



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 607 OF 2011**

**TAJ MALL LIMITED .....APPELLANT**

**VERSUS**

**TAJ VILLAS MANAGEMENT LIMITED ..... RESPONDENT**

**RULING**

1. By a Chamber Summons dated 8<sup>th</sup> February 2019, the respondent, *Taj Villas Management Limited*, filed a reference urging this court to set aside the taxing officer's ruling delivered on 4<sup>th</sup> June 2018 and to remit the Bill of Costs filed on 15<sup>th</sup> February 2018 to the taxing officer for fresh taxation.
2. In the grounds supporting the application and in the supporting affidavit sworn by learned counsel *Mr. Stephen Owino*, the applicant contends that the ruling on taxation was based on a mistake and contained an error on the face of the record as the decision by the taxing officer was contrary to the judgment of the Court of Appeal in Civil Appeal No. 112 of 2017.
3. The facts leading to the filing of the application are straightforward and undisputed since the appellant though served with the application and hearing notice did not file any response and did not attend the court on the hearing date. Briefly, the appellant (hereinafter the respondent) appealed to this court against the ruling delivered on 9<sup>th</sup> November 2011 by the lower court (*Hon. Boaz Olao*). In that ruling, the learned trial magistrate dismissed an application filed by the applicant (then the defendant) seeking to have the respondent's plaint struck out on grounds that it did not disclose any reasonable cause of action and that the respondent lacked *locus standi* to institute the suit.
4. The respondent was aggrieved by the trial court's ruling and filed an appeal to the High Court. The High Court (*Hon. Njuguna J*) heard the appeal and allowed it. The trial court's ruling was set aside and was substituted with an order allowing the respondent's Notice of Motion dated 30<sup>th</sup> June 2011. Each party was ordered to bear its own costs of the appeal but the applicant was condemned to pay the respondent's costs in the lower court.
5. The applicant being dissatisfied with the High Court's decision filed an appeal to the Court of Appeal being Civil Appeal No. 112 of 2017. On 19<sup>th</sup> January 2018, the Court of Appeal rendered its decision. It allowed the appeal, set aside the judgment of the High Court and substituted it with an order dismissing the respondent's appeal. The applicant was awarded costs both in this court and in the Court of Appeal.
6. Pursuant to the Court of Appeal's decision, the applicant filed the Bill of Costs subject of the instant reference. The court record confirms that in a ruling dated 4<sup>th</sup> June 2018, the Taxing Master *Hon. F. Rashid* struck out the Bill of Costs on grounds that it was based on the judgment of this court which did not award costs to the applicant.
7. Given the orders of the Court of Appeal in Civil Appeal No. 112 of 2017 as summarized hereinabove, there cannot be any doubt that the taxing officer was clearly wrong in her finding that the Bill of Costs emanated from the judgment of this court which did not award costs to the applicant and the applicant was therefore not entitled to costs. The taxing officer appears to have been unaware of the orders made by the Court of Appeal and delivered a ruling which contradicted those orders. This was an obvious mistake which amounts to an error on the face of the record.
8. For the reasons foregoing, I find merit in the applicant's chamber summons dated 8<sup>th</sup> February 2019. The same is accordingly allowed with the result that the Bill of Costs dated 14<sup>th</sup> February 2018 and filed on 15<sup>th</sup> February 2018 is hereby remitted to the taxing officer for taxation. I make no order as to costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI** this 14<sup>th</sup> day of November, 2019.

**C. W. GITHUA**

**JUDGE**

**In the presence of:**

Ms Kaburu holding brief for Mr. Mungai for the applicant

No appearance for the respondent though duly served

Mr. Salach: Court Assistant