



Mwangangi & Co Advocates v Kakenyi (Environment and Land Miscellaneous Application E005 of 2021) [2023] KEELC 16450 (KLR) (20 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16450 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2021
CA OCHIENG, J
MARCH 20, 2023

BETWEEN

MWANGANGI & CO ADVOCATES ADVOCATE

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 Advocates/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 premised on the grounds on the face of it and the Supporting Affidavit of Florence Mwangangi Advocate. The deponent avers that the decision sought to be appealed against 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 contends that being a Ruling on a reference to the decision of the Taxing Master, an Appeal only lies with leave of this court. She insists the Ruling of the court affects the 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 reiterates



that the Applicant has suffered great prejudice, loss and hardship which continues for as long as the matter remains pending in court. She reaffirms 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 a Replying Affidavit to oppose the Application.
4. The Applicant filed submissions to canvass the Application.

Analysis and Determination

5. Upon consideration of the instant Chamber Summons Application including the Supporting Affidavit, annexures and submissions, the only issue for determination is whether the Applicant is entitled to leave to file an Appeal against the decision of this Court dated the July 25, 2022.
6. The Advocates/Applicant in its submissions reiterated its averments and explained that it had made a case for leave. To support its averments, it relied on the case of *Najib Balala & 13 Others V David M Githere & 9 others* (2005) eKLR.
7. The Respondent did not file written submissions.
8. The law governing leave to lodge an Appeal against a decision determining a reference is contained in rule 11(3) of the *Advocates (Remuneration) Order*, which provides inter alia:

“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.”
9. In this instance, I note the Application has been brought without undue delay. Further, the Respondent did not oppose the instant Application. It is trite that leave to Appeal is at the discretion of the Judge. I note the Applicant sought leave to Appeal and even annexed the draft Memorandum of Appeal to the instant Application highlighting several grounds why its 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 determination 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.
10. In the circumstances, while relying on the legal provisions cited above and associating myself with the quoted decision, I will exercise my discretion and grant the Applicant leave to Appeal against the decision of this court dated the July 25, 2022.
11. It is against the foregoing that I find the Chamber Summons Application dated the 4th August, 2022 merited and will allow it.
12. I make no order as to costs.

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

CHRISTINE OCHIENG

JUDGE

