



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 318 OF 2017

JARED WASONGA.....PLAINTIFF

VERSUS

JOSEPH MISOLO.....1ST DEFENDANT

JUMA AKETCH.....2ND DEFENDANT

JAMES OBONYO.....3RD DEFENDANT

MICHAEL OTIENO OWIYO.....4TH DEFENDANT

RULING

1. Jared Wasonga, the Plaintiff, filed the motion dated 11th September 2018 against Joseph Misolo, Juma Aketch, James Obonyo and Michael Otieno Owiyo, the Defendants, seeking to set aside the order of 4th September 2018 for costs assessed at Kshs. 113,249/=, “pending the hearing and determination of the application.” That in the alternative, the Plaintiff seeks to be allowed to liquidate the amount of costs assessed at Kshs. 113,249/=, on 4th September 2018, in monthly installments of Kshs. 5,000/= until payment in full. The application is based on the five (5) grounds marked (a) to (e) on its face and supported by the affidavit of Jared Wasonga sworn on the 13th September 2018.

2. The application is opposed by Joseph Misolo, the 1st Defendant, through his replying affidavit sworn on the 2nd November 2018.

3. The application came up for hearing on the 6th March 2019 when Counsel for the Plaintiff and Defendants made their submissions.

4. The following are the issues for the Court’s determination;

a) Whether an order to set aside the order on taxation of costs issued on the 4th September 2018 can issue as prayed.

b) Whether the Plaintiff has made a case to be allowed to pay the assessed costs in monthly installments, and if so, how much per month.

c) Who pays the costs of this application.

5. The Court has carefully considered the grounds on the application, affidavit evidence, submissions by both Counsel and come to the following determinations;

a) That the suit filed by the Plaintiff through the plaint dated the 7th August 2017 was marked withdrawn upon an oral application being made by his Counsel on the 28th February 2018. That the Court granted the Defendants the costs which were later assessed by the Deputy Registrar after hearing the parties Counsel at Kshs. 113,249/=.

b) That prayer 2 of the motion cannot be issued at this stage because it is meant to last until the determination of the application, which is today. That the Court is therefore unable to understand what purposes the setting aside of the taxation order of 4th September 2018 for only up to the time the application is determined would serve. That such an order would only be useful and relevant if sought in the interim, pending the interpartes hearing and final determination. That as phrased, the prayer is an abuse of the Court’s process.

c) That the Court takes the Plaintiff’s application to be one seeking to be allowed to pay the costs as assessed in monthly

installments. The Plaintiff has proposed Kshs. 5,000/= per month saying that what he could manage. The Defendants have proposed at least Kshs. 30,000/= per month. The Court is of the view that Kshs. 5,000/= per month is too low considering the assessed costs will continue attracting interest until fully paid. That however, had the Plaintiff paid or deposited the Kshs. 5,000/= per month towards liquidating the assessed costs from September 2018 to March 2019, he would have to date paid Kshs. 30,000/=. That there is no reason why he cannot pay Ksh. 30,000/= as a starting installment within thirty (30) days, and thereafter pay the balance in monthly installments of Kshs. 15,000/=.

6. That flowing from the foregoing, the court allows the Plaintiff to liquidate the assessed costs in monthly installments as follow;

a) That the Plaintiff pays the Defendants the first monthly installment of Kshs. 30,000/= (Thirty thousands) on or before 3rd May 2019.

b) That thereafter, the Plaintiff liquidate the balance of the taxed costs in monthly installments of Kshs. 15,000/=, (fifteen thousands), payable on or before the 3rd day of every month until payment in full.

c) That the Plaintiff do pay the costs of this application to be agreed or taxed.

d) That in default of any single installment, the whole outstanding amount to become immediately payable and the Defendants be at liberty to execute for the whole.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 8TH DAY OF APRIL 2019

In the presence of:

Plaintiff Absent

Defendants Absent

Counsel Mr. Kobibo for Mwamu for Plaintiff

Mr. Onsongo for Rodi for Defendants

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE