



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA.

HIGH MISC. APP. NO. 208 OF 2013.

REPUBLICAPPLICANT

=VERSUS=

PETER LUNANI OGOMO.....INTERESTED PARTY

JOHN FRANCIS MUYODI.....EXPARTE APPELLANT.

R U L I N G.

JOHN FRANCIS MUYODI, the exparte applicant, through the chamber summons under certificate of urgency dated 28th Novmber, 2013 prays for the following;

“ 1. This application is certified as urgent and is heard on priority basis.

2. The Exparte Applicant is hereby granted leave to apply for an order of Mandamus to direct the Deputy Registrar High Court Busia to give her written reasons in her decision given on the 30th August, 2013 in taxation of the 1st defendants bill of costs dated 8th July, 2013 as required by Rule 11 (2) of the Advocates Remuneration order to enable him to contest that decision before the Judge.

3. The Exparte Applicant is hereby granted leave to apply for an order of certiorari to call into the High Court the Notice to show cause why the Exparte Applicant should not be arrested and committed to prison, dated 17th October, 2013 for the purpose of their being quashed.

4. The Exparte Applicant is hereby granted leave to apply for an order of prohibition to prohibit the learned Deputy Registrar High Court, Busia or any Court or person of subordinate court to entertain any proceedings in relation to or the decision made by the said Deputy Registrar on 30/8/2013 in the said taxation in Busia HCCC. NO. 42 of 2010.

5. The grant of leave to apply for orders herein above mentioned is hereby directed to apply as a stay of all proceedings that may be taken by any party before the Deputy Registrar High court in HCCC. No. 42 of 2010.

6. The cost of this Application be costs in substantial Application.”

The application is based on the four grounds marked (a) to (d). The application was filed together with the supporting affidavit to which is annexed five documents marked “JFM 1 – 5” Statement of facts and the Affidavit verifying statement of facts.

When the application was placed before me on 2nd December, 2013, directions were given to the effect that there was no urgency in the application and that a hearing date was to be taken at the registry. A hearing date of 6th March, 2014 was fixed the same day. On the 6th March, 2014, the Exparte Applicant was not in court but had forwarded a letter dated 5th March, 2014 indicating he was in Civil jail in respect of HCCC. No. 42 of 2010. The Respondent's counsel was then in court and the matter was stood over generally. Then on 3rd June, 2014 the Exparte Applicant fixed the application for hearing on 8th July, 2014 when it was rescheduled to 14th October, 2014 for reasons that there was no evidence of service of hearing notice on the Interested party, Peter Lunani Ongoma's counsel, M/S Magare & co, Advocates, who had come on record on 29th January, 2014.

The Interested Party had also filed a replying affidavit sworn by Francis Omondi, an advocate, on 30th January, 2014. The exparte Applicant had on 3rd March, 2014 filed written submissions.

When the matter came up for interpartes hearing on 14th October, 2014, Mr. Omondi, for Magare advocate, and the Exparte Applicant made their submissions.

I have carefully considered the grounds on the application, contents of the statement of facts, Affidavit verifying facts, supporting affidavit, replying affidavit, the written and verbal submissions and concluded as follows;

1. That judicial review is one of the reliefs this court can issue in proceedings under Article 23 (3) (f) of the Constitution in exercise of its jurisdiction under Article 165 of the Constitution. The procedure for commencing judicial review proceedings is guided by Order 53 of the Civil Procedure Rules.
2. That under Order 53 Rule 2 of the Civil Procedure Rules as read with section 9 (3) of the Law Reform Act, an application for leave to file an application for judicial review should be filed within six months from the date of the proceedings or order to be challenged. The Exparte Applicant has complied with this requirement as all the orders he seeks to challenge were issued after the taxation of the bill of costs dated 8th July, 2013 and his application was filed in court on 28th November, 2013.
3. That though the Interested Party has claimed that the Deputy Registrar was not obliged to give reasons for the items Exparte Applicant had sought for under the notice dated 2nd September, 2013 on the grounds that the Exparte Applicant had participated in the taxation and further that the taxation was by consent, there is nothing availed before this court to confirm that position. The provision of section 11 (1) of the Advocates (Remuneration) Order allows a party not satisfied with the decision of the taxing officer to give notice in writing on the items objected to within 14 days. The taxing officer is then obligated under subsection (2) to record and forward to the objector the reasons for his decision on the listed items. The objector is thereafter allowed to apply to a judge setting out the grounds of objection.
4. That Exparte Applicant's notice dated 2nd September, 2013 indicates the taxation was done on 30th August, 2013. The notice was therefore issued within the 14 days window provided under section 11 of the Advocates (Remuneration) order. There is however nothing to show that the Deputy Registrar, as the taxing officer, provided the reasons on the items listed as required under section 11 (2) of the Advocates (Remuneration) order and prayer 2 is therefore reasonable and should be granted.
5. That in respect to prayers 3 and 4, the court finds the issues therein can better be dealt with through other processes provided for under the law rather than judicial review. There is no justification for prayer (5) in view of the finding above.
6. That for reasons set out above, the application dated 28th November, 2013 is allowed only in terms of prayer 2 with costs in the cause. The application to be filed and served in 21 days.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 13TH DAY OF NOVEMBER, 2014.

IN THE PRESENCE OF; MR. OMONDI FOR INTERESTED PARTY ONLY.

JUDGE.