



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

MISC. APPLICATION NO. 478 OF 2017

KIMETO & ASSOCIATES ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

MUMIAS SUGAR COMPANY LIMITED.....CLIENT/RESPONDENT

RULING

1. When this matter came before me on **10th July 2018**, I directed that the two pending applications in this matter be heard together.
2. One of those applications is dated **24th April 2018** filed by the Advocate with the bill of costs. By that application the advocate seeks judgment be entered in her favour for the taxed costs.
3. The other application is filed by the client and is dated **31st May 2018**. By that application the client seeks leave of this court to file a reference out of time against taxation.
4. It will be seen the two applications are diametrically opposed. One seeks judgment of taxed costs and the other seeks leave to file a reference against that taxation.
5. It will be seen that it was in error that I ordered the applications to be heard together. They cannot and I therefore set aside my said directions and order that it is the application dated **31st May 2018** that shall be considered first.
6. That application is supported by an affidavit of the Company Secretary of **Mumias Sugar Company Limited**. The deponent stated that a letter was received on **12th April 2018**, by Mumias from Kimeto & Associates, the advocates. By that letter the advocate demanded payment of **Ksh 60,000,000** from Mumias being taxed amount in this matter. That at first the deponent thought that the certificate of costs related to a matter Mumias was represented by an advocate only later to realize it was another matter, that is this matter. The deponent stated that Mumias had inadvertently failed to instruct counsel to represent Mumias in this matter.
7. The application is opposed. The advocate in opposition has made very damning allegation of corruption of Mumias. The advocate has alluded to attempts by officials of Mumias seeking to have the advocate to bribe those officials in return the taxed costs to be paid. The advocate attributes the application seeking to file a reference to the advocate's refusal to corrupt those officials. Those allegations have not been responded to.
8. That as it may, although it should not be seen as though this court is trivializing the allegation, I find the interest of justice will best be served by permitting Mumias an opportunity to file a reference. The court will however strictly limit the hearing of that reference to be concluded within one month.
9. The orders of the court are as follows:

(a) Mumias Sugar Company Limited shall within 7 days from this date hereof file a reference to the taxation of 5th December, 2017.

(b) At the reading of this ruling a date for hearing of that reference shall be fixed.

(c) The costs of the chamber summon dated 31st May 2018 are awarded to the Advocate in any case.

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Applicant

..... for the Respondent

MARY KASANGO

JUDGE