

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC APPLICATION 1032 OF 2013

AMELI INYANGU & PARTNERS ADVOCATES.....APPLICANTS

VERSUS

KENYA URBAN ROADS AUTHORITY.....RESPONDENT

RULING

The dispute herein involves a bill of costs that was filed by the advocates against the client. After the filing of the bill of costs, a taxation notice was issued and served upon the Attorney General on behalf of the client. However, when the matter was called out on 13th April, 2016 before the Deputy Registrar, only the applicant appeared while the respondent was absent. The Attorney General had filed a replying affidavit to the said bill of costs. In the absence of the respondent, the applicant prayed that the bill be taxed as drawn and a ruling date be set.

In the ruling delivered on 29th August, 2016 the bill was taxed at Kshs. 49,791,127/=. Thereafter, the respondent filed an application dated 7th December, 2016 by way of Notice of Motion under Article 159 of the Constitution, Order 22 Rule 22 (1) of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act to have the certificate of taxation dated 6th September, 2016 set aside and the bill be taxed afresh.

There was also an order sought that the costs allowed by the Deputy Registrar on the ex parte taxation dated 7th October, 2013 be set aside and there be a stay of execution of all consequential orders there under.

When the said application was placed before the court under Certificate of Urgency on 8th December, 2016 the court ordered that the application shall be heard by the Deputy Registrar going by the provisions of Order 49 of the Civil Procedure Rules. Indeed, on the same day, that is 8th December, 2016 the Deputy Registrar gave a hearing date for 15th December, 2016. For reasons not clear on the record, nothing transpired on the date set for hearing but on 14th February, 2016 the matter was placed before Riech J, who made several orders resting with the order to file and serve submissions made on 19th April, 2017. Eventually this matter was placed before me on 2nd July, 2018 when Riech J had been transferred from this station whereupon I observed that both counsel had filed submissions and a ruling reserved for 25th October, 2018.

I have given this background because as of now, the order that I made on 8th December, 2016 for the hearing of the application by the Deputy Registrar has not been set aside. I consider it inappropriate to write a ruling in the subsistence of that order and therefore have elected to draw the attention of counsel thereto. Unless it is submitted and decided upon, that the Deputy Registrar should not hear this matter, the High Court should not address the issues raised in the application in view of the cited provisions and the order of 8th December 2016.

I believe that both parties would want this matter to be settled as early as possible and therefore to ensure that this is done, I direct that the file be placed before the Deputy Registrar on 30th October, 2018 for directions so as to comply with the order made on 8th December, 2016.

Costs shall be in the cause.

Dated, signed and delivered at Nairobi this 25th day of October, 2018

A. MBOGHOLI MSAGHA

JUDGE