



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC APPLICATION 590 OF 2014**  
**IN THE MATTER OF: THE ADVOCATES ACT CAP16**  
**LAWS OF KENYA AND**  
**ADVOCATES REMUNERATION RULES**  
**AND**  
**IN THE MATTER OF: TAXATION OF COSTS**  
**BETWEEN**  
**OMULELE & TOLLO ADVCOATES .....APPLICANT**  
**AND**  
**MAGNUM PROPERTIES LIMITED .....RESPONDENT**  
**RULING**

In my ruling of 27<sup>th</sup> July, 2017 I observed that “there is a multiplicity of applications herein which may cloud the issues in dispute if not handled carefully”. I am constrained to observe once again that the said applications may compromise the interests of the parties if order is not restored in view of the jumbled proceedings in the record.

In the application by way of Notice of Motion dated 19<sup>th</sup> and filed on 20<sup>th</sup> January, 2017 the applicant sought recusal of Sergon J and the placing of this file before the presiding Judge or any other Judge in the Division for hearing and determination. It also sought a review of the orders made by Sergon J on 20<sup>th</sup> December, 2016 and that the ruling on the applicant’s Notice of Motion dated 19<sup>th</sup> April, 2016 be delivered forthwith before the hearing of any other application in this matter.

On 28<sup>th</sup> September, 2016 both counsel for the parties herein appeared before Sergon J seeking directions. Counsel for the applicant addressed the court by drawing its attention to the fact that a ruling in respect of the motion dated 19<sup>th</sup> April, 2016 had not been delivered yet the same was argued alongside the one dated 17<sup>th</sup> May, 2016.

On 20<sup>th</sup> December, 2016 Sergon J gave directions as requested by counsel and in the process referred to his ruling of 27<sup>th</sup> May, 2016 where he observed that the motion dated 19<sup>th</sup> April, 2016 be stayed for 90 days. In that note for directions, the Judge concluded,

**“In the end, this court defers its ruling on the motion dated 19.4.2016 until the hearing and determination of the motion dated 21.7.2016. The aforesaid motion shall be fixed for inter partes hearing on priority basis next term.”**

At the instance of the applicant in its application dated 19<sup>th</sup> January, 2017, on 22<sup>nd</sup> February, 2017 Sergon J recused himself from hearing this matter and ordered that the file be placed before the Presiding Judge or any other Judge in the Division for hearing. It is clear that prayers 3,4 and 5 of the motion dated 19<sup>th</sup> and filed on 20<sup>th</sup> January, 2017 were not addressed.

The proceedings relating to applications dated 19<sup>th</sup> April, 2016 and 17<sup>th</sup> May, 2016 are too brief for making any determination thereon. The application dated 19<sup>th</sup> April, 2016 was by the applicant seeking judgment against the respondent based on taxed costs. On the other hand, the application dated 17<sup>th</sup> May, 2016 was by the respondent seeking a stay of the applicant’s said application dated 19<sup>th</sup> April, 2016 pending the hearing and determination of a reference relating to the taxed costs.

As at that time, it would appear the said reference had not been filed but was subsequently filed on 19<sup>th</sup> August 2016.

As at the time of arguing the application the subject of this ruling, the respondent’s applications dated 19<sup>th</sup> August, 2016 and the other dated 21<sup>st</sup> July but filed on 30<sup>th</sup> August, 2016 had not been argued. The position that presents itself is as follows, the applicant’s application dated 19<sup>th</sup> April, 2016 cannot be concluded based on the brief notes that appear on the record. At the same time, the respondents applications cited above have not been heard. This is the point where some order has to be brought into bearing.

Sergon J, having recused himself cannot revisit this file and on my part, having observed that the proceedings on record relating to the application dated 19<sup>th</sup> April, 2016 are too brief to be relied upon for a ruling, the only order that commends itself is that the said application has to be prosecuted afresh before a different Judge. Having said so, the prayer that the ruling relating thereto be delivered forthwith cannot be sustained.

There is a second limb of that prayer that, if the ruling thereof were to be delivered, it should be before hearing any other application in this matter. Judge Sergon observed in his ruling dated 27<sup>th</sup> May, 2016 as follows,

**“If the order to stay further prosecution of the motion dated 19<sup>th</sup> April, 2016 is not given, the respondent will suffer substantial loss in that the respondent will have lost the chance to challenge the taxed costs.....**

**In the end I find that it is necessary to first hear and determine the respondent’s motion dated 17.5.2016. in the circumstances of this case, it is only fair and just to issue stay which I do and order for further proceedings of the motion pending the hearing and determination of the respondents intended reference against the tax costs. It is important to note that the decision to issue an order of stay for proceedings is aimed at avoiding a situation where decree arising from taxation proceedings which are subject to review/appeal by way of a reference.**

**In the final analysis, an order for stay of proceedings on the motion dated 19.4.2016 is given to last for 90 days and pending the hearing and determination of the intended reference.”**

In the application by the respondent dated 21<sup>st</sup> July, 2016 and filed on 30<sup>th</sup> August, 2016, the orders sought therein are to set aside the ruling of the taxing master delivered on 19<sup>th</sup> April, 2016 and refer the matter back for taxation by an independent taxing master. That application is related to the earlier

application dated and filed on 19<sup>th</sup> August, 2016 by the respondent which seeks to strike out the award/certificate of costs of taxation of 19<sup>th</sup> April, 2016, and also to declare that the firm of Omulele & Company advocates had no legal capacity in terms of Registration of Business Names Act (Cap 499) Laws of Kenya to trade as such for lack of registration of the same.

I bring this up in view of what Seron J said in his ruling of 27<sup>th</sup> May, 2016. I am alive to the observation by the applicant that the respondent's application dated 21<sup>st</sup> July, and filed on 30<sup>th</sup> August, was filed out of the time allowed by the court. This however is a matter to be decided by the court which will be seized of the application at the time of hearing.

I understand the anxiety of the parties herein and the time it has taken to resolve the dispute. However it behoves this court to create some order so that the issues are determined once and for all. In that regard, I direct that the applications pending for hearing shall be heard in the following order; the respondent's applications dated 19<sup>th</sup> August, 2016 and filed on the same day and the other dated 21<sup>st</sup> July and filed on 30<sup>th</sup> August, shall be heard first. These will be followed by the applicant's application dated 19<sup>th</sup> April, 2016 which seeks entry of Judgment and or enforcement of the ruling of the taxing master made on the same date.

Considering the age of this dispute, parties shall take hearing dates in the registry on priority. The costs shall be in the cause.

**Dated, signed and delivered at Nairobi this 23<sup>rd</sup> Day of November, 2017.**

**A. MBOGHOLI MSAGHA**

**JUDGE**