



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO. 33 OF 2018

(CONSOLIDATED WITH MISC. CIVIL APPLICATION

NOS. 34 TO 36, 38 TO 40, 42 TO 44 AND 46 TO 48 OF 2018

BETWEEN

PETER M. KARANJA & COMPANY.....ADVOCATE/APPLICANT

AND

SUKWINDER SINGH CHATTHE.....1st RESPONDENT/CLIENT

RAGHBIR SINGH CHATTHE.....2ndRESPONDENT/CLIENT

CHANNAN SINGH CHATTHE.....3rd RESPONDENT/CLIENT

SATWANT SINGH CHATTHE.....4th RESPONDENT/CLIENT

RULING

Background

1. By a ruling dated 30th July, 2019, this court gave the following orders:

1) Applicant's Bills of costs in MISC. CIVIL APPLICATION NOS. 34 to 36 of 2018; MISC. CIVIL CAUSE NO 38 to 40 OF 2018; MISC. CIVIL CAUSE NO 42 to 44 OF 2018 and MISC. CIVIL CAUSE NO 46 to 48 OF 2018 are struck out

2) The decision and award of the Deputy Registrar given and made vide rulings delivered on 31st May, 2018 in respect of MISC. CIVIL APPLICATION NOS. 33, 37, 41 and 45 are hereby set aside and remitted to the Taxing Master for re-taxation

3) The costs of these applications will abide the outcome of the taxations.

Notice of Motion

2. Being dissatisfied with the foregoing decision, the Advocate/Applicant has moved this court by way of a Notice of motion dated 02nd August, 2019 filed on 05th August, 2019 seeking the following orders **THAT:**

1) The Advocate/Applicant be granted leave to appeal out of time

2) The costs of this Notice do abide the intended Appeal

3. The application is based on the grounds among others that the Advocate/Applicant desires to appeal against this court's ruling made on 31st July, 2019 which appeal can only be filed with leave.

4. The application is supported by an affidavit sworn by the Advocate/ Applicant on 02nd August, 2019 in which he reiterates the grounds on

the face of the application. Annexed to the affidavit is a copy of this court's ruling dated 31st July, 2019.

5. The application is opposed on the basis of grounds of opposition dated 18th November, 2019 in which it is asserted that the applicant has not demonstrated reasonable prospect of the intended appeal succeeding.

6. I have considered the application in the light of the supporting affidavit, the grounds of opposition and written submission on behalf of both parties and the cited authorities.

7. Grant of leave to appeal is discretionary **and the court** is called upon to exercise this discretion judiciously for furtherance of substantive justice (See **Muriu, Mungai & Co. Advocates vs New Kenya Co-op Creameries Ltd [2012] eKLR**).

8. A party seeking for leave must demonstrate good faith and the application must be done without undue delay. This application was made on 05th August, 2019 which was five (5) days after the impugned ruling. This application was filed within reasonable time and no bad faith on the part of the Applicant has been demonstrated.

9. I have considered whether the grant of leave will cause the Respondents any prejudice. Other than perhaps the inconvenience of defending this application which can be compensated with costs, I see no other prejudice.

10. Accordingly, I allow the notice of motion dated 02nd August, 2019 filed on 05th August, 2019 on the following terms:

1) I grant leave to the Advocate/Applicant to file an appeal and to file a notice of appeal within seven (7) days.

2) The Client/Respondent is awarded the costs of this application.

DATED AND DATED IN KISUMU THIS 30th OF January 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/ Okodoi

For the Advocate/ Applicant - Ms Barasa

For the Respondent - N/A