



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. CIVIL CASE NO. 44 OF 2019

THOMAS KIMAGUT SAMBU.....APPLICANT

- V E R S U S -

MUHORONI SUGAR CO. LTD (Under Receivership).....1ST RESPONDENT

FRANCIS OOKO.....2ND RESPONDENT

HARUN KIRUI.....3RD RESPONDENT

R U L I N G

1. The Application coming for consideration is dated 28th October, 2020 seeking the following orders:-

(i) THAT this Court be pleased to set aside the order dismissing the Application dated 13th October, 2020 for non-attendance by the Applicant.

(ii) THAT the Application dated 13th October, 2020 be reinstated and heard inter partes on merit and that that stay be granted pending inter partes hearing of the Application.

(iii) THAT the costs of the Application be in the cause.

2. The Application is based on the ground on the face of it and supported by the Affidavit of **FAUSTINE OSEWE** sworn on 28th October, 2020 in which he stated that he was the lawyer representing the Applicant and that he was not allowed to join virtual court and he later learnt that the matter proceeded in open court while he was in another court.

3. It is further deposed in the Supporting Affidavit that unless the said Application is reinstated the Applicant will suffer irreparably since he had settled the decretal sum in the suit that led to the Miscellaneous Application.

4. The Respondent filed a Notice of Preliminary Objection (NOPO) in response to the Application dated 28th October, 2020 on the following grounds:-

(i) THAT the matter relates to taxation of party and party Bill of Costs which matter is heard and determined before the Deputy Registrar and if the Applicant is aggrieved he should file a reference.

(ii) THAT similarly if the Applicant seeks to set aside such a decision he should file the Application before the Deputy Registrar.

(iii) THAT this court is not seized with the Jurisdiction to set aside the decision of taxing officer.

5. The parties filed brief written submissions in the Application dated 28th October, 2020 which I have duly considered. The Applicant submitted that the matter was filed through the online e-filing and ought to have been placed before the Deputy Registrar. The Applicant requested the court to refer the matter to the Deputy Registrar and submitted that the Applicant should not be condemned to pay costs as the mistake was on the part of the Registry.

6. The Respondent stated in their submissions that this court lacks jurisdiction to entertain this matter and the same ought to be filed before the Deputy Registrar, the law is very clear with regards to taxation, paragraph 10 of the Advocates Remuneration Order, 2019 prescribes that the taxation of bills is vested on the registrar, district registrar or deputy registrar of the High Court, in the absence of a registrar, an

officer appointed by the Chief Justice whereas paragraph 11 of the Advocates Remuneration Order, 2019 provides an elaborate and detailed procedure on how to review/set aside a Taxing Officer's decision.

7. The Respondent submitted that this Court lacks jurisdiction to hear this matter and further that the same ought to have been filed before the Deputy Registrar.

8. I find that the Applicant has conceded that this matter was filed before the wrong court. The Applicant is passing the blame to Registry Court Clerks.

9. I reinstate the Applicant's Application dated 13th October, 2020 and direct that this file be placed before the Deputy Registrar to deal as the court lacks the jurisdiction to handle matters related to taxation.

10. The costs of the Application dated 28th October, 2020 to abide the cause.

Delivered, signed and dated at Kericho this 29th day of January, 2021.

A. N. ONGERI

JUDGE