



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 2113 OF 2012**

**BANKING INSURANCE & FINANCE UNION (K)..... CLAIMANT**

**VERSUS**

**AGRICULTURAL FINANCE CORPORATION..... RESPONDENT**

**RULING**

1. The Claimant's Advocate came on record on 6<sup>th</sup> May 2015 after the judgment in the suit had been pronounced on 24<sup>th</sup> February 2015.
2. Messrs Philip Muoka & Co Advocates subsequently filed party & party bill of costs dated 23<sup>rd</sup> July 2015. On 12<sup>th</sup> August 2015, the Hon. Deputy Registrar dismissed the Bill of costs for non attendance.
3. The Respondent had objected to the bill of costs on two grounds namely;
  - a. The Advocates came on record after judgement had been delivered in contravention of order 9 rule 9 of the Civil Procedure Rules 2010 which provides that:

*“Where there is a change of advocate or when a party decides to act in person having previously engaged an advocate after judgement has been granted such change or intention to act in person shall not be effected without an order of the court:-*

- a. *upon an application with notice to all the parties or*
  - b. *upon consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be”.*
4. The bill of costs was defective in that the purported Advocate having come on record after judgement and without leave of court seeks in the bill of costs to receive payment for having received instructions to file the claim and for having appeared in court during the subsistence of the suit.
  5. It was submitted that the purported bill of costs is immoral, unlawful misleading and aimed at unjust enrichment by the Advocate.
  6. The Claimant/Applicant submits that the Respondent's notice of preliminary objection dated 12<sup>th</sup> August, 2015 lacks merit and ought to be dismissed.
  7. That the non-attendance on the part of the Claimant's Advocate that led to the dismissal of the party and party bill of costs dated 23<sup>rd</sup> July 2015 was caused by in advertence and should not prejudice the Claimant.
  8. That the ruling by the Deputy Registrar of 12<sup>th</sup> August 2015, dismissing the Claimant's party to party Bill of costs dated 23<sup>rd</sup> July 2015 for non-attendance was not premised on any law and the same be set aside.

## Determination

9. The dismissal of the Bill of costs dated 23<sup>rd</sup> July 2015 by the Hon. Deputy Registrar on 12<sup>th</sup> August 2015 was for non-attendance. The only issue for determination before this court is whether the Hon. Deputy Registrar was justified to dismiss the Claimant's party and party Bill of costs.
10. The preliminary objection to the Bill of costs raised by the Respondent before the Hon. Deputy Registrar was not heard and determined and therefore is a matter that is not properly before this court for determination. If the Bill of costs is reinstated by the court the Hon. Deputy Registrar will be seized of the matter.
11. In the case of *Macharia & Co Advocates -Vs- Magugu [2002] EA 428, Justice Ringera held at page 433 thus;*

*“First, the Advocates Remuneration order is a complete code and there is no provision for the invocation of the Civil Procedure Rules”*

12. Therefore when there was non-attendance by the claimant/applicant and/or its advocates on 12<sup>th</sup> August 2015, the Hon. Deputy Registrar as taxing officer could only issue orders and/or make directions as provided for under the Advocates (Remuneration) Order.
13. Rules 14 & 76 of the Advocates (Remuneration) Order are the only provisions that provide for consequences of non-attendance by a party or his advocate at taxation.
14. Rule 14 provides as follows;

*“Any advocate who after the due notice without reasonable excuse fail to appear on the date and at the time for taxation or on any date and time to which such taxation is adjourned, or who shall in any way delay or impede the taxation or put any other party to any unnecessary or improper expense relative to such taxation shall on the order of the taxing officer forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and attending taxation and shall in addition be personally liable to pay for any unnecessary or improper expense to which he has put any party and the taxing officer may proceed with such taxation exparte”.*

15. Rule 76 of the Order provides that;

*“The taxing officer shall have power to proceed to taxation exparte in default of appearance of either or both parties or their advocates and to limit or extend the time for any proceeding before him and for proper cause to adjourn the hearing of any taxation from time to time”.*

16. Therefore the only options available to a taxing officer in the event of non-attendance by a party to taxation or his advocate are to:-
  - a. Proceed with the taxation exparte
  - b. Make an order of forfeiture of the fees to which the party and/or his advocate would otherwise be entitled for drawing his bill of costs and attending the taxation and/or
  - c. Adjourn the hearing of the taxation
17. The entire Advocates (Remuneration) Order does not contemplate the dismissal of a bill of costs and the taxing master therefore lacks jurisdiction to dismiss bill of costs as was held by Waweru J in **High court Miscellaneous Application No 127 of 2008 Masore Nyanga'u & Co Advocates – Vs- Ombima.**
18. Therefore the ruling and order of the Hon. Deputy Registrar of 12<sup>th</sup> August 2015 dismissing the claimant's party & party Bill of costs dated 23<sup>rd</sup> July 2015 for non-attendance lacks basis in law and is set aside *ex debito justitiae*.
19. The court notes however, that the Hon. Deputy Registrar on the basis of preliminary objection raised before her may disallow items in the party & party Bill of costs dated 23<sup>rd</sup> July 2015 which lack factual basis.

**Dated and delivered at Nairobi this 18<sup>th</sup> day of March 2016.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**