



**Raiya Construction Limited v Sun Sand Dunes Limited; Kukadia (Objector)
(Civil Suit 179 of 2012) [2024] KEHC 9355 (KLR) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL SUIT 179 OF 2012
SM GITHINJI, J
AUGUST 2, 2024**

BETWEEN

RAIYA CONSTRUCTION LIMITED PLAINTIFF

AND

SUN SAND DUNES LIMITED DEFENDANT

AND

KANTILAL KUKADIA OBJECTOR

RULING

1. For determination is the Notice of Motion dated 4th June 2024 brought under Section 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 22 Rule 22 of the [Civil Procedure Rules](#) seeking the following orders;
 1. Spent.
 2. Spent.
 3. That the decision of the Taxing Master delivered on 23rd February 2022 in so far as the same relates to the reasoning and determination pertaining the Defendant/Respondent's Party and Party Bill of Costs dated 10th August 2018 and the consequent Certificate of Taxation issued on 5th April 2022 be set aside.
 4. That the Defendant/Respondent through his agents Mugema Auctioneers or any other auctioneers be precluded from proclaiming or having proclaimed from attaching or selling the objector's goods in an answer of the decree of this honourable court.
 5. That this honourable court be pleased to issue any other order as may deem just.
 6. That the costs of this application be provided for.



2. The Application is founded on the grounds on its face and the supporting affidavit of Kantilal Kukadia the objector who deponed that judgment was entered in this suit on 07.03.2017 where the court ordered each party to meet its own costs. That the Defendant proceeded to lodge in court a party and party bill of costs dated 10.08.2023 and the same was taxed on 23.02.2022 and allowed against the plaintiff in the sum of Kshs. 907,579 and a certificate of taxation was issued on 05.04.2022. He stated that subsequently warrants were issued on 23.05.2024 and he was served with a proclamation notice by Mugema Auctioneers on 27.05.2024 and the Respondent has threatened to attach his household goods. He stated that the said bill of costs and all the consequential orders are erroneous as the trial court did not award costs to any party to warrant the Defendant's bill of costs to succeed. In addition, the items attached in the proclamation notice belong to him and not the plaintiff.
3. In response, the Respondent filed a replying affidavit sworn by Job Nyasimi Momanyi counsel for the respondent who deponed that the respondent filed a bill of costs dated 10th august 2018 and the bill was allowed in the sum of Kshs. 907,579 on 23rd February 2022 and a certificate of cost issued on 5th April 2022. That consequently, the objector made partial payments on various days amounting to Kshs. 300,000 towards settlement of the said certificate of costs and a balance of Kshs. 607,579 remains unsettled despite several requests. He stated that the certificate of costs was properly issued by the taxing master and the same having been rendered conclusive gave way to execution proceedings. It was also deponed that the goods proclaimed for auction belong to the plaintiff and were proclaimed in the Plaintiff's premises and were held by the plaintiff at the time of the proclamation

Disposition

4. The application was canvassed by way of written submissions. I have considered the application and the grounds it is set upon, the replying affidavit, the submissions by the parties as well as the authorities relied upon. The sole issue for determination is whether objector meets the threshold for setting aside the Certificate of Taxation issued on 5th April 2022.
5. The principles of setting aside the decisions of Taxing Master were well established in the cases of *Premchand Raichand Limited & Another vs Quarry Services of East Africa Limited and Another* [1972] E.A 162, *First American Bank of Kenya vs Shah and Others* (2002) EA 64 and *Joreth Ltd vs Kigano and Associates* (2002) 1 EA 92. These include;
 - a. That there was an error of principle.
 - b. The fee awarded was manifestly excessive or is so high as to confine access to the court to the wealthy.
 - c. That the successful litigant ought to be fairly reimbursed for the costs he has incurred.
 - d. That so far as practicable there should be consistency in the award.
6. Further, in *First American Bank of Kenya Vs Shah and Others* [2002] E.A.L.R 64 AT 69, the court held as follows;

“First, I find that on the authorities, this court cannot interfere with the Taxing Officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle”.



7. The question I am faced with is whether the ruling delivered on 23rd February 2023 amounted to an error in principle. From the perusal of the documents on record I do note that a Certificate of costs dated 5th April 2022 was issued in respect to the Bill of cost dated 10th August 2018.
8. The objector's case is that the bill of costs and all consequential orders are erroneous as the trial court did not award costs to any party to warrant the Bill of costs. On its parts, the Defendant argues that by making a payment of Kshs. 300,000/= the remainder of the money should be paid.
9. I have perused the judgment dated 7th March 2017 upon which the bill of costs is founded. I do note that the learned judge in the said judgment directed that each party to meet its own costs. With that clearly spelt out, I do not see the foundation of the bill of costs as the plaintiff was not in any way condemned to pay costs to the defendant. Consequently, all actions attendant to the said bill of cost were irregular. It is my finding therefore that the taxation was founded on wrong principles and thus the Certificate of costs dated 5th April 2022 is erroneous. The same is hereby set aside with no orders as to costs.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 2ND DAY OF AUGUST, 2024.

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S.M. GITHINJI

JUDGE

In the Presence of; -

Miss Metto holding brief for Miss Chepkwony for Objector/Applicant

Mr Odhiambo for the Respondent – (absent)

