



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL CASE NO. 108 OF 2018

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

-VERSUS-

MIGORI COUNTY ASSEMBLY.....RESPONDENT/APPLICANT

RULING

MIGORI COUNTY ASSEMBLY has lodged an application dated 19th November 2019, seeking enlargement of time to file a Notice of Objection to the taxed costs.

1. It is common ground that on 25th July 2018 the learned Taxing Officer rendered her verdict, in which the Advocate/Client Bill of Costs was taxed in the sum of Kshs 1,365,209.08.
2. Before proceeding with the process of taxation, the Taxing Officer satisfied herself that the Applicant herein had been duly served.
3. After the Bill of Costs had been taxed, the Taxing Officer issued a Certificate of Costs dated 20th August 2018.
4. On the strength of the said Certificate of Costs, the Respondent herein, filed an application seeking judgment. The said application, which is dated 14th March 2019, was served upon the Legal Officer of Migori County Assembly on 27th March 2019.
5. When the application came up for hearing on 28th March 2019, the court had it adjourned to 4th June 2019, because the Notice given to the Applicant herein was too short.
6. On 25th April 2019, the Applicant's Legal Officer was served with a Hearing Notice, which informed the Applicant that the application dated 14th March 2019 was scheduled to be heard on 4th June 2019.
7. Notwithstanding the said service, the Applicant herein failed to attend court on 4th June 2019.
8. This court delivered its Ruling on 4th June 2019, granting judgment in favour of the Respondent herein.
9. On 20th November 2019 the Respondent herein filed the application dated 9th October 2019, through which he sought an Order of Mandamus to compel the Respondents to pay the decretal amount. In the Alternative, the Respondent herein sought the arrest and incarceration of the Speaker as well as The Clerk of the Migori County Assembly.
10. It is that application which forced the Applicant to wake up from its deep slumber.
11. By a Certificate of Urgency dated 19th November 2019, the Applicant herein indicated that;

“..... the Respondent/Applicant's Clerk risks civil jail and/or her Account No. 1253455813 KCB Migori Branch duly attached for non-payment of the contested taxed costs.”

12. It is thus clear that the Respondent herein had commenced the process of execution.
13. The Applicant has not challenged the Judgment or the process of execution.

14. It is my considered view that provided that the said Judgment remains in place, and when the execution thereof has not been stayed, it would be in vain to extend time for filing a Notice of Objection to the taxed costs.

15. The court cannot act in vain.

16. Secondly, the Applicant would not be entitled to this court's discretion, as it is guilty of inordinate delay in moving the court.

17. The said long delay must have given rise to a legitimate expectation, on the part of the Respondent, that the decretal sum would be settled.

18. I find no good reason that would warrant the deprivation of fruits which the Respondent has become entitled to, after he has followed through all the requisite legal steps.

19. In the result, the application dated 19th November 2019 is dismissed, with costs to the Respondent.

DATED, SIGNED and DELIVERED at KISUMU This 29th day of April 2020

FRED A. OCHIENG

JUDGE