



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 35 OF 2014

DAVIS KINYUA MURIBA..... CLAIMANT

VERSUS

TAIHO PROPERTIES LIMITED..... 1ST RESPONDENT

ABERDARE COUNTRY CLUB.....2ND RESPONDENT

THE ARK LIMITED.....3RD RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 12th June, 2015)

RULING

The court delivered the judgment in the suit on 31.10.2014 in favour of the claimant. The claimant was awarded costs of the suit and a bill of costs for taxation by the court was filed for that purpose.

The respondents objected to the taxation of the bill of costs by filing on 20.03.2015 the affidavit in opposition to the bill of costs by Allen Waiyaki Gichuhi Advocate. It is alleged in that affidavit at paragraph 3 thus, “**3. On 5th December 2014, our client informed us that the claimant had died**”. On that basis the respondents’ advocate objected to taxation of the bill of costs until a legal representative in the place of the allegedly deceased claimant had been appointed.

Parties agreed to file submissions in view of the objection raised for the respondents and for the court to make a finding in that regard.

The advocate for the claimant has opposed the objection to the taxation and stated that there is no evidence that the claimant is deceased and therefore the issue of substitution of the claimant with a legal representative does not come about. Further, even if the claimant was shown to be deceased, the suit has since been determined and there is no pending suit that may abate or could be subject to substitution of a legal representative in such circumstances that taxation is part of execution proceedings.

The **1st issue** for determination is whether the claimant is deceased. There is no material evidence placed before the court to show that the claimant is deceased. The respondent’s advocate has referred to information by the client about the death of the claimant. First, the respondents are not natural persons and they are three. It not disclosed who of the three respondents the advocate may have received the information from; or the natural person being the official or officer of the respondents that was the source of the information. Second, the basis of believing the information to be true has not been established. Accordingly, the court finds that there is no reason to find that the claimant is deceased as alleged and urged for the respondents.

The 2nd issue for determination is whether, if the claimant were dead, the taxation proceedings would have to be stayed pending substitution of such deceased claimant.

Under section 2 of the Civil Procedure Act, suit means all civil proceedings commenced in any manner prescribed. As submitted for the claimant, rule 3 of Order 24 of the Civil Procedure Rules provides for issues of suits in circumstances of death and bankruptcy. The court holds that taxation proceedings are a suit within the definition of section 2 of the Civil Procedure Act and substitution of a deceased party with the respective legal representative would be necessary to continue the taxation proceedings. It was submitted for the claimant that taxation is step in execution of the decree so that rule 10 of Order 24 of the Civil Procedure Rules applied thus, **“10. Nothing in rules 3, 4, and 7 shall apply to proceedings in execution of a decree or order.”**

Section 38 of the Civil Procedure Act provides that execution of a decree shall be:

- a) by delivery of any property specifically decreed;
- b) by attachment and sale, or by sale without attachment of any property;
- c) by attachment of debts;
- d) by arrest and detention in prison of any person;
- e) by appointing a receiver; or
- f) in such other manner as the nature of the relief granted may require.

Taxation is the process of determining the costs due to the party in the suit and in the opinion of the court the taxation process is not part of the execution proceedings. Taxation is not any of the means of satisfying an order or decree as set out in the cited section. Thus, it will not be saved from substitution of a deceased party to the taxation by reason of rule 10 of Order 24 of the Civil Procedure Rules.

In this case the court has found that the respondents have failed to establish by evidence that the claimant is indeed deceased and the objection to the taxation will therefore fail with orders that the respondents will pay the claimant’s costs of the objection.

Signed, dated and delivered in court at Nyeri this **Friday, 12th June, 2015.**

BYRAM ONGAYA

JUDGE