



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**  
**CAUSE NUMBER 38 OF 2014**

**BETWEEN**

**GEOFFREY MBOLU MWOLOLO.....CLAIMANT**

**VERSUS**

**NORTH WOOD SECURITY FIRM.....RESPONDENT**

**AWATIF ABBAS ..... 1<sup>ST</sup> OBJECTOR**

**TUDORS SERVICES LIMITED ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. Judgment was read in favour of the Claimant, on 27<sup>th</sup> June 2014. Throughout the trial, Mr. J.M. Mwawasi Advocate, appeared holding brief for Mr. J.S. Asige Advocate for the Respondent. After Judgment was delivered, the Advocates for the Claimant and those of the Respondent engaged in various correspondences, where the Respondent made proposals to settle the Claim 'out of Court'. This is notwithstanding that the Claim had indeed already been settled in Court.

2. There was no settlement of any form as proposed by the Respondent, and the Claimant filed his Bill of Costs on 11<sup>th</sup> September 2014. On 10<sup>th</sup> October 2014, Mr. Mwawasi holding brief for Mr. Asige for the Respondent, together with Ms. Maximiller Kedeki Advocate for the Claimant, appeared before the Deputy Registrar for taxation of the Bill of Costs. The Respondent applied for, and was granted 7 days, within which to file Response to the Bill of Costs. There was further adjournment up to 28<sup>th</sup> November 2014, when the two Advocates agreed the Bill would be taxed. On 28<sup>th</sup> November 2014 neither Mr. Asige nor Mr. Mwawasi appeared in Court for taxation. Ms. Kedeki asked, and the order was granted, that the Bill is taxed as drawn.

3. The Respondent filed an application on 11<sup>th</sup> December 2014, supported by the affidavit of Mr. Asige sworn on 11<sup>th</sup> December 2014. He explains his Clerk forgot to indicate the date when the Bill of Costs was fixed for taxation, in the Advocate's Diary. The Clerk had been advised by Mr. Mwawasi when taxation would take place. Mr. Asige therefore did not attend taxation. The Respondent states also that the amount allowed in taxation at Kshs. 130,822, is higher than the principal amount awarded by the Court and is in breach of the Scale of Fees.

4. On the same day 11<sup>th</sup> December 2014, Mr. Mwawasi filed an application on behalf of the 2 Objectors. The Objectors allege the attached goods do not belong to the Respondent; they belong to the Objectors. The Objection is based on the affidavit of the first Objector, who is a Director of the 2<sup>nd</sup> Objector.

5. The Claimant filed a Replying Affidavit and Grounds of Opposition answering both the Application and the Objection. The Court granted the Respondent and the Objectors interim stay of execution orders on the 19<sup>th</sup> December 2014. Hearing in the presence of all the Parties took place on 26<sup>th</sup> February 2015.

*The Court Finds:-*

6. Judgment was made in favour of the Claimant on 27<sup>th</sup> June 2014. Subsequently, Ms Kedeki and Mr. Asige were engaged in correspondence on satisfaction of the Judgment. In one of the letters dated 1<sup>st</sup> August 2014, Mr. Asige states the Claimant was in fact, an Employee of Tudors Services Limited, not the Respondent. It was proposed by Tudors, who is now an Objector, to settle the Claim.

7. The Objection by Tudor and Awatif has no basis. These are just entities in a Business Enterprise which employed the Claimant. Their Objection is not made in good faith, but simply made to keep an Employee from accessing his terminal benefits. The Respondent and the Objectors seem to the Court to be just arms in the same Business Enterprise, who are bent on creating obstacles to the Employee in accessing his terminal benefits.

8. The Respondent's Advocate has all along instructed the Objectors' Advocates to appear for the Respondent. The Bill of Costs was fixed with the consent of the Advocates. There was no affidavit filed by Mr. Asige's Assistant, showing he was advised on the date for taxation by Mr. Mwawasi, and failed to diarize. It is not likely in the view of the Court that Mr. Asige was to attend taxation; in all likelihood Mr. Mwawasi was to appear for taxation, going by the history of the file. The 2 Advocates failed to attend taxation without a good reason.

9. The Taxing Master cannot be faulted for proceeding in the absence of the Respondent. There was nothing filed by the Respondent, faulting the Bill as drawn by the Claimant. Adequate time was given to Respondent to file any objection to the Bill. Nothing was filed, and there was no attendance during taxation, on the part of the Respondent. The Court does not think it should interfere with the taxed costs, adequate opportunity having been availed to the Respondent to challenge the Bill, and that opportunity having been ignored.

IT IS ORDERED:-

- a. ***The application by the Respondent dated 11<sup>th</sup> December 2014 is rejected;***
- b. ***The objection filed the Objectors on the 11<sup>th</sup> December 2014 is rejected;***
- c. ***The orders for stay of execution in either case are lifted;***
- d. ***The Claimant is at liberty to execute; and,***
- e. ***Costs of the 2 applications to the Claimant.***

Dated and delivered at Mombasa this 23rd day of March 2015.

James Rika

Judge