



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT MOMBASA**

**MISC. APPLICATION NO. 13 OF 2018**

**MAINA & PARTNERS ADVOCATES.....APPLICANT**

**VERSUS**

**KWALE INTERNATIONAL SUGAR CO. LTD.....RESPONDENT**

**RULING**

1. Vide a Ruling shown to have been delivered on 2<sup>nd</sup> October 2018, this Court's Deputy Registrar taxed the Advocate/Client Bill of Costs dated 7<sup>th</sup> March 2018 at ksh.126,483.90.

2. The Deputy Registrar (taxing officer) stated in his Ruling:-

***“in respect of the sum of ksh.1,725,000 paid to the claimant as legal fees, the same was paid for 24 matters under the series. As such the Respondent is given credit of the sum of ksh.1,750,000 of the total sum taxed on the bills.”***

3. On 3<sup>rd</sup> September 2021, the Deputy Registrar, **Hon. A.S. Lesootia**, issued a Certificate of Costs for the taxed sum of kshs.126,483.90

4. On 14<sup>th</sup> October 2021, the applicant filed a Notice of Motion dated 12<sup>th</sup> October 2021 seeking the following orders:-

**a) that the Honourable Court be pleased to adopt the certificate of costs dated 2<sup>nd</sup> October 2018 and issued on 3<sup>rd</sup> September 2021 into a decree and judgment together with interest at 14% from 2<sup>nd</sup> October 2018 until payment in full.**

**b) that the costs of this application be awarded to the applicant.**

That is the application before me, and the same is based on the supporting affidavit of KENNETH MAINA sworn on 12/10/2021. Copies of the Deputy Registrar's said Ruling and the Certificate of Costs are annexed to the supporting affidavit.

5. The application is shown to have been served on the Respondent, kwale International Sugar Co. Ltd, on 29<sup>th</sup> October 2021 though record shows that the Respondent is represented in this matter by Lloyd & Partners Advocates. The Court was not told why the Respondent was served directly when it has counsel on record. Nevertheless, an Affidavit of Service sworn by Omambia Mososi Godfrey was belatedly filed in Court on 16<sup>th</sup> November 2021.

6. No documents have been filed in opposition to the application.

7. When the application came up for hearing on 16<sup>th</sup> November 2021, Mr. Maina appeared for the Applicant while Mr. Mathenge appeared for the Respondent. Mr. Mathenge told the Court that he is an in-house counsel in the Respondent company. He confirmed that the application had been served on the Respondent, and told the Court that the Respondent was not opposing the application. On his part, Mr. Maina urged me to allow the application as prayed.

8. The application is expressed to be brought under Section 51(2) of the Advocates Act and Order 11(3) of the Civil Procedure Rules. Section 51(2) of the Advocates Act provides:-

***“the certificate of a taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including in a case***

*where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”*

9. The taxing officer's Certificate dated 2<sup>nd</sup> October 2018 and issued on 3<sup>rd</sup> September 2021 has neither been altered nor set aside by this Court, and has not been shown to be the subject of any dispute, save for the indication in the Deputy Registrar's/Taxing Officer's Ruling dated 2<sup>nd</sup> October 2018 to the effect that some credit is to be given to the Respondent herein in a series of some twenty four (24) files. (See paragraph 2 of this Ruling).

10. Consequently, judgment is hereby entered in the sum of ksh.126,483.90 being the Applicant's costs certified by the taxing officer vide the Certificate of Costs dated 2<sup>nd</sup> October 2018 and issued on 3<sup>rd</sup> September 2021.

11. I however direct that the decree shall not be executed against the Respondent until the issue of the credit ordered by the taxing officer to be given to the Respondent in a series of twenty four (24) files is sorted out between the Applicant and the Respondent.

12. Interest on the decretal sum shall be at Court rates, and shall be calculated from the date of this Ruling until payment in full.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9<sup>TH</sup> DAY OF DECEMBER 2021**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

**Appearance:**

Mr. Otieno for Applicant

Mr. Weru Respondent