



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**MISC APPL. NO. 144 OF 2017**

**C.M. ONGOTO & CO ADVOCATES.....APPLICANT**

**v**

**KENYA UNION OF DOMESTIC, HOTELS,**

**EDUCATIONAL INSTITUTIONS & ALLIED WORKERS.....RESPONDENT**

**RULING**

1. For determination is a motion by C.M. Ongoto & Co. Advocates (applicant) seeking orders

1. **THAT** judgment be entered in favour of the Applicant against the Respondent in the sums of Kenya Shillings 5,258,274.12 and certified costs due to the applicant.

2. **THAT** the Respondent to pay the applicant interest at court rates from the date of taxation as above.

3. **THAT** the costs of this application be borne by the Respondent.

2. The grounds in support of the application were that the Respondent instructed the applicant to represent it in Petition No. 16 of 2012 but failed and/or declined to pay professional fees and that the same were taxed by the Taxing Officer on 28 August 2018 at Kshs 5,258,274/20.

3. When the application first came for hearing on 19 November 2018, the Court adjourned the hearing to 4 December 2018 because it was not satisfied with service upon the Respondent.

4. On 4 December 2018, the applicant informed the Court that service had been effected.

5. On record was an affidavit of service sworn by Kennedy Nyamweya deposing that the Respondent was served with a hearing notice on 28 November 2018 and the same was acknowledged by a secretary who stamped and signed a copy (annexed to the affidavit).

6. The Respondent did not attend the hearing of the motion on 4 December 2018.

7. The Court has looked at the record. It shows that the applicant had filed 2 Advocate/Client Bill of Costs arising from Petition No. 5 of 2013, *KUDHEIHA v Minister of Labour & Ors* and Petition No. 16 of 2013, *KUDHEIHA v National Hospital Insurance Fund & Ors*.

8. A ruling in respect of the Bill of Costs for Petition No. 16 of 2013, *KUDHEIHA v National Hospital Insurance Fund & Ors* was delivered on 10 April 2018 by Hon. W. Ngumi.

9. The Certificate of Taxation was however issued by Hon. Daisy Mutai on 28 August 2018. On the face of the certificate, it showed that it was in regard to Party to Party Costs.

10. In both *D. Njogu & Co. Advocates v Kenya National Capital Corporation* (2006) eKLR and *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd* (2007) eKLR, the High Court was of the view that a Certificate of Taxation signed by a person other than the Taxing Officer was a non-starter and could not be the foundation of further Court orders.

11. This Court would endorse the holding by the 2 Courts.

12. Consequently, this Court has come to the conclusion that the instant application should be dismissed for the reasons that the attached Certificate of Taxation is not signed by the Taxing Officer who taxed the bill of costs, and that the Certificate of Taxation refers to *party to*

*party costs* while the bill of costs taxed on 14 May 2018 was an *advocate and client bill of costs*.

13. In short, the Certificate of Taxation is not final, is defective and incompetent.

14. The application dated 24 September 2018 is dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 8<sup>th</sup> day of February 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant C.M. Ongoto & Co. Advocates

Court Assistant Lindsey