



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 143 OF 2013

DAVID OGEACLAIMANT

v

EAST AFRICAN SECURITY GUARDS LTD..... RESPONDENT

RULING

1. On 5 December 2014, this Court delivered judgment in which the termination of the Claimant's employment was held to be unfair, and awarded the Claimant the sum of Kshs 168,249/-.
2. The Judgment was specific that each party would bear own costs.
3. On 25 February 2015, the Claimant through his Advocate on record filed a Party & Party Bill of Costs in the sum of Kshs 199,750/-. A notice of taxation for 12 March 2015 was issued. According to an affidavit of service filed in Court on 11 March 2015, the firm of Rodi, Orege & Co. Advocates acknowledged service of the notice of taxation.
4. The record bears that on the date fixed for taxation of the Bill of Costs, a Kibe held brief for Mr. Wambeyi for the Claimant, while the Respondent's counsel on record was absent.
5. After a very brief address, Hon. Kombo as Taxing Officer allowed the Bill as drawn and issued a Certificate of Costs on 8 April 2015.
6. An application for execution through attachment had however been presented on 2 April 2015 and warrants of attachment and warrants of sale of property were issued on the same day.
7. Why the warrants of attachment and warrants of sale were issued hurriedly even before the Certificate of Costs had been issued, the Court cannot tell.
8. The auctioneers, as usual in this type of case, moved with equal haste and proclaimed the Respondent's property on 13 April 2015. This prompted the Respondent to move Court under certificate of urgency on 16 April 2015.
9. When the motion was placed before Court, the Court ordered that Mr. Makomere Kennedy Wambeyi appear in Court to explain under what circumstances his firm had proceeded to file and have taxed, a Bill of Costs despite the Court order that each party bear own costs.
10. Mr. Wambeyi appeared on 24 April 2015, and made explanations from the bar. The Court does not intend to discuss the explanations in this ruling. Such discussion will not serve any useful purpose.
11. The taxation of the Bill of Costs presented by the Claimant was contrary to the judgment. The Court, relying on its inherent powers and acting ex debito justitiae sets the taxation aside. The Court finds the purported/ensuing execution null and void.
12. The Court was minded to order the firm of Wambeyi Makomere & Co. Advocates to bear the costs of the execution and the Respondent's but will not make such an order for two reasons.
13. First, the firm of Ochweri Ngamate who presented the motion for stay of execution and review of the taxation was not properly on record because the consent of the Advocate on record at judgment was the firm of Rodi, Orege & Co. Advocates, and two, Mr. Ngamate failed to attend Court on 24 April 2015 though he had extracted an order showing that the matter was coming up

on 24 April 2015.

Delivered, dated and signed in Nakuru on this 8th day of May 2015.

Radido Stephen

Judge

Appearances

For Claimant Ochweri Ngamate & Co. Advocates

For Respondent Wambeyi Makomere & Co. Advocates

Nixon Court Assistant