



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 157 OF 2015**

*(Before Hon. Lady Justice Maureen Onyango)*

**JOHN WANJALA WANJAMA.....CLAIMANT**

**-VERSUS-**

**WANANDEGE CO-OPERATIVE SAVINGS SACCO AND**

**CREDIT SOCIETY LIMITED.....RESPONDENT**

**RULING**

The case herein was heard ex parte and judgment entered against the respondent in the sum of Kshs.1,417,220 on 25<sup>th</sup> February 2016. The respondent attempted to set aside the judgment by applications dated 8<sup>th</sup> March 2016 and 5<sup>th</sup> May 2016 both of which were dismissed.

The respondent was thus compelled to settle the decretal sum. The claimant's Party and Party Bill of Costs was subsequently taxed in the sum of Kshs. 408,834 all-inclusive by consent of the parties dated and filed on 18<sup>th</sup> August 2016.

A Certificate of Taxation was extracted on 17<sup>th</sup> August 2016 and served upon the respondent's counsel by email on the same date. A hard copy was served on 22<sup>nd</sup> August 2016. The claimant's counsel thereafter instructed **Eshikoni Agency Auctioneers** to execute for the costs on 19<sup>th</sup> August 2016 and the auctioneers obtained a warrant of attachment and proclaimed the respondent's movable property on the same day.

The Auctioneer has filed an application for payment of costs by the respondent. The issue before me for determination is therefore who between the claimant and the respondent should pay the auctioneer's costs.

It is the respondent's case that it paid the decretal sum on the very date that it was served with the Bill of Costs, that the proclamation was effected after 12.00 p.m. on a Saturday contrary to the provisions of the law, that the execution was premature and that the costs should be paid by the instructing claimant's advocates.

Counsel for the claimant VICTOR ODHIAMBO AYIEKO of Ayieko Kangethe & Company Advocates on record for the claimant however states that the proclamation was procedural as the respondent's counsel was made aware of the same two days prior to the proclamation.

**Determination**

It is not in dispute that the certificate of attachment was served on the respondent's counsel on 2<sup>nd</sup> August 2016. It is further not in dispute that the proclamation was carried out on 19<sup>th</sup> August 2016 before the certificate was served upon the respondent's counsel. It is further not in dispute that the respondent paid the costs on the very date on which the certificate of costs was served upon it. It has also not been disputed that the proclamation was carried out after 12pm on a Saturday in violation of the relevant legal provisions.

For these reasons it is obvious that the proclamation on 19<sup>th</sup> August 2016 was premature and irregular and the respondent is therefore not liable to pay the costs of the auctioneer.

On these grounds I find that the instructing counsel for the claimant is responsible to pay the auctioneer's costs and order accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27<sup>TH</sup> DAY OF APRIL 2018**

**MAUREEN ONYANGO**

**JUDGE**