



REPUBLIC OF KENYA



KENYA LAW
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Musya t/a Makuri Auctioneers v Tamarind Management Ltd (Miscellaneous Case E037 of 2021) [2023] KEELRC 2957 (KLR) (16 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2957 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS CASE E037 OF 2021**

**AK NZEI, J
NOVEMBER 16, 2023**

BETWEEN

JOEL TITUS MUSYA T/A MAKURI AUCTIONEERS APPLICANT

AND

TAMARIND MANAGEMENT LTD RESPONDENT

RULING

1. The application before me is the Respondent/Appellant's Chamber Summons dated 28/9/2021 and filed in Court on 30/9/2021. The application is expressed to be a Memorandum of Appeal filed pursuant to rule 55(4) & (5) of the *Auctioneers Rules*, 1997 from the Ruling of Hon. Lesootia Saitabau, Deputy Registrar, delivered on 27/9/2021 in the cause herein. The following order are sought:-
 - a. Spend
 - b. Spend
 - c. Spend
 - d. That this Court be pleased to set aside the Ruling of Lesootia Saitabau – Deputy Registrar delivered on 27th September 2021 and any resultant certificate of costs.
 - e. That the Court be pleased to allow the appeal with costs.
2. The application sets out on its face the grounds on which it is founded, which grounds are replicated in the affidavit of Nicholas Weru Advocate sworn on 28th September 2021 in support of the application. It is deponed in the said affidavit:-
 - a. that the decision of Hon. Lesootia Saitabau delivered herein on 27/9/2021 awarded the Respondent Auctioneers costs of ksh. 213,556.00 on account of a decree issued in CM ELR 450 of 2018 (Anderson Fedheha Buni v Tamarind management Ltd).



- b. that the taxation was based on a bill of costs dated 25th June 2021 filed by the Respondent on the same date.
 - c. that following proclamation of the Applicant's goods on 28th May 2021, the Applicant filed an application for contempt of Court in Mombasa ELRC Appeal No. 10 of 2020 (*Anderson Fedbeba Buni & Another v Tamarind Management Ltd*) as the Respondent had executed illegally as there was an order of stay of execution issued by the ELRC on 28th May 2021.
 - d. that the Respondent's Counsel on record herein appeared in Court on 15th June 2021, informed the Court that execution had been levied on misinformation and sought forgiveness, upon which by consent, the execution proceedings commenced by way of proclamation of 28th May 2021 was set aside and the Respondent was discharged from the contempt proceedings.
 - e. that in obvious contempt of Court, the Respondent proceeded to file and to serve a bill of costs, which is the subject of the proceedings herein, with full knowledge that (execution) had been set aside by this Court with their consent.
 - f. that the Taxing Master did not have jurisdiction to tax the bill of costs as the proclamation of 28th May 2021 was set aside by this Court in Appeal No. 10 of 2020, by consent of the parties.
 - g. that the appeal herein was filed without undue delay.
3. Documents annexed to the said supporting affidavit are shown to include the aforementioned contempt application and orders issued thereon as indicated by the Applicant.
 4. Apart from a preliminary objection dated 15th June 2022 which the Respondent filed on 17th August 2022, and which I determined vide this Court's Ruling delivered on 2nd February 2023, the Respondent does not appear to have opposed the application/appeal herein. The same is unopposed, and, being satisfied that execution proceedings that gave rise to the impugned taxation of Auctioneer's costs had been levied in contempt of valid stay orders, and having considered written submissions filed, I hereby allow the Chamber Summons dated 28th September 2021 in the following terms:-
 - a. The Ruling of Hon. Lesootia Saitabau, Deputy Registrar, delivered on 27th September 2021 and any resultant certificate of cost are hereby set aside.
 - b. Each party will bear its own costs of these proceedings.
 - c. The Court's record/file herein is hereby closed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 16th NOVEMBER 2023.

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Agnes Kitiku Nzei

Judge

Appearance:

..... for Appellant



..... Respondent

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