



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISCELLANEOUS APPLICATION NO. 14 OF 2020

MAZINGIRA WELFARE AND SPORTS ASSOCIATION.....APPLICANT

VERSUS

MUTURI S.K. & CO. ADVOCATES.....RESPONDENT

RULING

This ruling is on the application dated 5/8/2021. It is by the Applicant and it is brought under **Order 11 (2) of the Advocates Remuneration Order**. It seeks to set aside the Hon. Deputy Registrar's decision made on 19/10/2020 dismissing the Applicant's Preliminary Objection to the Respondents Advocate –Client Bill of Costs dated 12/6/2020.

The application seeks other orders namely;

(b) that the Applicant's submissions and supporting documents dated 6/7/2020 and filed on 9/7/2020 be deemed to have been duly filed and placed in the Court File.

(c) That the Applicants Preliminary Objection be remitted back to the Honourable the Deputy Registrar and heard afresh based on the documentation in (b) above. Prayers (d), (e) and (f) are addressed to this Court.

There are nine (9) grounds for seeking the above orders but I can summarize them into a single sentence namely that even though the Applicant's submissions were on record, there was an error made by the Court registry in that the said submissions were not availed to the Deputy Registrar. As a result, the Applicant was condemned unheard even though he had exercised diligence in ensuring that all the necessary material was on record.

Further, the assessed costs were excessive and way beyond the amount agreed by the applicant and the advocate.

The application is supported by an affidavit sworn by Erick Njeru Nyaga the Managing Director of the Applicant which has sixteen annexures. The annexures include the communication between the Applicants and the Respondent prior to the filing of the suit which gave rise to the current application.

Also included is the communication between the Applicant's Counsel and the Court Registry.

The application is opposed by the Respondent who has sworn a replying affidavit dated 26/8/2021 in which he says that the Remuneration agreement has never been exhibited and that the Applicant is merely gambling as it has failed to address specific issues in the bill of costs.

I have carefully considered the application in its entirety including the affidavits, annexures, submissions and the entire record.

I find that the application dated 5/8/2021 has merit and I allow it for the two reasons.

Firstly, I find that the Applicant has demonstrated that they exercised due diligence and filed their submissions on time and for some reason for which they are not to blame, those submissions were not considered by the learned Deputy Registrar.

Secondly, the right to a fair hearing is not only a common law requirement but a constitutional one enshrined in **Article 50(1)** of the **Constitution**. No good reason has been demonstrated as to why the Applicant should not be heard in opposition to the Respondents Bill of Costs.

Application dated 5/8/2021 allowed on terms of prayers (a), (b) and (c).

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF JANUARY, 2022.

M.N. GICHERU

JUDGE