



**Dado v Godhana & 2 others (Election Petition 001 of 2022)
[2024] KEHC 5538 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
ELECTION PETITION 001 OF 2022
SM GITHINJI, J
MAY 9, 2024**

BETWEEN

HUSSEIN TUNEYA DADO PETITIONER

AND

DHADHO GADDAE GODHANA 1ST RESPONDENT

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION
(IEBC) 2ND RESPONDENT**

YONAH OGALO OWIYO 3RD RESPONDENT

RULING

1. That the honourable court be pleased to enter judgment for the Applicant against the Petitioner/ Respondent for the sum of Kshs. 2,000,000 (Kenya Shillings Two Million Only) as appears on the certificate of Taxation dated 31st January 2024 together with interest from the date of filing the Bill of costs, that is from 13th July 2023 till payment in full.
2. That the honourable court be pleased to enter judgment for the Applicant against the 2nd Respondent for the sum of Kshs. 3,000,000 (Kenya shillings three million only) as appears on the certificate of taxation dated 31st January 2024 together with interest from the date of filing of the Bill of costs that is from 13th July 2023 till payment in full.
3. That the applicant be allowed to execute the judgment herein against the Petitioner/Respondent, Hussein Tuneya Dado and the 2nd Respondent, the Independent Electoral & Boundaries Commission (IEBC) herein.
4. That the costs of this application be borne by the Petitioner/Respondent.

The application is founded on the grounds set out on its face and the supporting affidavit of Prof. Tom Ojienda, SC the Managing partner in the firm of Prof. Tom Ojienda & associates which is on record



for the 1st Respondent. He stated that the 1st Respondent /Applicant herein filed two separate Party and Party Bills of cost both dated 13th July 2023 which arose out of the court judgment in the matter following an election petition dated 2nd September 2022 filed by the petitioner. That the said judgment upheld the 1st Respondent's election and awarded costs of Kshs. 3,000,000 and Kshs. 2,000,000 against the Petitioner and the 2nd Respondent respectively. Further, the court issued two certificates of taxation both dated 31st January 2024 for the said sums which said certificates of taxation have not been set aside or altered by any court.

The petitioner in response filed grounds of opposition dated 3rd April 2024 stating that the application is premature, misconceived and incompetent. That the Applicant has not exhausted all other methods of recovery. Additionally, that the applicant in seeking interest relies on Section 51 (2) and Rule 7 of the [Advocates Remuneration Order](#) which is erroneous and does not apply to Party and Party Bill of costs.

Disposition

The application was canvassed by way of written submissions. I have considered the submissions by the parties as well as the authorities relied upon. The issue for determination is whether the two Certificates of Costs dated 31st January 2024 should be adopted as judgment of the court.

Section 51 (2) of the [Advocates Act](#) provides;

- (2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

The above subsection is clear that the certificate of costs once issued by the Taxing officer is final unless set a side or altered by the court. The court may also make an order that judgment be entered in terms of the amount in the certificate of costs.

From the record before me, taxation on the bills of cost against the petitioner and the 2nd respondent was done on 25th January 2024 and two certificates of costs were issued on 31st January 2024. There is no evidence before me that either the petitioner or the 2nd Respondent has challenged the Taxing Officer's decision and the certificate of costs. This is so despite the fact that the Petitioner and the 2nd respondent had been served with the notice for taxation.

In view of the certificates having been issued and not challenged, it became conclusive as to the amount ascertained by the taxing officer. I take into account the principle in Article 159(2) (b) and (d) that justice should not be delayed and that justice should be administered without undue regard to procedural technicalities. As I have already explained herein above, bills of costs were taxed on 25th January 2024 and consequently certificates of costs issued. The certificates have neither been challenged nor set aside or altered. In the circumstance, I am inclined to allow the application and make the following orders;

- a. Judgment is hereby entered against the Petitioner and the 2nd respondent in favour of the applicant for Kshs. 3,000,000 and Kshs. 2,000,000=respectively, as more particularly ascertained by the Taxing Officer of this Court and contained in the certificate of taxation dated 31st January 2024.
- b. Interest at court rates from the date of this judgment to the applicant.
- c. Costs of the application to the applicant



RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 9TH DAY OF MAY, 2024.

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S.M. GITHINJI

JUDGE

**In the Presence/absence of:

1. Ms Opiyo holding brief for Msando for the Applicant
2. Ms Kemunto holding brief for Mr Munyithya for the 2nd Respondent

