



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

MISCELLANEOUS ACEC NO. 3 OF 2018

(FORMERLY MISC. CIVIL APPLICATION NO 498 OF 2006)

**IN THE MATTER OF: AN APPLICATION BY MHA TANNERS LIMITED FOR JUDICIAL
REVIEW ORDERS OF MANDAMUS, CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF: THE ANTI CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003

AND

IN THE MATTER OF: THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT 2004

AND

**IN THE MATTER OF: THE EXCHEQUER AND AUDIT (VETERINARY
SERVICES DEVELOPMENT FUND) REGULATIONS**

AND

IN THE MATTER OF: THE CUSTOMS AND EXCISE ACT CHAPTER 472 LAWS OF KENYA

AND

IN THE MATTER OF: THE INCOME TAX CHAPTER 470 LAWS OF KENYA

REPUBLIC.....APPLICANT

Versus

ANTI CORRUPTION COMMISSION.....1ST RESPONDENT

THE KENYA REVENUE AUTHORITY...2ND RESPONDENT

RULING

1. This ruling is in respect of two applications dated 24th October 2013 and 14th November 2013 filed by the 1st and 2nd respondents respectively. They are brought under Rule 11(2) of the Advocate (Remuneration) Order and they seek the following orders namely:

- (i) The Deputy Registrar's decision to tax the Applicant's bill of costs be set aside.

(ii) The decision of the Taxing Officer delivered on 7th October 2013 in respect of item numbers 1, 23, 24,36,97,126-131; 137,138,142,146 & 147 of the Exparte Applicant's bill of costs be set aside and the bill of costs be remitted for taxation by a different taxing officer.

(iii) The Applicant's bill of costs dated 28th November 2012 be struck out/dismissed with costs to the respondents.

(iv) Costs of the application be provided for.

2. The Exparte applicant filed a statement of grounds of opposition dated 9th February 2018.

3. All parties filed written submissions through their respective Counsel who elected not to highlight them. I have keenly read the record and in particular the Ruling by the Hon. Deputy Registrar Mrs A.N. Ongeru (as she then was).

The said Ruling was delivered on 7th October 2013.

4. The respondents filed their applications on 24th October 2013 and 14th November 2013 respectively. Thereafter they went and slept for four and half years (4 ½ years). Even the exparte applicant did the same. The grounds of opposition were only filed on **9th February 2018**.

5. There is no explanation for the uncalled for delay in prosecuting these applications by the parties in particular the Respondents/Applicants who had filed the same. From the record and Ruling by the Hon. Deputy Registrar it is shown that the respondents had raised an objection in terms of paragraph 11(2) of the Advocates Remuneration (Order).

6. The issue was dealt with and this is what the court stated in its Ruling.

“However, in the current case, the former Advocates wrote a letter to the current advocate and clearly stated that he did not object to the firm of Karanja Kiarie & Co Advocates proceeding with concluding the various taxations in Misc. Application 498 & 499 of 2006. I therefore find that the Respondents have no basis for objecting to the bill of cost.”

7. My understanding of the issue of the certificate of clearance is to ensure that the former advocate has no pending issues with the client that would roll over to the new advocate. Further that there are no issues between the former *and* new advocate. The Hon. Deputy Registrar was satisfied as to the authenticity of the letter by Karanja Kiarie & Co Advocates presented to court hence her finding. The former advocate gave the new advocate clearance to proceed with the matter.

8. In the case of **Mohamed & Samnakery Advocates v Twiga Paints Ltd [2011] eKLR** Justice Kimondo had this to say of the requirement of the clearance certificate:

“In my view, it must not be forgotten that the Advocates (Remuneration) Order and paragraph 62 A(1) are subsidiary legislation. They cannot stand in the way of a clear provision granting the court overriding objective or inherent jurisdiction to do justice found at section 3A of the Civil Procedure Act. This has become more clearer with the passage of section 1A and 1B of the Civil Procedure Act. If there is further doubt, it is cleared by Article 159 of the Constitution that requires courts to administer justice without undue regard to technicalities. To that extent, I am in full agreement with the taxing master's decision to disregard, in the interests of justice, the requirement of subparagraph 3 of paragraph 62A of the Order

I fully agree with my brother Judge on this. The issue being raised on the issue of the certificate in the face of the letter presented is a technicality.

9. The exparte applicant had prayed for over Kshs 5 million on item No.1. The minimum allowed under this item is Kshs 28,000/-. The Court gave its reason for awarding Kshs 200,000/- instead of Kshs 28,000/- or Kshs 5,000,000/- as sought on this item.

10. The 2nd respondent has in its application requested for the entire bill to be dismissed. This bill was filed pursuant to the court having awarded costs to the exparte applicant. Even after making such a prayer the 2nd respondent did not follow up the matter to prosecute it. Surely there must be an end to litigation for the interest of justice to be served, and to be seen to be done. This is all captured in the objective and provisions of the Civil Procedure Act.

11. The Ruling being challenged herein has clearly set out and given reasons as to why certain claims were dismissed and/or reduced. I find no reason to make me interfere with the said Ruling.

12. In conclusion I find no merit in the applications dated 24th October 2013 and 14th November 2013 and dismiss them with costs.

Orders accordingly.

Dated, signed and delivered this 21st June 2018 in open court at Nairobi.

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HEDWIG I. ONG'UDI

JUDGE