



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. PROBATE & ADMINISTRATION APPL. NO. 17 OF 2017

IN THE MATTER OF ADVOCATES RENUMERATION ORDER RULE X

IN THE MATTER OF THE ESTATE OF MICHAEL KIPRONO SANG *alias* MICHAEL A. SANG

JOHN KIPRORIR RONO.....ADMINISTRATOR

BETWEEN

CHARLES KIPKOECH RONO & 5 OTHERS

VERSUS

W. K. NGENOH t/a W.K. NGENOH

LESSAN AND COMPANY ADVOCATES.....RESPONDENT

RULING

1. Before me is a Chamber Summons dated 22nd March 2019 filed by Charles Kipkoech Sang against W. K. Ngenoh t/a Ngeno Lessan & Co. Advocates. The applicant claims to have filed the application together with 5 others who are not disclosed; as beneficiaries of the estate of Michael Kiprono Sang *alias* Michael A. Sang. The administrator is John Kiprono Rono who is not a party in the application.

2. The application was brought under Rule 17 (4) of the Advocates (Remuneration) Order (cap.16) and section 3 and 3A of the Civil Procedure Act (cap.21) and seeks the following orders-

- 1) That the application be and is hereby certified as urgent and service dispensed with in the first instance.**
- 2) That pending the hearing and determination of this application inter-parties, there be and is hereby issued an order of stay of execution of the taxed costs and/or certificate of costs.**
- 3) That this honourable court be pleased to enlarge time within which to allow the applicant to file a reference to object to the Bill of Costs herein.**
- 4) That the costs of this application be provided for.**

3. The application has grounds on the face of the Chamber Summons that the Bill of Costs dated 8/6/2017 and taxed (by consent) between the administrator of the estate and the respondent on 5th July 2017 was without the consent of the other beneficiaries and that the applicants and other beneficiaries were merely served with a demand notice and decree on 26th February 2019, and that the Bill of Costs taxed and the amount allowed was inordinately high and exaggerated.

4. The application was filed with a supporting affidavit of the applicant Charles Rono sworn on 22nd March 2019, in which he deposed that the taxation was in respect of Succession Cause No.114 of 2013, in which John Kipkorir Rono was proposed as administrator, and that the applicant among others was a beneficiary as a son of the late Michael Kiprono Sang *alias* Michael A. Sang, that the valuation of the estate was erroneously done at kshs.600,000,000/- while the estate's value was kshs.200,000,000/- and that since there was a decree for execution on the exaggerated Bill of Costs taxed by consent, the beneficiaries would suffer irreparable damage and costs. The applicant also filed a supplementary affidavit he swore on 24th April 2019- challenging the averments in the replying affidavit.

5. In response, an affidavit sworn on 15th April 2019 by W. K. Ngeno was filed. It was deposed that it was not true that the applicants were not aware of the taxation of the Bill of Costs, and that the applicants brought the application merely in an attempt to abuse the court process, and that the applicant had no *locus standi* to bring the application.

6. Parties' counsel filed written submissions to the application. The applicants' counsel Rono & Co. Advocates filed submissions on 25th April 2019. Counsel contended that as the applicant was a beneficiary of the estate, and would be affected by the Bill of Costs, he had *locus standi* to bring the application. Counsel also stated that the applicant was entitled to a review of the certificate of costs, and that he should be granted leave to file a reference out of time and be awarded costs of the application.

7. The respondent filed written submissions on 24th April 2019 in which he stated that the applicant had no *locus standi* to bring the application as he had not been appointed the administrator of the estate, and that the dispute on the amount of taxed legal fees herein had already been determined in a ruling of this court dated 21st February 2019.

8. I have considered the application and documents filed and submissions on both sides. Prayers 1 and 2 of the application have been spent. Only prayer 3 for enlargement of time to file a reference and prayer 4 for costs are for my determination.

9. In my view, this application is determinable on two issues, first, whether the applicant has *locus standi* to bring the application; and secondly, whether the contest on the amount of Bill of Costs has already been determined.

10. The applicant claims to be a beneficiary of the estate. Though there are allegations that he is a co-administrator with John Kipkorir Rono, he has not filed any document to demonstrate that he is a co-administrator. As a beneficiary, he certainly has an interest in the taxed Bill of Costs as the costs are payable from the estate of the deceased before distribution of the net assets to beneficiaries including himself. This position clearly comes out of section 83 of the Law of Succession Act (Cap. 160) on the duties of a personal representatives which states *inter alia* as follows-

“83. A personal representative shall have the following duties

a)

b)

c) To pay out of the estate of the deceased, all expenses of obtaining the grant of representation, and all other reasonable expenses of administration including estate duty; if any”.

It follows therefore, the inheritance share of the applicant and the other beneficiaries will be affected by the amount of costs, as costs will be paid from the estate before the net amount is distributed to them.

11. However, in my view the applicant as a beneficiary cannot file such an application in his own name to challenge the Bill of Costs, as there is no law conferring on him that right. That right and obligation falls only in the hands of the personal representative or administrator whom he is not. It is thus my finding that the applicant has no *locus standi* to bring this application, seeking enlargement of time to challenge the taxed Bill of Costs.

12. The second issue is whether, in any event the dispute on the amount of the Bill of Costs has already been determined by this court.

13. In a ruling delivered on 21st February 2019 in an application dated 9th February 2018 between the administrator (personal representative) John Kipkorir Rono and the respondent herein, Mumbi Ngugi J. concluded as follows-

“21. These provisions of the Law do not leave room for the administrator to say that the estate has 39 beneficiaries, and that he cannot therefore not make a decision with respect to legal fees payable in respect of the administration of the estate. He has the legal duty to pay such fees. Upon entering into a consent on the fees in his capacity as administrator, he has a duty to meet the terms of the consent. He cannot argue that individual beneficiaries have a duty to pay the fees for on the administrator, the property of the estate is vested in law on him, and he is required by law to pay the expenses related to the administration of the estate out of the estate of the deceased, prior to distribution of the estate to the beneficiaries.

22. Accordingly, I find that no basis has been laid for interfering with the consent order entered into between the applicant as administrator and the respondent on 5th July 2017. The application dated 9th February 2018 is therefore dismissed with costs to the respondents”.

14. From the above ruling of this court, it is clear that the dispute on the amount of taxed Bill of Costs herein was substantively determined by this court. The above decision of the court can only be challenged on appeal to the Court of Appeal. It cannot be challenged through filing of parallel applications by either the administrator or any other interested party. Since it has not been challenged in the Court of Appeal, so it still stands, and is binding on all interested parties. Bringing the present application was thus a misadvised futile exercise.

15. In these circumstances, I find no merits in the application. The application herein dated 21st March 2019 is thus hereby dismissed with costs to the respondent.

Dated and delivered at Kericho this 24th July 2019 in the presence of Ms Chepkirui holding brief for applicant and Mr. W. K. Ngeno

for the respondent.

George Dulu

JUDGE