is hereby set aside.**

- 2) That the costs of the application dated 15th July 2003 are awarded to the Respondent to the bill.**

Dated and delivered this 15th day of December 2004.

MARY KASANGO

JUDGE