



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 136 OF 2017**

**PRISCILLA CHEPKEMOI KIMETO.....PLAINTIFF**

**-VERSUS-**

**JACKSON CHELOGOI.....DEFENDANT**

**RULING**

The Application before me is the Notice of Motion dated 1<sup>st</sup> March, 2017, where the Plaintiff/Applicant sought for orders of stay of execution of the decree and the certificate of Bill of Costs and an order to set aside, the exparte taxed bill, Decree, proclamation and the Notice to show cause and grant leave to the Defendant in the suit herein.

The Application was based on the grounds that the Bill of costs and the Notice of hearing were received under protest and that the aforesaid Bill was taxed highly and there was no service of the Notice of the taxes costs. The Application was further supported by the Affidavit of the Plaintiff in which she deponed that the Bill of Costs was taxed high and that during the hearing her advocates were not present as he was engaged at the High Court in Machakos and it shall serve the interest of Justice if the application is heard.

The Application was opposed by the Decree Holder who averred that the Judgement Debtor is the wife of one Anthony Kimeto who was the Plaintiff in Nakuru HCC No. 97 of 2008 and that on the 17<sup>th</sup> May, 2016 the judgement Debtor advocates failed to attend court they were ordered to pay costs which they have not paid to date. The respondent enumerated various dates in which the Judgment Debtor and his advocate never attended court. He further contended that no proof was provided to show that indeed the Judgement Debtor's Advocate was away and that there was no indication on the items that were taxed highly.

I have considered the Application before me and the submissions filed by counsel. From the pleadings it is evident that the bill of costs that is in contention was taxed in the absence of the Judgement Debtor and her advocates. It is the Decree Holder's contention that the Application before court is bad in law as it was brought under the wrong provisions of the law.

I find that even though this was to be a reference the Applicant had filed an Application but in the spirit of Article 159 (2) of the Constitution of Kenya 2010 I find this as a mere technical error that should not be used on the doer of the application.

Having carefully considered the Application it shall serve the interest of justice if the Applicant is heard as proceeding with the execution in her absence and that of her advocate amounts to being considered unheard.

The upshot of the above is that I will allow the Notice of Motion dated 1<sup>st</sup> March, 2017 and I consequently set aside the exparte taxed bill, proclamation and attachment notice and the notice to show cause and I order the Bill of costs be served afresh and the same be heard afresh.

I further order that the Judgement Debtor/Applicant do pay the sum of kshs. 15,000/- that was awarded to the Decree holder on 2<sup>nd</sup> July, 2019 before the hearing of the aforesaid Bill of Costs.

Orders accordingly.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 30<sup>th</sup> day of July, 2019**

**Mohammed Kullow**

**Judge**

**30/7/19**

In the presence of: -

Mr Kiptoo holding brief for Plaintiff/Judgement Debtor

N/A for the Defendant

CA:Chuma