



IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 1 OF 2019

BETWEEN

OBWOGE ONSONGO & COMPANY ADVOCATES.....APPLICANT

AND

PETER ODUOR MAKOKHA.....RESPONDENT

RULING

1. **Peter Oduor Makokha**, the respondent herein filed an application by way of Notice of Motion under section 3 A of the Civil procedure Act. He is seeking the following orders:

- a) That this Honourable Court be pleased to certify this application as urgent and service before its hearing be dispensed with.(Spent)
- b) That pending the hearing of this application inter – partes the execution of the decree, and an application for such execution made herein and warrants of attachment and proclamation issued thereof be stayed until this application is determined.(Spent)
- c) The execution of the decree herein be stayed until directions are given by the Law Society of Kenya on dispute pending before it between the parties herein.
- d) Costs of this application be borne by the respondent decree holder.

2. The application is premised on the following grounds:

- a) The taxation herein on which the decree sought to be executed was found was intended to ascertain the client and advocate fee to be deducted from what Mr. Onsongo advocate was paid for his client the applicant herein in Busia PM's Courts Civil case No.280 of 2000 which the Advocate decree holder herein has not fully paid the matters thereof are still pending before the Law Society of Kenya between the parties herein.
- b) The applicant has no debt to be paid to Mr. Onsongo advocate herein in respect of the taxation made herein but it is Mr. Onsongo with the debt to pay to the applicant after his taxed costs herein has been deducted from the money that he is supposed to pay to the applicant as paid to him in civil case No.280 of 2000 in trust for the applicant.
- c) The application for execution of the decree as made by Mr. Onsongo the decree holder herein was made by malice and is frivolous vexatious and an abuse of court process.
- d) Unless this Hon. Court is pleased to stop Mr. Onsongo from his malicious act to execute the decree herein the applicant stands to suffer grief injustice and irreparable damages.

3. The respondent/applicant retained the services of Mr. Obwoege Onsongo advocate in Busia PM's Courts Civil case No.280 of 2000. The case was finalized on 16th December 2004.

4. The respondent/applicant contended that he was awarded KsHs170, 000/= special damages whereas the applicant advocate contends that that this figure was erroneous and was subsequently rectified in the decree.

5. I have looked at the original record and the register. The respondent applicant had pleaded Kshs.17, 000/=. The copy of the decree attached as an exhibit marked WOO1 confirm the same. I therefore find that the respondent/applicant was awarded Kshs.17, 000/= special damages.

6. The advocate has contended that the complaint to the law society was determined in his favour. The respondent/applicant other than

contending that there was a pending complaint, he did not attach any document to that effect. In any case, the outcome of the proceedings before the Law society of Kenya cannot forestall a judicial process. In case an advocate is found to have breached rules of practice, there exists a mechanism for disciplinary action.

7. The application by the respondent therefore lacks merit and the same is dismissed with costs.

DELIVERED and SIGNED at BUSIA this 25th day of February, 2020

KIARIE WAWERU KIARIE

JUDGE