



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS,
MISC. APPLICATION NO 141 OF 2013 (OS)
FLORENCE NYAGUTHIE MURAGE.....CLIENT/ APPLICANT
-VERSUS-
RUMBA KINUTHIA & COMPANY ADVOCATES...ADVOCATE/ RESPONDENT
RULING

The applicant in this suit has filed an originating summons dated the 5th of June 2013. It is brought under section 1A, AB and 3A of the Civil Procedure Act and Order 52 Rule 4 of the Civil Procedure Rules. The applicant seeks the following orders;

- a. That the honorable court be pleased to order the delivery by the advocate of the cash account owing to the applicant.
- b. That the honorable court be pleased to order the immediate release/delivery of Kshs.1,318,483.50 to the applicant being the proper amounts held by the respondent on behalf of the applicant.
- c. That the costs of this application be borne by the respondent.

The application is supported by the following grounds;

- i. The judgment in favor of the applicant in a previous miscellaneous application No. 1411 of 2004 was passed on the 21st July 2010 by the honorable Justice Okwengu awarding the applicant Kshs.1,698,559.50. This amount is the award, interest plus costs.
- ii. The relation between the applicant and the respondent in the aforementioned suit broke down, because of the respondent's intent to withhold more money than would be required of them.
- iii. The respondent's bill of cost that exceeded the amount provided for by the advocates remuneration order thereby necessitating taxation of costs.
- iv. On the 19th of February 2013, the ruling on the taxation on the matters was delivered in chambers by the learned Deputy registrar. The bill were taxed and allowed as against the applicant in the sum of Kenya Shillings Three Hundred and Eighty Thousand and Eighty Six shillings (Kshs.380,076) only.
- v. On 20th May 2013 judgment in favor of the respondents to execute the bill of costs was entered in miscellaneous application no. 141 of 2013.
- vi. The respondent is therefore entitled to Kshs. 380,076/- and is required to deliver Kshs. 1,318,483.5 to the applicant of the judgment money which the respondent is still holding.
- vii. The respondent has refused to acknowledge the same and the prescribed time for filing any

reference has since lapsed. The respondent is therefore still holding the money unlawfully.
viii. The respondent is indebted to the applicant by holding her award. The applicant is therefore entitled to institute proceedings for the taking of accounts pursuant to Order 52 Rule 4 of the Civil Procedure.

The application is supported by the affidavit of Florence Nyaguthie Murage dated 5th June 2013. The application was opposed and the respondent filed a replying affidavit sworn by Rumba Kinuthia advocate dated 3rd July 2013.

In her supporting affidavit the applicant gives a background of how judgment was delivered in her favor for Kshs.1,698,559/50. Thereafter a bill of costs was filed and ruling given, it was taxed at Kshs.380076/-. That she is therefore entitled to the said sum. That thereafter the respondent has refused to acknowledge the same and the time to file the reference has lapsed. That the respondent is still holding onto the money and does not respond to their correspondence, hence the application.

The respondent in his affidavit does not dispute the judgment but states that he has applied for the ruling of 20/5/13 to be removed, that all along his firm has intended to lodge a reference to the judge from November and that they intend to request for the reasons from the Deputy Registrar on numerous items on the taxation. That he has also written letters to the court. That the applicant is trying to deny him his rights and that he too would like the litigation to come to an end as he has all along acted in good faith. That the applicant has even moved and filed a complaint at the Law Society of Kenya.

I have considered what is deposed together with the oral submissions made in court by counsels. During the respondent submissions in court counsel argued that they rely on the provisions of order 52 (4) (3) of the Civil Procedure Rule. That the issue of costs has not been determined and that the application dated 20/3/2013 is still pending in court as the time extended to lodge the reference. That the court has delayed in furnishing them with a certified copy of the ruling and the reasons. That therefore asks the court to stay the matter pending the outcome of the application.

In reply in summary, Mr. Ligunya for the applicant argued that the respondent has not followed upon their application that was filed. That nothing bars the Court from giving orders under Order 52 rule (4) of the CPR.

I have gone through the court file and note that there is the application dated 23/5/13 that seeks to stay an execution of the judgment given by J. Waweru on the 20/5/13. This application has not been heard and determined. Subsequent to that application the applicant filed an application dated 27/5/13 seeking a release of the sum awarded. This application too has not been heard and determined. On the 5/6/13 the applicant filed this application.

Having gone through the Court file there is need, in my view to give directions on how this matter should proceed as there are pending applications not yet determined, before a ruling can be given on the application before me. Indeed the applicant is entitled to the fruits of her judgment but there are a number of the applications yet to be determined. I will therefore not go into the merits of this application but I give directions as follows; that the parties shall take a mention date for the application that was filed to extend time to file a reference before this court. This court will then give a date for the hearing of the said application. Once that is done this court will give directions on how to proceed with the applications dated 3/5/2013 and 27/5/13 respectively. In my view granting any of the orders sought in this application at this stage will not assist any of the parties as there are pending applications that must be dealt which will determine the issue of costs and finally the final award to the applicant. I therefore decline to go into the merits of the application. Parties to take a date for directions on the application before this court for reference and the other pending applications if need be.

Orders accordingly.

Dated, signed and delivered this 30th of January 2014.

R. E OUGO

JUDGE

In the presence of ;

.....For the Applicant.

.....For the Respondent.

.....Court Clerk