

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E103 OF 2023
(Before Hon. Lady Justice Hellen Wasilwa, J)

JOHNSTONE **MAGILI**
CHOGO.....PETITIONER

VS

KAMONGO **PAPER**
LIMITED.....RESPONDENT **(K)**

RULING

- 1 The Petitioner/Applicant filed a Notice of Motion dated 5th August 2025 seeking orders that: -
- 1) *Spent*
 - 2) *The Honorable Court grants leave to the Deputy Registrar of this Court to-
Tax the Petitioners Bill of Costs;
To compute the interest accrued on the decretal sum from the date of judgment to the date of last payment on the 30th day of July 2025.*
 - 3) *The Petitioner be granted leave equally to file further Bill of Costs to incorporate the costs and other expenses occasioned by the Respondent's application for stay of execution and for leave to pay through instalments.*
 - 4) *The Respondent be compelled to settle the costs as taxed together with the computed interest*

within thirty (30) days following the date of delivery of the ruling by the Deputy Registrar on the taxed costs and computed interest failing of which the Applicant be at liberty to execute for recovery by attachment and sale of the Respondent's movable property immediately thereafter.

5) *Further costs for this application be provided for.*

Petitioner/Applicant's Case

- 2 The Petitioner/Applicant avers that this court vide its judgment of 11th October 2024, ordered that the Respondent pays him Kshs. 932,349.00 being the principal amount together with costs and interest at 14% from the date of judgment until payment in full.
- 3 The Petitioner/Applicant avers that the award on costs and interest has not been vacated or varied and must be honoured for the due administration of justice.
- 4 He avers that the costs and interest had not been taxed and computed, therefore, he applied for execution when the Respondent began to exhibit conduct of descent in business and his fear was it would wound up and his decree amount would unrecoverable.
- 5 It is the Petitioner/Applicant's case that the Respondent is experiencing decline in business as it confirmed this to court in their pleadings when applying to settle the decree

in instalments which the court allowed in its ruling delivered on 28th April 2025.

- 6 The Petitioner/Applicant avers that until the Respondent settled the principal amount, it would not have been convenient for the Deputy Registrar to compute the accrued interest as ordered Court but since the Respondent made the last payment on the 30th July 2025, it is time for the interest to be computed and recovered.
- 7 It is the Petitioner/Applicant case that costs would not have been taxed to pursue execution which the Respondent had displayed signs of evading to settle.

Respondent's Case

- 8 In opposition to the application, the Respondent filed a replying affidavit dated 16th September 2025 sworn by Jignesh Patel.
- 9 The Respondent avers that it has satisfied the decree in full, execution proceeded, and the decretal sum was paid in full as confirmed by the Applicant himself. Therefore, the matter ought to have rested.
- 10 The Respondent avers that the Petitioner seeks to reopen the matter through a Bill of Costs filed after execution and by a Notice of Motion asking for leave to tax and compute interest.

- 11 However, he admits that execution was carried out before taxation of costs and computation of interest. That admission alone proves the irregularity and it is deemed that the Applicant forego its costs.
- 12 The Respondent avers that section 94 of the Civil Procedure Act stipulates that where a decree orders both money and costs, the decree holder cannot execute for money until the costs are ascertained by taxation.
- 13 It is the Respondent's case that the Applicant did not obtain leave under Section 94 before proceeding to execute. The imminent taxation and execution of the purported bill of cost is thus unlawful, null and void. The law cannot permit one to circumvent its express safeguards and then attempt to fix the breach after the fact.
- 14 The Respondent contends that the Applicant's conduct in attempting to tax the bill of cost long after he had already executed the decree and received the full decretal sum is a ploy towards double taxation and execution to which this court ought not to entertain as it contravenes section 94 of the Civil Procedure Act.
- 15 It is the Respondent's case that by filing the Bill of Costs after execution, this transforms costs are ordinarily ancillary into a fresh substantive claim, detached from the decree that has already been settled.

- 16 It avers that courts are enjoined by Article 159 of the Constitution to do substantive justice and prevent abuse of court processes. Allowing this application would offend both principles and it would turn litigation into an endless pit where even satisfied decrees are reopened, leaving parties with no closure.
- 17 The Respondent avers that the Applicant's own admission of execution before taxation without leave, the unlawful filing of a Bill of Costs after full satisfaction of the decree, and the manifest danger of double taxation. For this reason, the instant application is incompetent, misconceived, and amounts to an abuse of the process of this court.

