

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. 24 OF 2018

STEPHEN KIVANDI KAMULA..1 ST	DECREE
HOLDER/APPLICANT		
JOSEPHINE MUTINDI KILUVA.....	2 ND	DECREE
HOLDER/APPLICANT		
BELLA ROSE LAVI.....	3 RD	DECREE
HOLDER/APPLICANT		

-VERSUS-

BONIFACE KIOKO MWOLOLO.....1 ST	JUDGMENT	DEBTOR/RESPONDENT
SIDIAN BANK LIMITED.....	2 ND	JUDGMENT DEBTOR/RESPONDENT

RULING

Introduction

1. This is a ruling in respect of a notice of motion dated 28th June, 2024 in which the Plaintiffs/Decree Holders pray that judgment be entered for the Decree holder in terms of the certificate of Taxation dated 19th February, 2024 and issued on 5th March, 2024 by the Hon. Deputy Registrar for Kshs.964,360/=.

Decree holder's contention

2. The Decree holders state that their party and party bill of costs dated 5th December, 2022 was taxed on 19th February, 2024 in the sum of Kshs.964,360/=. The 1st Defendant/Judgement debtor was served with a demand notice for the settlement of the taxed costs but he has neglected and or failed to settle the same.
3. The Decree holders state that they are entitled to enforce the taxed costs hence the application to this court to convert the Certificate of Taxation into a judgment to enable them execute for the costs.

Judgment debtor's contention

4. The Judgment debtor opposed the Decree holders' application through a replying affidavit sworn on 24th October, 2025. The Judgment debtor states

that he has appealed against the judgment which resulted into the taxed costs in Nairobi Court of Appeal E434 of 2022 (Boniface Kioko Mwololo –vs- Stephen Kivandi Kamula, Jossephine Kiluva and Bella Rose Lavi).

5. He states that the pending appeal came for directions on 22nd October, 2025 and he was given leave to amend his memorandum of appeal. He states that the amendment was necessitated by the fact that he was unprocedurally evicted from the suit premises and that the Decree holders had promised that if he was evicted from the suit premises, they will not pursue him for costs.
6. The Judgment debtor states that this application is made in bad faith and that it should not be allowed in view of the pending appeal.

Analysis and Determination

7. At the hearing of this application the counsel for the parties indicated that they wished to rely on the affidavits filed without submitting. I have considered the application as well as the replying affidavit. The only issue for determination is whether the Certificate of Taxation should be converted into a judgment.
8. There is no contention that there is certificate of taxation which was issued on 5th March, 2024. Section 51 (2) of the Advocates Act provides as follows:
“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs”.
9. Section 51 (2) of the Advocates Act clearly states that where there is a certificate of the taxing officer which has not been set aside, an order can be made that judgment be entered for the sum certified to be due with costs.
10. The only reason the judgment debtor is opposing entry of judgment is that there is a pending appeal against the judgment and that there was a promise

that the Decree holders will not pursue him for costs once he is evicted from the suit premises. There is no evidence that the Decree holder had waived their right to costs.

Disposition

11. The fact that there is a pending appeal is no bar to entry of judgment for the taxed costs. There is no stay from the Court of Appeal. This being the case, I find that the Decree holder's application is well founded. I allow the same as prayed.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 19TH DAY OF NOVEMBER, 2025.**

IN THE PRESENCE OF:

Mr. Mapesa for Decree holders/Applicants.

Mr. Muia for Judgment debtor/Respondent.

Court assistant – Steve Musyoki