



**IN THE HIGH COURT OF KENYA AT KISUMU**

**ELECTION PETITION NO. 2 OF 2017**

**IN THE MATTER OF ELECTION FOR COUNTY WOMEN MEMBER OF THE NATIONAL ASSEMBLY FOR KISUMU COUNTY**

**BETWEEN**

**GRACE ADHIAMBO AKUMU.....PETITIONER/RESPONDENT**

**VERSUS**

**THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION....1ST RESPONDENT**

**JOHN COX LORIONOKOU (Returning Officer Kisumu County).....2ND RESPONDENT**

**ROSA AKINYI BUYU.....3RD RESPONDENT/APPLICANT**

**RULING**

1. By a notice of motion dated 13.8.18, brought under Section 11A, 1B and 3B of the Civil Procedure Act and Order 51 (1) of Civil Procedure Rules; the 3rd respondent/applicant prays for orders:-

**1. THAT the certificate of costs issued on 25.7.18 be executed as a decree of this Honourable Court and a decree be issued in terms of the said certificate**

**2. Any further order**

**3. The costs of this application**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn on 13.8.18 by Jackson Awele Onyango, advocate for the applicant. He avers that the Bill of Costs was on 11.6.18 taxed by consent in the sum of Kshs. 1,850,000.00 and a certificate of taxation (**Marked B**) was issued for the said sum. He further avers that the certificate was served on the petitioner/respondent who has however failed to make good her payments obligations of the costs.

3. The application is opposed on the basis of Grounds of Opposition dated 11.10.18 and filed on 12.10.18. The respondent states that the application is frivolous, vexatious, lacks merit, is incompetent, fatally defective and offends principles of natural justice. The application is further stated to be brought in bad faith meant to stifle any negotiations between the parties.

4. I have considered the Notice of Motion in the light of the supporting affidavit and the grounds of opposition.

5. There is evidence that the 3rd respondent's/applicant's bill of costs dated 25th April, 2018 was taxed by consent of the parties on 11th June, 2018 for **Kshs. 1,850,000/-** and a certificate of taxation was issued for the said sum on 25th July, 2018.

6. It is trite that a court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract. (See **Eslon Plastics Of (K) Limited v National Water Conservation and Pipeline Corporation [2014] eKLR; Gatobu M'ibuutu Karatho v Christopher Muriithi Kubai [2014] eKLR and National Bank of Kenya Ltd V Pipe Plastic Samkolit (K) Ltd & Another (2002) EA 503**).

7. As it stands now, the consent that gave rise to the Certificate of Taxation in this matter has not been set aside or altered. In the circumstances, I see no reason to deny the 3rd respondent/applicant judgment as sought.

8. From the foregoing, I have come to the conclusion that the petitioner's/respondent's assertion that the 3rd respondent's/applicant's notice of motion is frivolous, vexatious, lacks merit, is incompetent, fatally defective and offends principles of natural justice is without merit.

9. The upshot of the foregoing is that the notice of motion dated 13.8.18, succeeds and is allowed in the following terms:

*a) Judgment is hereby entered for the 3rd respondent/applicant against the Petitioner/Respondent for Kshs. 1,850,000.00*

*b) Interest shall accrue at court rates until payment in full*

*c) The 3rd respondent/applicant is also awarded the costs of this application.*

**DATED, DELIVERED AND SIGNED AT KISUMU THIS 1ST DAY OF NOVEMBER 2018**

**T.W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistant - Felix

For Applicant/3rd Respondent - Mr Dehure/ Mr Awele

For Petitioner/Respondent - N/A