



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW CASE NO. 69 OF 2012

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CITY COUNCIL OF NAIROBI..... RESPONDENT

AND

IVYLAND PARK LTD.....INTERESTED PARTY

EX PARTE:

INDERPAL SINGH

FRANCIS N. NEBE AND

JAMES KISA

Suing as Officials of

CONVENT DRIVE SOUTH RESIDENTS' ASSOCIATION

RULING

1. The application that is the subject of this ruling is a Notice of Motion dated 11th October 2019 by Ivyland PARK Limited, the Interested Party herein, seeking the following orders:-

a) THAT this court be pleased to adopt the certificate of taxation dated 5th of August, 2019 for Kenya Shillings Seven Hundred and Thirty Three Thousand Four Hundred Forty Four (Kshs.733,444.00) and judgment be entered against the Respondent for the said sum.

b) THAT this court be pleased to issue a decree in respect of Certificate of Taxation dated 5th August, 2019 and that the Advocate be at liberty to execute for recovery of the same and interest therein in such manner as a decree of this Court.

c) THAT the Respondent be ordered to comply with the Certificate (of)/decree dated 5th August, 2019 within 7 days from the date of the order.

2. The Application is supported by an affidavit dated 11th October, 2020 sworn by Christopher Ochieng', an Advocate practising in the firm of Ogola Okello and Company Advocates LLP, who are the advocates on record for the Interested Party. The said advocates in addition filed its written submissions dated 9th July, 2020 He averred that on the 1st of September, 2016, the Deputy Registrar taxed and awarded their firm Kenya Shillings Seven Hundred and Thirty Three Thousand Four Hundred and Forty Four (Kshs. 733,444.00) as against the *ex parte* Applicants in **JR Misc. Cause No. 69 of 2012**, which is the matter herein.

3. The deponent contended that consequently, their firm was issued with a Certificate of Taxation in respect of the costs thereof. He also stated that an order of this Court adopting the Certificate of Taxation as a judgment and subsequently as a decree of the court is necessary to enable execution by the Applicant, and annexed a copy of the Certificate of Costs dated 5th August 2019 for the sum of Kshs. 733,444.00

4. The application was unopposed, as neither the Respondent nor the *ex parte* Applicants filed any response thereto, despite being so directed by the Court, and given ample opportunity to do so. .

The Determination

5. The Interested Party in its submissions contended that the certificate of taxation dated 5th August, 2019 should be adopted as a decree of the court to enable its enforcement as the ex-parte Applicant has withheld the payment for several years, and the certificate of taxation has not been varied or set aside by the court. Reliance was placed on section 51(2) of the Advocates Act, and the decisions in **Nyabena Alfred t/a Nyabena Nyakundi & Co. Advocates versus Tourism Promotion Limited t/a Serena Hotel, [2018] eKLR** and **Kerandi Manduku & Company versus Gathecha Holdings Limited, [2006] eKLR**, that a certificate of costs once issued is final as to the amount of the costs covered and, where there is no dispute as to retainer, the Court can order that judgment be entered for the sum of as per the certificate of costs.

6. It is necessary to clarify at this stage that the only issue for determination in the instant application is whether judgment should be entered again the Respondent for the taxed costs due to the Interested Party. This is for the reason that the additional prayers sought by the Interested Party as regards the issuance of a decree in the terms of the certificate of costs, and the enforcement of the decree are not only premature, but also not properly before this Court. The Interested Party in this regard needs to first observe and comply with procedure set out under Order 21 Rule 8 of the Civil Procedure Rule as regards preparation of decrees, and under Order 22 Rule 6 as regards their execution.

7. As regards entry of judgment, section 51(2) of the Advocates Act grants this Court power to enter judgment in an Advocates' favour on taxed costs as follows:

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs”.

8. It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is if the same has been set aside or altered, or where there is an issue with retainer. This position has been upheld in various cases including **Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited (supra)**, **Dally and Figgis Advocates vs Homelex Limited (2013) eKLR** and **Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Ltd (2012) eKLR**. In addition Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14 % until payment in full.

9. In the present application, it has not been disputed that the Interested Party was granted costs in this matter, and that the same were taxed in its favour at the sum of Kshs. 733,444.00. The Interested Party has also provided evidence of the Certificate of Costs dated 5th August 2019 for the sum of Kshs. 733,444.00. Therefore, as the taxed costs and Certificate of Costs issued to the Interested Party have not been challenged, and there is no demonstrated dispute on the Interested Party's retainer, I find merit in the Interested Party's Notice of Motion dated 11th October 2019.

10. I accordingly allow the Notice of Motion application dated 11th October 2019 to the extent of the following orders:

I. Judgment is entered for the Interested Party against the *ex parte* Applicants for the taxed costs of Kenya Shillings Seven Hundred and Thirty Three Thousand Four Hundred Forty Four (Kshs.733,444.00), as certified in the Certificate of Taxation dated 5th August 2019, with interest at 14% per annum from the date of this ruling until payment in full.

II. There shall be no order as regards the costs of the Notice of Motion dated 11th October 2019 .

11. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF JANUARY 2021

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

Pursuant to the Practice Directions for the Protection of Judges, Judicial Officers, Judiciary Staff, Other Court Users and the General Public from Risks Associated with the Global Corona Virus Pandemic dated 17th March 2020 and published 17th April 2020 in Kenya Gazette Notice No. 3137 by the Honourable Chief Justice, this ruling was delivered electronically by transmission to the email addresses of the *ex parte* Applicants', Respondent's and Interested Party's Advocates on record.

P. NYAMWEYA

JUDGE