



**REPUBLIC OF KENYA**

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

**(CORAM; CHERERE-J)**

**MISC. CIVIL APPLICATION NO 141 OF 2018**

**BETWEEN**

**BRUCE ODENY & COMPANY ADVOCATES....APPLICANT/ADVOCATE**

**AND**

**EQUATOR BOTTLERS LIMITED.....RESPONDENT/CLIENT**

**RULING**

1. By a notice of motion dated 18th October, 2018 and filed on 19th October, 2018 brought under the provisions of Order 12 rule 7 of the Civil Procedure Rules, Section 1A, 1B,3A and 63 (e) of the Civil Procure Act, Article 50 (1) and 159 of the Constitution, the applicant seeks the following orders:-

***1. That this Honourable Court be pleased to set aside the proceedings and subsequent orders entered against the respondent on 8th October, 2018 plus all other consequential orders made pursuant thereto***

***2. That this Honourable Court be pleased to remit Applicant's Bill of Costs dated 22nd June, 2018 for fresh taxation on the merit***

***3. That costs of this application be allowed***

2. The motion is premised on the grounds among others that the Applicant's was aware that the Taxation was coming up on 8th October, 2018 but arrived in court at 10.00 am to find that the Bill had taxed in his absence. It is also based on the ground that the applicant is desirous of defending the Bill of Costs.

3. The motion is supported by an affidavit sworn by Nixon Abira , advocate for the Applicant on 18th October, 2018 in which he reiterates the grounds on the face of the application

4. The reference is opposed on the basis grounds of opposition dated 22nd October, 2018 and filed on 23rd October. The Respondent contends that the reference is an afterthought since it was brought 11 days from the date of the impugned taxation. The Respondent also faults the applicant for not making any offer to settle the costs.

**Analysis and Determination**

5. I have carefully considered the reference in the light of the affidavit and grounds of opposition and submissions on behalf of both parties.

6. The applicant has not explained the 11 days delay in filing this reference. The foregoing notwithstanding, Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya gives this court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. I find that it would be in the interest of justice for the Applicant to defend the Bill of Costs which runs into millions.

7. In the end, notice of motion dated 18th October, 2018 is allowed on the following terms:

***1. The Honourable Court hereby sets aside the proceedings and subsequent orders entered against the respondent on 8th October, 2018 plus all other consequential orders made pursuant thereto***

***2. The Honourable Court hereby remits Applicant's Bill of Costs dated 22nd June, 2018 for fresh taxation on the merit***

*3. The Applicant is condemned to pay to the respondent Kshs. 10,000/- being throw away costs within 30 days from today's date.*

**DELIVERED AND SIGNED AT KISUMU THIS 13<sup>TH</sup> DAY OF December 2018**

**T. W. CHERERE**

**JUDGE**

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

Court Assistant - Felix

For the Applicant - N/A

For the respondent - Mr Odeny