



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISCELLANEOUS APPLICATION NO. 306 OF 2015

**JAMES AGGREY MWAMU T/A MWAMU &
COMPANY ADVOCATESADVOCATE/APPLICANT**

VERSUS

COUNTY ASSEMBLY OF MIGORICLIENT/1ST RESPONDENT

THE SPEAKER MIGORI COUNTY ASSEMBLY2ND RESPONDENT

THE CLERK MIGORI COUNTY ASSEMBLY3RD RESPONDENT

RULING

By Notice of Motion dated 10th August 2016 and filed herein on 11th August 2016 the Advocate/Applicant seeks the following orders:-

- “1. That the matter be certified as urgent and be heard exparte in the first instance.***
- 2. That the Speaker of Migori County Assembly Boaz Okoth to show cause why he has been discussing the applicant's bill of cost in public while the matter is before the court.***
- 3. That the court be pleased to jail Boaz Okoth for six months for breaching the principles of subjudice.***
- 4. That the court be pleased to enter judgment for the applicant in the sum of Kshs.2,900,000/= from September 2014.***
- 5. That the court be pleased to order cost and interest on the judgment to accrue from September 2014 to date.***
- 6. The cost of the application be provided for.”***

The grounds for the application are:-

- “(a) That the respondent agreed to pay the applicant Kshs.2,900,000/= being fees for case.***
- (b) That the applicant acting Speaker Boaz Okoth had turned the applicant's bill of cost in a company tool for election as an MCA North Kadem Ward.***
- (c) That he has turned to discuss the matter before the court in a public place.”***

In the supporting affidavit James Agrrey Mwamu, the Advocate, deposes that he was instructed to act for the County Assembly of Migori on a Constitutional matter on 14th July 2014 and that he thereafter sent a bill for 5,000,000/= to the client being his fees. The Speaker and Clerk of the County Assembly did not agree with the fees and so invited him for a meeting where they agreed to pay Kshs.2,500,000/= plus Value Added Tax. He subsequently learnt that a part payment had been prepared but although the same was never paid to him. However on 19th October 2015 he received a telephone call from a certain journalist inquiring whether his firm had been paid Kshs.991,379/=. He wrote to the Clerk to clarify that the money had not reached him only to learn that the Speaker and the Accountant had been suspended. He therefore filed his bill of costs for taxation but soon realized that it was being discussed in the media by the 2nd Respondent. He has annexed a newspaper cutting as evidence of such discussion and now prays that the 2nd Respondent be jailed for flouting the sub-judice rule and that judgment be entered for his firm for the sum of 2,900,000/= being the fees agreed with interest from 10th September 2014 till payment in full.

In a replying affidavit sworn on 29th August 2016 the 2nd Respondent denies knowledge of the allegations made against him in the supporting affidavit. He deposes that the sum of 991,379/= is the subject of an investigation and has generated several public questions which he (2nd Respondent) has on more than one occasion been called upon to answer in the spirit of accountability and transparency to the public and that the present application as long as it deviates from the taxation is frivolous, vexatious and constitutes a gross abuse of the court process. On 17th January 2017 this Court heard arguments from Mr. T. Omondi for the Advocate/Applicant and Miss Aron for the Client/Respondent and it could not agree more with the 2nd Respondent's submissions that this application is an abuse of the court process. This miscellaneous application was brought primarily for taxation of the Advocates Bill of costs and if there was an agreement on the Advocates fees that is a matter that should be taken up before the taxing officer. A party wishing to penalise another who breaches the sub-judice rule and therefore is in contempt of the court must bring an application for contempt of court proper. This is not one such an application but an application for "summary judgment" so to speak without first proving that there was an agreement for fees as claimed which in any case as I have stated is a matter that ought to be canvassed before the taxing officer. This application has no merit. It is mischievous and an abuse of the court process. It is dismissed with an order that the file be taken back to the Deputy Registrar/Taxing Officer for taxation. The costs of this application be borne by the Advocate.

Signed, dated and delivered at Kisumu this 23rd day of February 2017

E. N. MAINA

JUDGE

In the presence of:-

Ms Adwar for the Advocate/Applicant

Mr. Ouma for the Client/Respondent holding brief for Aron

Otieno – Court Assistant