

**REPUBLIC OF KENYA**

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

**MISC CIVIL APPLICATION NO. E011 OF 2025**

**EDDIS SACCO**

.....

**APPLICANT**

**VERSUS**

**BETTY CHEROTICH**

.....

**RESPONDENT**

**RULING**

1. The Applicant filed a Notice of Motion Application dated 17<sup>th</sup> March 2025 which sought the following orders: -

I. Spent.

II. THAT pending the hearing and determination of this Application inter parties, this Honourable Court be pleased to order a stay of the Certificate of Costs given

on 28<sup>th</sup> August 2024 in Bomet PMCC Number 44 of 2021.

- III. THAT this Honourable Court be pleased to enlarge time within which the Applicant should apply for grounds and reasons from the trial court and Taxing Officer following the assessment of the Respondent's costs in Bomet PMCC Number 44 of 2021 (Edis Sacco vs Betty Cherotich)
- IV. THAT costs of this Application be provided for.

2. The Application was brought under the provisions of **Order 11 of the Civil Procedure Rules, Rules 1, 2 and 4 of the Advocates (Remuneration) Order, sections 3, 3A and 63e of the Civil Procedure Act** and it was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by David Langat on 17<sup>th</sup> March 2025.

**The Applicant's case.**

3. The Applicant stated that the Respondent had a Judgement in her favour in Bomet PMCC Number 44 of 2021 and the same was delivered on 28<sup>th</sup> August 2024. That the Respondent applied for a Certificate of Costs and forwarded her costs to the Applicant. The Applicant further stated that it was neither served with a copy of the costs nor a Notice of Taxation.

4. It was the Applicant's case that the it received a Certificate of Costs on 27<sup>th</sup> November 2024 and could not take the next steps as taxation had already been done. That the taxation was not done according to the law as the instruction fee was exorbitant as it was increased by 300%. It was the Applicant's further case that they need to seek reasons for the taxation from the Taxing Master.

5. The Applicant stated that they perused the lower court file and it indicated that the costs were not served upon them and the Respondent had no intent to serve them.

6. At the time of writing this Ruling, the Applicant had not filed its written submissions.

### **Response**

7. Through her Replying Affidavit dated 2<sup>nd</sup> October 2025, the Respondent stated that there was a pending Application being Bomet PMCC Number E044 of 2021 where similar reliefs had been sought. That the instant Application for stay had been overtaken by events as the Applicant had settled the decretal sums including the Auctioneers costs. The Respondent further stated that there was no outstanding liability owed by the Applicant and the present Application was unnecessary and without merit.

8. It was the Respondent's case that litigation must come to an end. That the Applicant was abusing the court process by filing repeated Applications seeking similar orders.

9. The Respondent indicated to the court that she will not be filing written submissions but will rely on the contents of her Replying Affidavit.

10. I have gone through the Notice of Motion Application dated 23<sup>rd</sup> May 2025 and the Replying Affidavit dated 2<sup>nd</sup> October 2025. The only issue for my determination was whether the Application had merit.

11. This court is clothed with powers to stay execution or proceedings. Such power is to be exercised diligently and judiciously with the greater goal of justice in mind. I have looked at the lower court file and I have noted that the Applicant filed a Notice of Motion Application date 23<sup>rd</sup> May 2025 seeking stay of execution of the Decree. Counsel for the Respondent, Mr. Leteipa Advocate addressed the court on 18<sup>th</sup> June 2025 and informed the trial court that the Applicant had paid their fees as taxed together with the Auctioneers fee. He further stated that the Application be dispensed with. This corroborated the Respondent's

assertion in her Replying Affidavit dated 17<sup>th</sup> March 2025 that the Applicant had already settled their fee.

12. Instructively, in the trial court, counsel for the Applicant, Ms. Chepkemoi Advocate informed the trial court that she was not aware that her client had paid the fee and costs.

13. It is clear from the above that the Applicant had settled the fees making the present Application superfluous. In any event, failure to obtain reasons for Taxation from the Taxing Master was not fatal and did not prevent the Applicant from filing a Reference. In **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] KECA 325 (KLR)**, the Court of Appeal held: -

***“..... Indeed, we are of the view, that if a taxing officer totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself***

**preclude the objector from filing a competent reference.....**” (Emphasis added)

14. Similarly, in **Maisha Yetu Services Limited v Buyoywa [2024] KEHC 14930 (KLR)**, Kamau J. held: -

***“Ordinarily, failure to seek the reasons under Paragraph 11(1) of the Advocates Remuneration Order was not fatal.....”***

15. Flowing from the above, it is my finding that the Application has been overtaken by events and has no merit. The Notice of Motion Application dated 17<sup>th</sup> March 2025 has no merit and is dismissed with costs to the Respondent.

**Ruling delivered, dated and signed at Bomet this 17<sup>th</sup> day of November, 2025.**

.....  
**Hon. JULIUS K. NG'ARNG'AR**  
**JUDGE**

**Ruling delivered in the presence of:**

**Siele/Susan (Court Assistants).**

**N/A for the Applicant**

**Leteipa for the Respondent**

ORIGINAL