



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

MISC. CIVIL APPLICATION NO. 241 OF 2019

BETWEEN

NYANDORO AND COMPANY ADVOCATES.....ADVOCATES/DECREE HOLDER

AND

NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION.....CLIENT/RESPONDENT

AND

KENYA COMMERCIAL BANK GROUP LIMITED.....GARNISHEE

RULING

1. This matter arises out of an Advocate/Client Bill of Costs dated July 2019 in which the Advocates sought Kshs. 41,602,804.20 as fees from the Client. When the bill of costs came up for hearing on 8th August 2019, the Client was neither present nor represented. The bill of costs was accordingly taxed and by a ruling dated 25th November 2019, the Deputy Registrar awarded the Advocates Kshs. 41, 602,804.20 as its fees in the matter.

2. The Advocates then filed a Notice of Motion dated 17th December 2019 under **section 51(2)** of the *Advocates Act (Chapter 16 of the Laws of Kenya)* seeking judgment for the taxed costs. The Notice of Motion came up before me on 12th February 2020 when I rejected the Client's application for adjournment. In an *ex-tempore* ruling delivered on the same day, I entered judgment for the Advocates. The Advocates then followed up the matter with an application for execution by way of garnishee proceedings.

3. In order to forestall attachment and to remedy the situation, the Client filed a Notice of Motion dated 18th March 2020 seeking the following orders:

1. [Spent]

2. [Spent]

3. **THAT** this Honorable Court do issue an order granting leave to the Client/ Applicant to file Reference out of time objecting to the taxed Advocate- Client bill of costs in High Court Miscellaneous No. 241 of 2019, Nyandoro & Co. Advocates vs National Water Conservation and Pipeline Corporation.

4. **THAT** this Honorable Court do issue an order granting unconditional leave to the Client/Applicant to seek reasons for the taxing masters decision out of time.

5. **THAT** the Court be pleased to set aside any consequential interim Order/ Orders pending the determination of the Reference.

6. **THAT** the Ruling and/or decision delivered herein on 25th November, 2019 by the Honorable learned Taxing Master, S.A. Opande taxing the Decree- Holder/Respondent's Bill of Costs dated 24th July 2019 at Kshs. 41,602,804.20/= be set aside and/or

vacated.

4. I have taken the trouble to set out the history of the matter and the prayers sought in the application as nothing is said of the judgment that the court entered on 12th February 2020. The proceedings before the Deputy Registrar, the ruling and Certificate of Costs all merged into the judgment and unless the judgment is set aside the court cannot re-open the proceedings before Deputy Registrar. As Counsel for the Advocates correctly pointed out the judgment has not been set aside, appealed or reviewed. The application as it stands is therefore a collateral attack on a valid judgment of the court.

5. Having reached this conclusion, it is unnecessary to touch on the issues that took place prior to the judgment or consider the application on its merits as the court lacks jurisdiction to proceed in the manner proposed by the applicant.

6. The consequence of this finding is that I hereby strike out the Notice of Motion dated 18th March 2020 with costs to the Client/Application.

DATED and DELIVERED at NAIROBI this 27th day of AUGUST 2020.

D.S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Njuguna instructed by Njuguna, Kahari and Kiai Advocates for the Advocates/Applicant.

Ms Githuku with instructed by Githuku and Githuku and Company Advocates for the Client/Respondent.

Mr Mahinda instructed by Gathara Mahinda and Company Advocates for the Garnishee.