



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**MISCELLANEOUS CAUSE NO. 12 OF 2014**

**AMUGA & CO. ADVOCATES.....ADVOCATES**

**-VERSUS-**

**JOYCE NZISA.....1<sup>ST</sup> RESPONDENT**

**MONICA NDUNGE MWONGELA.....2<sup>ND</sup> RESPONDENT**

**CONNIE MBITHE MUIA.....3<sup>RD</sup> RESPONDENT**

**MARY MUSUKI MUDACHI.....4<sup>TH</sup> RESPONDENT**

**JOSEPH LOMBA MWONGELA.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. There are four applications before me for determination. I however wish to start by setting out the background of this matter before considering the merits of those applications.
2. The Advocates, **Amuga and Company Advocates**, represented **Joyce Nziza, Monica Ndunge Mwangela, Connie Mbithe Muia, Mary Musuki Mudachi** and **Joseph Lomba Mwangela** in the **Succession Cause No. 162 of 1979**. There is however dispute by Joyce Nziza whereby she alleges the Advocates did not act for.
3. The Advocates filed Advocate/Client Bill of Costs which was taxed on 30<sup>th</sup> July 2014 at Kshs. 11,894,926. A reference was filed against the taxation of that Bill of Costs and the Advocates in turn filed an application for entry of judgment for the taxed costs. On 23<sup>rd</sup> February 2015 the client's reference was dismissed and judgment was entered for the Advocates for the taxed costs.
4. Since the Judgment was not settled the Advocates sought execution by attachment of L.R. No 209/7190/113. That attachment was allowed by the Deputy Registrar on 21<sup>st</sup> September 2015. The Advocates then moved the Court for settlement of terms of sale of the attached property. Those terms of sale by public auction were settled by the Deputy Registrar on 15<sup>th</sup> January 2016.
5. Joyce Nziza filed an appeal before a Judge against the deputy Registrar's order settling terms of sale.

That appeal was struck out by this Court on 17<sup>th</sup> July 2017. The other clients did not appeal against the Deputy Registrar's order.

6. By an application dated 13<sup>th</sup> November 2017 all the clients filed an application to file an appeal out of time.

7. The Court by its Ruling of 6<sup>th</sup> March 2018 granted leave to Joyce Nzisa to appeal out of time against the ruling of 17<sup>th</sup> July 2017 and she was granted 30 days stay of execution. In respect to the other clients the Court by the ruling of the same date declined to grant them leave to appeal out of time.

8. In the light of the above background it becomes clear that Monica Ndunge Mwangela, Connie Mbithe Muia, Mary Musuki Mudachi and Joseph Lomba Mwangela have no right of appeal against the orders of the Deputy Registrar or any other orders issued herein.

9. Monica Ndunge Mwangela filed a Notice of Motion application dated 18<sup>th</sup> April 2018. She seeks for the law firm Anya Kalwa & Co. Advocate to be allowed to come on record for her; stay of execution proceedings pending the hearing of the appeal; and that she be permitted to reconstruct the Court.

10. None of those prayers except one are merited. There is no appeal which is filed by Monica Ndunge pending before any Court. There is no reason to reconstruct the file because the Court file is available. The firm of Anya Kalwa & Co. Advocates shall however be permitted to come on record for Monica Ndunge.

11. Mary Musuki Mudachi filed a Notice of Motion application dated 18<sup>th</sup> September 2018. She prays for orders that the Court be pleased to grant her leave to file Notice of Appeal out of time and that such do operate as stay of execution pending filing the appeal.

12. By her affidavit in support Mary Musuki stated that she wishes to file an appeal against the ruling of 6<sup>th</sup> March 2018. That she wrote to the Deputy Registrar on 14<sup>th</sup> March 2018 requesting for copy of the ruling of 6<sup>th</sup> March to enable her prepare her appeal. That the intended appeal will raise 'triable issues'.

13. Apart those deposition Mary Musuki does not state what prevented her from filing Notice of Appeal within time. The filing of such a Notice does not require a copy of the Ruling or proceedings. There being no explanation of the delay in filing the Notice of Appeal the application is without merit and is dismissed.

14. Connie Mbithe Muia filed an application by Notice of Motion dated 16<sup>th</sup> May 2018. Her application is a replica of the one filed by Monica Ndunge. Connie Mbithe prays for an order to grant leave to Anya Kalwa & Co. Advocates to come on record for her; an order of stay of execution/proceedings pending hearing of the appeal; and an order to reconstruct the Court file.

15. As stated before there is no appeal pending in this matter for the 2<sup>nd</sup> to the 4<sup>th</sup> Respondents/Clients. This includes Connie Mbithe. A stay of execution pending non-existent appeal cannot therefore be granted. An order will be granted for the Advocate Anya Kalwa & Co. Advocates to come on record for Connie Mbithe.

16. Joyce Nziza filed Notice of Motion dated 5<sup>th</sup> April 2018. She seeks extension of stay of execution.

17. On 6<sup>th</sup> March 2018 Joyce was granted leave to file an appeal and stay of execution for 30 days was granted to her on that day where the Court stated the stay was to allow Joyce time to lodge her appeal and to obtain appropriate orders from the Court of Appeal.

18. Joyce Nziza, as rightly submitted by the Advocates, should have sought stay of execution from the Court of appeal on expiry of the 30 days stay. This Court barred her from seeking further stay from this

Court after the expiry of 30 days. It is for that reason that I find the application lacks in merit.

19. In the end all the applications filed by the client are without merit, they are misconceived and are dismissed with costs.

**20. In conclusion the Notice of Motion applications dated 5<sup>th</sup> April 2018, 16<sup>th</sup> May 2018, 18<sup>th</sup> April 2018 and 18<sup>th</sup> September 2018 are hereby dismissed with costs being awarded to the Advocates. Leave however is granted to Anya Kalwa & Co. Advocates to act for Monica Ndunge Mwangela and Connie Mbithe Mwangela.**

Orders accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 22<sup>ND</sup> day of MAY, 2019.**

**MARY KASANGO**

**JUDGE**

***Ruling Read and Delivered in Open Court in the presence of:***

Sophie.....COURT ASSISTANT

.....FOR THE PLAINTIFF

.....FOR THE 1<sup>ST</sup> RESPONDENT

.....FOR THE 2<sup>ND</sup> RESPONDENT

.....FOR THE 3<sup>RD</sup> RESPONDENT

.....FOR THE 4<sup>TH</sup> RESPONDENT

.....FOR THE 5<sup>TH</sup> RESPONDENT