

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION AT MILIMANI LAW COURTS

HCCC CASE NO 746 OF 2012

NJERU NYAGA & CO. ADVOCATESAPPLICANT

Versus

GEORGE NGURE KARIUKI.....DEFENDANTS

RULING

Stay of taxation of advocate-client bill of costs

[1] I am called upon to determine the application dated 9th October, 2013 which is expressed to be brought under Article 159 of the Constitution, the Advocates Act, sections 1, 1B, 3A of the Civil Procedure Act (hereafter the CPA) and Order 51(1) of the Civil Procedure Rules (hereafter the CPR). The application carries 4 prayers but prayers No 1 and 2 were granted ex parte by Havelock J on 10.10.2013. What are left for my decision are, therefore, prayers No 3 and 4 of the application. Prayer No 3 has mixed up the parties and I believe that is the source of the technical objection by the Respondent on the front of misdescription of the parties. The mix-up in the said prayer 3 arises from the fact that it talks of ‘‘Applicants bill of costs’’. But I should think, there is no doubt that the Application before me is the one dated 9th October, 2013 filed on behalf of GEORGE NGURE KARIUKI and is seeking to stay the taxation of the bill of costs filed by Njeru Nyaga & Co Advocates. Accordingly, the Applicant should be GEORGE NGURE KARIUKI, and the Respondent is Njeru Nyaga & Co Advocates. I will also refer to those parties as such. That way, the confusion which prayer No 3 has introduced will be avoided; I do not also think it causes any prejudice to any party. And by that rendition, the objection on misdescription of parties is resolved in favour of substantive justice.

Court may decide matter on a point not addressed by parties

[2] But one thing perturbs the court: Although the Respondent raised an objection to the application on the basis of there being a fatal misdescription of parties- which I have addressed *in limine* due to its preliminary connotation- I do not think that objection was in relation to who should be the real respondent in the taxation cause. The reason why the issue is of concern to the court is that the plaintiff that was filed by the Respondent herein was for and on behalf of KIKI INVESTMENTS LIMITED which was described in paragraph 1 of the said plaintiff as follows:

The Plaintiff is a Limited Liability Company with its registered offices in Nairobi.

[3] That realization drifts the mind of the court to a completely different airspace of company law. And the intuitive sense of the court admonishes that the issue is a huge legal point on which the decision of the court may as well turn. Doubtless, presence of proper parties before the court is a matter of great preliminary significance, and *sine qua non* exercise of jurisdiction of the court on the matter at hand. Faced with such dilemma, there is absolute necessity for the parties to address the court on the issue which I will formulate below. The course I have taken that derives legitimacy on the recognition that, whereas the court may engage its own industry and research on any legal point, where the question in issue has been taken out *suo moto* and is of a nature that may completely determine the case, the court should afford the parties an opportunity to address it

on the issue before a decision based on the particular point is made. Accordingly, I direct the parties to address me on the following issue:

a) Whether, GEROGE NGURE KARIUKI who is the Managing Director of KIKI INVESTMENTS LTD is the proper party in this taxation cause which arises from the original suit that was filed by and on behalf of KIKI INVESTMENTS LTD.

[4] The matter is apparent on and glaring from the pleadings filed before me and it is not far-fetched or invented whatsoever or intended to cause prejudice or to avail an advantage to any party, rather it is to benefit the course and administration of justice.

Dated, signed and delivered in open court at Nairobi this 21st day of May, 2014

F. GIKONYO

JUDGE