



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO 99 OF 2012

ARIF BAYASUF.....PLAINTIFF

VERSUS

LUCY TOFANI.....DEFENDANT

RULING

1. I have before me for determination a Notice of Motion Application dated 25th July 2017. The Applicant prays for Orders:-

That Judgment be and is entered in favour of the Applicant for the total costs which were assessed by the taxing master at Kshs 312,114.24/- together with interest at 14% per annum.

That the Respondents bears the cost of this Application.

2. The said Application is supported by the annexed affidavit of Reynard B.O. Ochieng the Applicant's Advocate sworn on 25th July 2017. It is premised on the grounds:-

- i. That a Certificate of costs was issued on 15th June 2017 and the same has not been challenged, disputed, set aside or altered;***
- ii. That the Party and Party Bill of Costs dated 19th August 2014 has not been disputed; and***
- iii. That it is in the interest of justice, fairness and equity that this Honourable Court be pleased to allow this Application.***

3. In response to the Application, Mr. Tukero Ole Kina, the Learned Counsel for the Respondent herein has sworn a Replying Affidavit filed herein on 15th December 2017 and a Further Replying Affidavit filed on 20th December 2017. In the said Affidavits, Counsel avers that the complaint herein is baseless, devoid of any legal or factual foundation and/or reasonable justification and therefore it ought to be rejected peremptorily.

4. The Respondent asserts that the Plaintiff was dissatisfied with the decision of the Taxing Master and filed a Chamber Summons application dated 10th May 2016 which application was subsequently determined on 17th March 2017. The Plaintiff has since appealed the Court's decision. The Respondent further contends that the invitation to the Court to tax the Bill is devoid of any foundation.

5. Counsel for the Respondent further states that as at the time this Application was filed, the Applicant had been paid the sum of Kshs 100,000/- and only Kshs 212,114.25 of the sum awarded in the certificate of costs remained outstanding. It is Counsel's case that the entire sum would have been paid but for the Applicant's decision to appeal the taxing master's decision twice, which meant the Applicant had not accepted the amount that was awarded.

6. Mr. Ole Kina further avers that on 19th September 2017, he released the balance of the sum demanded by the Plaintiff and as at the time of filing the Replying Affidavit, there was no sum due and owing to the Plaintiff on the Certificate of Costs.

7. I have considered the Application and the response thereto. I have equally considered the oral submissions made before me by the respective Learned Advocates acting for the Parties herein.

8. From the record, it is evident that the Certificate of Costs was extracted on or about 15th June 2016. The sum awarded is shown therein as Kshs 312,114.24/- only and there was no award of interest thereon. According to the Respondent, the said Certificate of Costs was never

served upon them. Be that as it may, by a letter dated 13th April 2017(DEX 2), the Respondents released a sum of Kshs 100,000/- to the Applicant.

9. By a letter dated 24th April 2017(DEX 3), the Applicant acknowledged receipt of the said sum of Kshs 100,000/- and demanded payment of the balance being Kshs 212,114.24/-. It would appear that the said balance was not availed immediately leading to the filing of the application presently before me on 25th July 2017.

10. On or about 12th September 2017, the Respondents finally released the balance of the amount due on the Certificate of Costs. From the record, it is evident that the Respondents were served with the Motion on 28th July 2017 before they released the balance.

11. I note however that even though the Defendant's had not paid the balance, the sum demanded in the Motion was evidently not due as Kshs 100,000/- had been paid earlier in April 2017 as stated herein above.

12. Acknowledging that the entire amount due on the Certificate was paid before this matter came up for arguments before me, the Applicant urged the Court to grant them interest and costs of this application.

13. I have looked at the circumstances herein. It is clear to me that as at 20th December 2017 when the Application came before me for arguments, it had clearly been overtaken by events as the entire sum claimed had been fully settled. The claim for payment of interest is neither made in the application nor tenable in view of the fact that no interest was awarded on the amount indicated in the Certificate of Costs.

14. In the circumstances, I shall disallow the application.

15. Each party shall bear their own costs.

Dated, signed and delivered at Malindi this 28th day of June, 2018.

J.O. OLOLA

JUDGE