



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL SUIT NO. 119 OF 2012**

MOUNT ROBIN LIMITED .....PETITIONER/APPLICANT

VERSUS

ZED HOLDINGS LIMITED .....DEFENDANT/ RESPONDENT

**RULING**

[1].The application dated 5<sup>th</sup> June 2014 is premised on the order by the Deputy registrar issued on 17<sup>th</sup> April 2014.

The order stated.

1.

*2. That the defendant is hereby ordered to give costs to the plaintiff for attending court accommodation as from 30<sup>th</sup> March 2014 to 9<sup>th</sup> April 2014 and the same be taxed by the taxing mater of the court.*

[2]. The applicants being aggrieved by the order of the Deputy Registrar filed this application praying that their application be certified urgent, that a stay of execution be granted pending interparties hearing and leave to appeal. The application was supported by the affidavit of Senior Counsel Fred Gumbo Ojiambo MBS.

The respondents herein M/s Zed Holdings Ltd. Files their grounds of opposition through the firm of M/s Khaminwa & Khaminwa stating that the defendant is acting in bad faith and that this is an attempt to embarrass the court and that its view is to delay this suit among other reasons stated therein.

[3]. This matter came before me on 9<sup>th</sup> April 2014. Mr. Gathuku advocate held brief for Khaminwa & Khaminwa for the petitioner/applicant while Mr. Ombiju advocate held brief for Kaplan and Stratton advocates.

The court was told by M. Ombiju that the client of Messrs. Kaplan and Stratton was out of the country. Mr. Gathuku opposed the adjournment arguing that the applicant in this application was refusing to come to court. I made a ruling as follows;

*That this matter shall be mentioned on 11.6.13 for further orders. When the directors of plaintiffs company and directors of the defendant must attend. I note the defendant is a limited liability company. Obviously it does not have one director. The claim for costs is merited. The plaintiffs company director has come all the way from Canada, has been here from 30.3.14 and living in a hotel. He claims for his*

1,000/= US\$) as ticket from Canada to Mombasa. I cannot assess the costs in the court. I do order that the plaintiff gets the costs for coming to court and accommodation.

*The same to be assessed by the taxing master of the court. It is so ordered.*

[4]. On 9.6.14 when this matter came to court for the motion dated 5.6.14, I ruled that the orders as extracted are not in accordance with the orders issued on 9.4.14. I ordered the Deputy Registrar to peruse the court order and see if it corresponds with the record. I ordered that the application be heard interparties within 14 days. The parties opted to file written submissions.

I have perused the letter from the Deputy Registrar in which she states that she thought the court awarded the plaintiff costs for accommodation from 30.3.2014 and that the plaintiffs' counsel interpreted the same as such.

[5]. This matter came before the court on 31<sup>st</sup> March 2014 before me. It was adjourned to 8.4.14 by Mr. Gathuku holding brief for Dr. Khaminwa and Mr. Njeru holding brief for the defendants. On this date there was no mention of any witness who had come from Canada and was living in any Hotel and no orders were granted as such. The orders I gave on 9<sup>th</sup> April 2014 when it came up for hearing again was that I could not assess the costs in court. I gave specific orders that the plaintiff gets the costs for coming to court and his accommodation. I further ordered that those costs be assessed by the taxing master. That is what this court ordered. There would have been no basis or jurisdiction for ordering for costs on days that the plaintiff stayed in the hotel from 30<sup>th</sup> March to April 9<sup>th</sup>. If these costs were to be ordered they would have been prayed for and ordered on 31<sup>st</sup> March 2014. No such prayers were made by counsel for the petitioner/respondent or order made on that day by the court.

[6]. In the final analysis and for the avoidance of doubt the costs ordered by the court were for accommodation on the 8<sup>th</sup> and costs for coming to court. These are the costs the Deputy Registrar should assess.

The order of 17<sup>th</sup> April 2014 by the Deputy Registrar of this court does not comply with the courts order. I hereby set it aside and order that the Deputy Registrar do assess the said costs in accordance with this ruling.

This application succeeds to that extent.

The applicant is granted leave to appeal as prayed in the application if not satisfied with this courts orders. Costs of this application shall be to the applicant.

DATED and SIGNED at BUNGOMA this 18th day of September 2015.

**S. MUKUNYA**

**JUDGE**

DELIVERED in MOMBASA this 7<sup>th</sup> day of October 2015 by Hon. Justice A. Omollo.

**JUDGE.**