



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC CASE NO 82 OF 2017

ISAAC MWANGI KANYORO.....PLAINTIFF

VERSUS

STEPHEN WAGITA KIBOI.....DEFENDANT

RULING

1. An Interlocutory judgment was entered and judgment entered after formal proof on the 5th day of October 2017 wherein costs were awarded to the Plaintiff at the lower scale as the suit was undefended. The notice of taxation was served on the Defendant/ Respondent but he failed to file their response wherein the Bill of costs was taxed at ksh 103,346/= on the 12th day of March, 2018.

2. On the 23rd July 2018, the court was moved to have the Defendant evicted from the suit land which orders were granted.

3. Vide an application dated the 13th November 2018, the Plaintiff/Applicant sought to review, set aside and/or vacate the orders of the Deputy Registrar of 12th March 2018 on taxation and grant the Applicants leave to amend their bill of costs dated the 19th December 2017 in terms of a supplementary Bill of costs therein annexed and thereafter the matter be referred back to the Deputy Registrar for fresh taxation.

4. The said Motion is expressed to be filed under order 45 Rule 1, order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act, Rule 71 of the Advocates Remuneration and Art 159 of the Constitution.

5. The application is supported by the affidavit of Isaac Mwangi Kanyoro and based on the grounds on the face of it.

6. The Application was served upon the Defendant/Respondent who filed his Replying Affidavit dated the 27th March 2019 on the same date.

7. The matter was fixed for inter-parties hearing wherein both parties were ready to proceed and the matter was given a time allocation for 10:30 am. However when the matter was called out, the Defendant did not respond and the same proceeded ex parte.

8. The Applicant submitted that after delivery of the judgment and orders for eviction were issued, the Defendant/Respondent herein had failed give vacant possession of the properties wherein it necessitated them to proceed to evict him thereby incurring extra costs which was the reason for filing the supplementary bill of costs.

9. That from the Respondent's Replying Affidavit, it was clear that he was aware of the judgment and eviction orders yet he failed to give vacant possession. That at paragraph 4 and 6 of the said affidavit, there was admission that there were crops and trees on the suit and.

10. The defendant did not defend the Application as he chose to stay away at the hearing despite his presence in court when time allocation as given. I have considered the application herein.

11. The statutory foundation of amendment of a Bill of Costs is straight forward. Amendment of bills of costs is permitted under Order 71 of the Advocates (Remuneration) order 2009 but by the consent of the parties, or by the permission or discretion of the Court or taxing officer. Order 71 of the Advocates (Remuneration) Order 2009 provides:

No addition or alteration shall be made in a bill of costs by the party submitting the same after the bill has been lodged for taxation except by consent of the parties, or by permission or discretion of the court or taxing officer.

12. Amendment of the said Bill of costs relates to the exercise of discretion by the Court and should be exercised in accordance with established legal principles and not whimsically nor capriciously.

13. The usual principles which attend amendment of pleadings also apply to amendment of a bill of costs. Ordinarily, unless an amendment

of the bill of cost would occasion prejudice on the Respondent, it should be allowed so that the costs can be taxed again if there are exaggerations, matters within the province of the taxing officer. I do not see the prejudice the Respondent will suffer by this amendment.

14. The application dated 13th November 2018 is allowed.

Dated and delivered at Nyahururu this 18th day of June 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE