



Mwangangi & Co. Advocates v Kakenyi (Environment and Land Miscellaneous Application E004 of 2021) [2023] KEELC 16328 (KLR) (20 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16328 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2021
CA OCHIENG, J
MARCH 20, 2023
IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF
KENYA
AND
IN THE MATTER OF SCHEDULES 1 & 5 OF THE ADVOCATES
(REMUNERATION) (AMENDMENT) ORDER, 2014
AND
IN THE MATTER OF PARAGRAPH 7 OF THE ADVOCATES
(REMUNERATION) ORDER
AND
IN THE MATTER OF LAND REFERENCE NUMBER 7885/26

BETWEEN

MWANGANGI & CO. ADVOCATES APPLICANT

AND

CLEMENT MUNYAO KAKENYI RESPONDENT

RULING

1. What is before Court for determination is the Advocates/Applicant's Chamber Summons Application dated the August 4, 2022 brought pursuant to Rule 11(3) of the Advocates Remuneration Order and Sections 1A, 1B and 3A of the *Civil Procedure Act*. The Applicant seeks the following orders:
 1. Spent



2. That leave do issue to the Applicant to file an Appeal to the Court of Appeal against the Ruling of Hon. Christine Ochieng J. delivered at Machakos on July 25, 2022.
 3. That the costs of this Application be in the cause.
2. The Application is based on the grounds on the face of it and the Supporting Affidavit of Florence Mwangangi Advocate where she deposes that the decision sought to be appealed against was delivered on 25th July, 2022. She avers that the decision was in respect to an Application to correct an error of miscalculation of the fees payable to the Applicant only on Item No. 1 of the Bill of Costs by the Taxing Court. She explains that being a Ruling on a reference to the decision of the Taxing Master, an Appeal only lies with leave of this court. She states that the Ruling of the Court affects the Advocates/ Applicant who rendered legal services in 2018 to the Respondent's instructions for the registration of a title for the land herein in the name of the Respondent and the costs remain unpaid to date despite the said title having been successfully registered. She reaffirms that the Advocates/ Applicant have suffered great prejudice, loss and hardship which continues for as long as the matter remains pending in court. She reiterates that the Respondent will not suffer any prejudice if the Application is allowed as it will get a chance to be heard on Appeal.
 3. The Respondent did not file any response nor submissions to oppose the instant Application.
 4. The Advocates/ Applicant filed their submissions to canvass the instant Application.

Analysis and Determination

5. Upon consideration of the Chamber Summons Application dated the August 4, 2022 including the Supporting Affidavit of Florence Mwangangi Advocate as well as the annexures thereon and submissions, the only issue for determination is whether the Advocates/ Applicant is entitled to leave to file an Appeal against the decision of this Court dated the July 25, 2022.
6. The Advocate/ Applicant in its submissions reiterated its averments as per the Supporting Affidavit and explained that it had made out a case for leave. To support its arguments, it relied on the decision of *Najib Balala & 13 Others V David M Githere & 9 others* (2005) eKLR.
7. The legal provisions governing leave to lodge an Appeal against a decision determining an objection is under Rule 11(3) of the Advocates (Remuneration) Order, which provides that:

Any person aggrieved by a decision of the Judge upon any objection referred to such Judge under subsection (2) may with the leave of the Judge but not otherwise Appeal to the Court of Appeal.”
8. I note the Applicant has brought the instant Application without undue delay. Further, the Respondent did not oppose the instant Application nor even file his written submissions. The Applicant sought leave to Appeal against the decision of this court in respect to determination of an objection and even annexed the draft Memorandum of Appeal enumerating the grounds of the Appeal. The Advocates/ Applicant argue that the Appeal is merited. In the case of *Najib Balala & 13 Others V David M Githere & 9 others* (2005) eKLR, the Court of Appeal while dealing with an issue of leave to Appeal from a decision of an objection held thus:

If an objection is filed and determined, then by Rule 11(3) of the Order, a person aggrieved by such a determination can only Appeal to the Court of Appeal with leave of the Judge.”



9. In the circumstances while relying on the legal provisions cited above and associating myself with the quoted decision, since the Application was unopposed, I will exercise my discretion and grant the Advocates/ Applicant leave to Appeal against the decision of this court dated the July 25, 2022.
10. It is against the foregoing that I find the Chamber Summons Application dated the August 4, 2022 merited and will allow it.
11. I make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF MARCH, 2023

**CHRISTINE OCHIENG
JUDGE**

