

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 744 OF 2009

PETER O NGOGE T/A

O P NGOGE & ASSOCIATES. APPLICANT/DECREE HOLDER

VERSUS

STEPHEN KIPKEBUTT T/A

RIVERSIDE LODGE & ROOMS.RESPONDENT/J. DEBTOR

R U L I N G

The application before the court is the Notice of Motion dated 3rd June, 2013 brought under Section 3A of the Civil Procedure Act, Order 2 Rule 15(1) (d), Order 25 Rule 5 and Order 51 Rule 1 of the Civil Procedure Rules. The application seeks: -

1. ***Striking out of the applicant/Decree Holder/Advocate's application dated the 8th May, 2014 which itself seeks a review or a setting aside of Consent Letter dated the 18th March, 2013 and filed in court on 23rd March, 2013.***

In the affidavit of support the applicant herein deponed that after some discussion and negotiations, the Applicant/Advocate and the Respondent/Client/Judgment Debtor, reached a settlement on the advocate/applicant's costs. They signed a Consent Letter dated 18th March, 2013 fixing the applicants costs at Ksh.250,000/- which they filed in court on the same day. That, two months later and before the Respondent could extract a court order, the applicant/Advocate filed an application in court dated 7th May, 2013 seeking to set the Consent Letter aside. However, the said application lay in court without being served upon the Applicant/Judgment Debtor herein until when he discovered it when he went to extract the consent order. However, the fact that the agreed costs were consented at Ksh.250,000/- is borne out in the court file record related to a garnishee order nisi which was lifted by consent on the 23rd April 2013 and the matter under which the application by the Applicant/Advocate stood, was marked as settled.

The court notes also that this application was not opposed by any replying affidavit or grounds of opposition, while even during this prosecution the Respondent/Advocate did not attend to oppose.

I have carefully considered the application. The earlier application it seeks to have struck out, does not appear to show the purpose for which it was filed, except merely to block the applicant herein from operating his Bank Account in Barclays Bank of Kenya Limited, Karen Branch to which the garnishee order had been directed. The Garnishee order itself was lifted and the matter in which the Advocates Bill of Costs arose marked settled. The targeted application accordingly shows no reasonable cause of filing it or purpose of existence.

Since, as stated, the application was in no way opposed by the Respondent/Advocate herein, it is liable to be struck out in accordance with order 2 Rule 15(1) of the Civil Procedure Rules.

The application dated 3rd June, 2013 is, therefore hereby granted. The Respondent/Advocates application dated 8th May, 2013 is hereby struck out and dismissed with costs. Orders are made accordingly.

Dated and delivered in Nairobi on 19th day of December, 2014.

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D A ONYANCHA

JUDGE