Petitioner/Applicant's Submissions

- 18 The Petitioner/Applicant submitted that the Respondent's business was experiencing a decline as can be confirmed in the ruling delivered of 28th April 2025. He contends that this reason can be treated as an exceptional circumstance to grant leave for his bill of cost dated 6th January 2025 to be taxed by the Deputy Registrar.
- 19 The Petitioner/Applicant submitted that the Respondent having filed an application to stay execution and also propose mode payment of the decretal sum, made the Applicant incur more expenses, hence the need for him to be granted leave to incorporate costs and expenses on the said application.

- 20 The Petitioner/Applicant submitted that he will not suffer any prejudice as the primary Judgement on the merit of the petition has already been determined and the issue pending is cost which was clearly awarded. Thus, denying him leave to have his bill of costs taxed will be unjust and will violate his automatic right, which right the Court did consider and awarded him costs.
- 21 It was submitted that taxation is only but a necessary procedural stamp to ascertain the amount that the Petitioner/Applicant is entitled to and not an attempt to re-open the case and or petition hence not an abuse of the process.
- 22 It is the Petitioner/Applicant's submission that the Respondent when filing its application for stay of execution dated 16th January 2025, did not object to execution having not been done in line with the provisions of Section 94 of Civil Procedure Act but only sought for stay on the ground that they wanted to be given an opportunity to negotiate a payment scheme. This Court's ruling dated 28th April 2025 stayed execution hence no execution proceeded and the position was that the Petitioner reverted to where he was before execution was initiated. This means that the he was free to proceed and seek leave to have his bill of costs taxed hence the instant application.

23 The Petitioner submitted that at the time of filing this application the Respondent had last made payment on 30th July 2025 and the decretal sum had not been settled; hence the decree was not fully satisfied at the time of filing this application. Thus, he sought for leave for orders for the bill of costs dated 6th January 2025 be taxed and the same computed together with interests accrued on the decretal sum till the stated date and also to be incorporate expenses occasioned by the Respondent's application for stay of execution.

Respondent's Submissions

24 The Respondent submitted on two issues: whether the application is merited and if the orders sought are available at this interim stage; and whether the Petitioner's employment was procedurally terminated by the Respondent.

25 On the first issue, the Respondent submitted that Section 94 of the Civil Procedure Act provides that: "Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation."

- 26 It thus submitted that the import of this provision is that execution before taxation of costs can only proceed where leave is granted. Even when leave is deemed or implied, such execution carries with it legal presumption, that the decree-holder, by his conduct, has waived the right to demand costs. In the present case, the Applicant neither sought nor obtained leave. He rushed to execution, enjoyed the fruits of the decree, and had the Respondent satisfy it in full. Having done so, he cannot re-open a fully satisfied decree under the guise of taxing costs. The Respondent cited ***Vincent Edward Njoroge & 2 others v Kenol Kobil Ltd [2015] KEELRC 1516 (KLR)*** and ***Sparkle Properties Limited v Johana Ngai & 8 others [2020] KEELC 412 (KLR)***.
- 27 It is the Respondent's submission that the Notice of Motion seeking leave to compute interest and tax costs is an attempt to resurrect rights that have been forfeited and is deemed unjust and unfair in both law and principle.
- 28 On the second issue, the Respondent submitted that permitting the Applicant to tax costs after execution, having already recovered the principal, amounts to double taxation, making it pay twice for the same decree.
- 29 The Respondent submitted that once a decree holder elected to execute the decree without leave, they are

estopped from coming back with a Bill of Costs. To allow it would amount to double taxation.

- 30 On costs, the Respondent submitted that the basic principle regarding costs is that '*costs follow the event*' as was held in ***Party of Independent Candidate of Kenya vs Mutula Kilonzo & 2 Others (2013) eKLR***. As such, the successful party will always have costs of his success unless the court has good reason to order otherwise.
- 31 I have examined all the submissions of the parties herein. Section 94 of the Civil Procedure Act states as follows:

Execution of decree of High Court before costs ascertained Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

- 32 The law envisages that it is the High court (read ELRC) which can allow Execution before taxation. Where the decree holder then executes before taxation and without any waiver for execution granted by the court, the presumption is that the decree holder has waived his rights of costs. This is the scenario herein where the applicant proceeded to execute before taxing the bill. In

the circumstances, he forfeited his right to tax the bill of costs and so cannot go back and do a fresh taxation. In the circumstances of this case the application has no merit and the prayers sought cannot be granted. The application is dismissed accordingly. There shall be no order of costs.

Dated, Signed and Delivered Virtually at Nairobi this 27th Day of November 2025.

**HELLEN WASILWA
JUDGE**

ORIGINAL