



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**MISC. CIVIL CASE NO. 306 OF 2015**

**JAMES AGGREY MWAMU T/A MWAMU & CO. ADVOCATES ...APPLICANT/RESPONDENT**

**-VERSUS-**

**MIGORI COUNTY ASSEMBLY.....RESPONDENT/APPLICANT**

**RULING**

The application dated 19<sup>th</sup> November 2019 seeks the enlargement of time, to enable the Applicant, **MIGORI COUNTY ASSEMBLY**, lodge a Notice of Objection to the taxed costs.

1. It is common ground that the Advocate/Client Bill of Costs, as between the Respondent, **JAMES AGGREY MWAMU T/A MWAMU & COMPANY ADVOCATES**, and the Applicant, was taxed on 22<sup>nd</sup> May 2018.
2. Following the taxation, the learned taxing officer awarded to the Respondent, the sum of Kshs 1,290,257/96.
3. As conceded by the Applicant, this application was brought after the lapse of one-and-a-half years, from the time when the costs were taxed.
4. The Applicant explained the delay by saying that the period was spent in

***“consultation between the Assembly and the Execution (sic!), on which organ ought to have taken up the Reference in view of the colossal sum.”***

5. It was the contention of the Applicant that there was no Advocate/Client relationship between it and the Respondent.
6. If it is only the County Assembly Service Board that has the statutory mandate to procure goods and services on behalf of the Applicant, and if the Applicant never issued instructions to the Respondent, that would have been a sound foundation upon which the Applicant could have raised objections to the Bill of Costs.
7. However, although the Applicant was served with the Bill of Costs, as well as with a Notice of Taxation, it failed to utilize the opportunity available to it.
8. The Applicant also submitted that the taxed costs were manifestly excessive.
9. The reason why the Applicant was served with the Notice of Taxation was that the Notice accorded it an opportunity to make submissions during the process of the taxation. Having chosen to stay away from the process, which was available to it, the Applicant cannot now be heard to complain about a decision which it made a choice not to have any role in.
10. The Respondent and the Court gave to the Applicant an opportunity to attend the process.
11. Neither the Court nor the Respondent could compel the Applicant to attend either the process of taxation or the hearing of the application through which the Respondent asked the court to grant judgment in terms of the taxed costs.
12. Fair Administrative Action connotes the giving of an opportunity to be heard before the adjudicating body renders its determination.

13. I find that the Applicant has failed to demonstrate that its right to Fair Administrative Action was violated.

14. The court has already granted Judgment in favour of the Respondent. And, indeed, the Respondent commenced execution proceedings.

15. On 20<sup>th</sup> February 2020, Hon. Lady Justice T.W. Cherere issued an Order of Mandamus, compelling the Clerk, Migori County Assembly to pay to the Respondent, the decretal amount of Kshs 1,290,256/96. That order was made in Judicial Review Cause No. 13 of 2019.

16. Neither the Judgment herein nor the Orders made on 20<sup>th</sup> February 2020 have been challenged by the Applicant.

17. I therefore find that if the Applicant were granted an extension of time to lodge a Notice of Objection to the taxed costs, such an order would be in vain, as it cannot countermand either the Judgment or the Order of Mandamus.

18. Accordingly, the application dated 19<sup>th</sup> November 2019 is dismissed, with costs to the Respondent.

**DATED, SIGNED and DELIVERED at KISUMU This 29<sup>th</sup> day of April 2020**

**FRED A. OCHIENG**

**JUDGE**