

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 513 OF 2010

NATHAN OZIGE OLIRA.....CLAIMANT

VS

ELDORET GRAIN LIMITED.....RESPONDENT

RULING

1. On 4th November 2013, I reinstated the Respondent's application dated 25th June 2013 which I had dismissed on 30th July 2013 for non attendance. The application seeks to set aside execution orders and certificate of taxation issued against the Respondent on 18th June 2013. It further seeks a fresh taxation of the Claimant's bill of costs.
2. The application was heard on 20th November 2013 with Mr. Kiplimo appearing for the Respondent and the Claimant appearing in person. Counsel for the Respondent submitted that his law firm was served with a taxation notice for 6th May 2013, which was received under protest as the date which had been taken by the Claimant *ex parte* was not convenient to them. They nevertheless instructed an Advocate to hold their brief but the matter was not listed.
3. The Claimant then served the Respondent's Advocates with another taxation notice for 28th May 2013 which was also received under protest. Again the matter was not listed on this date. The Claimant took yet another *ex parte* date for 18th June 2013 on which date the Respondent's Advocates instructed Mr. Toro to hold their brief but the matter was not listed. They were therefore surprised to be served with an execution notice requiring them to pay Kshs. 244,945 in costs.
4. It was the Respondent's contention that the bill of costs as taxed was inflated.
5. In opposing the Respondent's application, the Claimant submitted that he had served the Respondent's Advocates with the 1st taxation notice for 6th May 2013 on 24th April 2013, but there was no appearance for the Respondent. The Claimant was therefore given another date being, 28th May 2013 and he served a notice on the Respondent's Advocates on 13th May 2013 which notice was received under protest.
6. On 28th May 2013, the Claimant was given yet another date being, 18th June 2013 which he served on the Respondent's Advocates on 30th May 2013. It was the Claimant's contention that the bill of costs was properly taxed and even if the matter was not listed, the Respondent's Advocates ought to have made inquiries from the Court.
7. It is a basic principle of fair play that a party to a dispute must be afforded an opportunity to present its position. In order to give effect to this basic principle, parties must endeavour to fix dates that are mutually convenient. In the instant case, the Claimant kept taking *ex parte* dates without making any effort to invite the Respondent to take a mutually convenient date and in the final analysis, the Respondent was not represented at the taxation stage.
8. I therefore set aside the execution orders and certificate of taxation issued against the Respondent on 18th June 2013 and direct the parties to take a mutually convenient date for a fresh taxation of the Claimant's bill of costs before the Deputy Registrar.

Each party will bear their costs for this application.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF
JANUARY 2014**

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*