

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI**

MISCELLANEOUS APPLICATION NO. E028 OF 2024

LYDIA MAWIA NGOSI

**KIMWELE MWANGANGI (suing as the Personal
Representatives of the estate of Stephen Kimanzi
Kimwele (deceased))**

APPLICANTS

**RABDIYA CONSTRUCTION CO LTD
RESPONDENT**

EMPLOYMENT AND LABOUR RELATIONS COURT

RULING NO 3

1. Lydia Mawia Ngosi and Kimwele Mwangagi, as the Personal Representatives of the estate of Stephen Kimanzi Kimwele (applicants), moved the Court on 9 February 2024, seeking orders adopting the award of compensation by the Director of Occupational Safety and Health.
2. The Respondent raised a Preliminary Objection to the Motion, and after hearing the parties, the Court allowed the Motion on 5 March 2024, and a decree was issued.
3. The applicants thereafter presented a Party-to-Party Bill of Costs on 5 July 2024. The Respondent

raised a Preliminary Objection to the Bill on the ground that the Court had not awarded any costs on 5 March 2024.

4. The Taxing Officer considered the Preliminary Objection and, in a Ruling delivered on 24 January 2025, struck out the Bill of Costs on the ground that the Court had not awarded any costs on 5 March 2024.

5. The applicants were not satisfied and on 5 May 2025, they filed a Motion seeking orders:

(i) THAT the Ruling and Orders of the Taxing Master dated 24th January 2025 be set aside.

(ii) THAT the Honourable Court grants orders for the applicants' Bill of Costs dated 12th June 2024 to be taxed as required in law by the Taxing Master.

(iii) THAT the costs of this application be provided for.

6. The grounds supporting the Motion were that the Court had, on 5 March 2024, allowed the Motion with costs and therefore the Taxing Officer had erred in law and fact in striking out the Bill of Costs.

7. The Respondent caused a replying affidavit to be filed on 10 June 2025, asserting that the Court had not awarded costs on 5 March 2024; the Work Injury Benefits Act did not provide for the award of costs; the Taxing Officer could not tax costs not awarded by the Court and that the application had no legal foundation.

8. The applicants filed their submissions on 29 July 2025, and the Respondent on 21 August 2025.

9. The Court has considered the Motion, affidavits and submissions.

10. When the Court considered the applicants' Motion on 5 March 2024, it rendered itself thus:

The award of the Director OSH given on 5th May 2021 is adopted as order of Court and should be executed as such.

11. It is clear that the applicants sought several orders in their Motion dated 8 February 2024. The prayers included interest and the costs of the Motion.

12. A cursory glance at the notes/proceedings on 5 March 2024 indicates that the Court did not award any costs nor make an express and unambiguous order that the Motion is allowed as is.

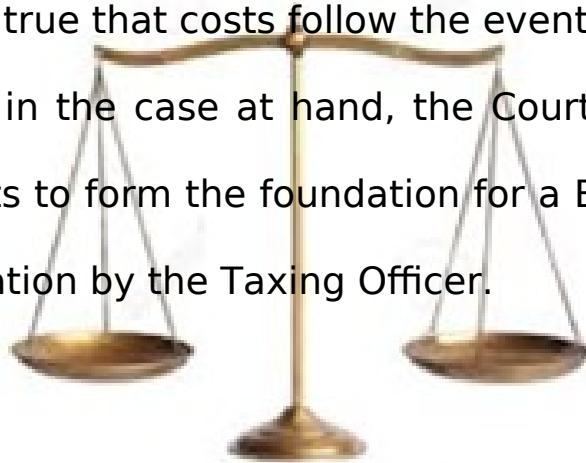
13. The Court has also looked at the decree extracted from the Ruling of 5 March 2024. The extracted decree indicates that the Court awarded the costs.

14. The extracted decrees did not align with the orders issued by the Court, and cannot supersede the original handwritten notes by the Court. The Deputy Registrar of the Court who sealed the decree was not keen to ensure that the extracted decree spoke to the notes of the Court.

15. It is further instructive that the applicants' focus is on costs and not even interest, which was part of the prayers and which appears on the face of the extracted decree. It is not clear to this Court why the applicants would focus on costs and not interest. It was assumed that the application was allowed as prayed.

16. It is true that costs follow the event.

17. But in the case at hand, the Court did not award costs to form the foundation for a Bill of Costs and taxation by the Taxing Officer.



Orders

18. The Motion dated 5 May 2025 is without merit and is dismissed with costs to the Respondent.

Delivered virtually, dated and signed in Nairobi on this 6th day of November 2025.

Radido Stephen, MCI Arb

Judge

Appearances

For applicants

Fred Mwiha & Co.
Advocates

For Respondent

S. M. Righa & Co.
Advocates

Court Assistant

Wangu

EMPLOYMENT AND LABOUR RELATIONS COURT



NAIROBI