

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAKURU  
CAUSE NUMBER 377 OF 2016**

**BETWEEN**

IGNATIUS OPULO SICHENI ..... CLAIMANT

**VERSUS**

ROYAL GROUP INDUSTRIES LIMITED .....  
RESPONDENT

**RULING**

1. Judgment was delivered in favour of the Claimant on 17th January 2023.
2. He was granted a total sum of Kshs. 244,000, costs and interest.
3. The Claimant executed for the principal sum, on 7th March 2023. He did not include costs as awarded in executing.
4. He filed a Bill of Costs later, which is dated 6th November 2024.
5. The Respondent filed an application dated 14th October 2025, seeking to have the Bill of Costs struck out, ostensibly on the ground that the Claimant executed for the principal sum before taxing his Bill of Costs, and without the leave of the Court, under Section 94 of the Civil Procedure Act. In the absence of leave to execute, the Claimant is deemed to have forfeited his costs.

6. The application is founded on the affidavit of Soher Taheralli Dawoodbhai, Respondent's director, sworn on 14th October 2025.
7. The Claimant opposes the application, relying on his affidavit sworn on 14th November 2025,
8. He denies that he forfeited his costs, as granted by the Court. The Respondent never applied for waiver of the costs. Parties reached settlement on payment of the principal sum, and for costs to be taxed subsequent to settlement of the decretal sum.
9. The Respondent initially filed an application for stay of execution pending appeal, dated 21st February 2023. The application was withdrawn, upon settlement terms on payment of the principal sum, and subsequent taxation of costs.
10. No leave was required before execution, under Section 94 of the Civil Procedure Act.
11. Parties agreed to have the application considered and determined on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions at the last appearance before the Court, on 17th February 2026.

**The Court Finds: -**

12. Rule 70 of the E&LRC [Procedure] Rules 2024, governs award of costs in proceedings before this Court.

13. It does not provide for forfeiture or waiver of costs.
14. Section 94 of the Civil Procedure Act, which the Respondent invokes, states:

“Where the High Court considers it necessary that a decree passed in the exercise of original 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 so much thereof as relates to costs that the decree may be executed as soon as the amount of costs shall be ascertained by taxation.”

15. This law does not contain a waiver of costs element, as attributed to it by the Respondent. It provides for situations where the High Court considers it necessary, that the principal sum should be executed, before costs become known through taxation.
16. The Court agrees with the Claimant that Section 94 is not intended to strip the successful litigant, their substantive right to costs. Recovery of the principal sum, does not equate to waiver of costs.
17. Parties agreed on settlement of the judgment debt, at the time they consented on the stay of execution application, that was made by the Respondent. There was no requirement that the Claimant seeks leave to

execute decree, before costs were taxed, the Parties having consented on payment of the decree.

18. What the Respondent is pursuing through its application, is review orders, to recall the order for costs, made in favour of the Claimant in the Judgment on record. The order for costs is part of the Judgment on record, and can only be set aside by the Court on review of the Judgment, or appeal against the Judgment, or by consent of the Parties.
19. It can never be deemed to have been waived, on account of recovery of the principal sum, having preceded taxation.

**IT IS ORDERED: -**

- a. The application dated 14th October 2025 filed by the Respondent is declined.***
- b. Costs to the Claimant.***

Dated, signed and delivered electronically at Nakuru, this 31st day of March 2026.

James Rika  
Judge

