



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. CIVIL APPLICATION NO. E44 OF 2020**

**KAGIA OLE KAMAIRO.....APPLICANT**

**VERSES**

**NATOOLI ENAIBOR AJIJK CO. LTD.....RESPONDENT**

**RULING**

1. The **chamber summons application dated 4<sup>th</sup> November 2020** by the applicant herein prays for the following orders;

*a) That the time limited for lodging this application from the decision of the taxing master as per the certificate of taxation herein dated 21<sup>st</sup> July 2020 be and is hereby extended and the application herein deemed as duly lodged within the prescribed time.*

*b) That the ruling of the taxing master in relation to the certificate of taxation dated 21<sup>st</sup> July 2020 for the respondent against the applicant herein be and is hereby set aside.*

*c) That this court be pleased to order taxation of the respondent's bill of costs based on the provisions of the remuneration order.*

*d) The respondents be condemned to pay the auctioneers charges in relation to the execution of the certificate of costs.*

2. The applicant prayed for the costs of the application.

3. The application is premised on the grounds on the face of the application as well as his affidavit sworn on the even date and further supplementary affidavit sworn on 23<sup>rd</sup> August 2021.

4. Basically the dispute between the applicant and the respondent has to do with a matter namely Nakuru cmcc misc. app. No 41 of 2018 in which the applicants and others sought to be enjoined as parties. The said application was disallowed and they were condemned to pay costs.

5. The costs were thereafter assessed at Kshs. 148,475 by the taxing master. The applicant it appears was dissatisfied with the results and has filed this application to seek further and or fresh assessment of the said costs.

6. It is also clear that while the issue was pending the auctioneers attempted to execute and they incurred costs of Kshs. 97,026 which it demands from the applicant.

7. The applicant's argument is that the assessment was not done according to the remuneration order and that the trial court has failed to give reasons why it reached the amount it did. That to date they are still waiting for the courts reasons. They have therefore been unable to proceed as the time stipulated of 14 days has already lapsed.

8. The respondent vide its grounds of opposition dated 29<sup>th</sup> March 2021 has opposed the application on the grounds that the same was frivolous and an abuse of the courts process. That the applicant failed to comply with the provisions of Rule 11 of the Advocates Remuneration Order 2014 by failing to request for the reasons as contemplated therein.

9. That the 14 days' period stipulated had been breached by the applicant who has filed the objection about three months after the decision was effected.

10. When the matter came up for hearing and directions i directed that the same be determined by way of written submissions. Apparently it was only the applicant who has filed the same.
11. Without belabouring the issue herein, this court is unable to decipher either from the applicant or the respondent when the assessment of costs was done. The only available piece of evidence was the certificate of costs dated 21<sup>st</sup> of July 2020 which does not indicate whether it was done in the presence of both parties.
12. More fundamentally the court is unable to know why the taxing master has been unable to give reasons as per the applicant's letter marked kok2 which although not framed well, it can be deduced as an objection for now.
13. In the premises, this court although it agrees with the respondent that the applicant has not provided any security for stay pending the determination of the matter, finds that the correspondences between the applicant and the court was not smooth. The same should not be visited against the applicant.
14. Be it as it may it is still necessary in allowing this application to demand security from the applicant pending the outcome of the intended reference. The other periphery issue of who to settle the bill is actually between him and the persons he is representing and not for this court to determine.
15. Consequently, the application is allowed as hereunder;

- a) The applicant is hereby granted leave to file and serve the respondent his reference within 14 days from the date herein.**
- b) The applicant shall within 30 days from the date herein deposit the sum of Kshs. 100,000 in a joint interest earning account of both counsels for the applicant and the respondents and in default prayer (a) above shall be discharged automatically and the respondent be at liberty to execute for the entire amount.**
- c) The auctioneer's fees if any shall await the outcome of the reference.**
- d) The respondent shall have the costs of this application.**

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 27TH DAY OF JANUARY 2022.**

**H K CHEMITEI**

**JUDGE.**