



REPUBLIC OF KENYA

High Court at Kisumu

Civil Case 47 of 2011

CHARLES LUTTA KASAMANI t/a

KASAMANI & COMPANY ADVOCATES.....PLAINTIFF

VERSUS

PATRICK JEREMY OKWARO OTIENO.....1st DEFENDANT

GEOFREY DENNIS OLUOCH YOGO t/a

OTIENO, YOGO & COMPANY ADBOCATES2nd DEFENDANT

RULING

The Plaintiff/applicant's application dated 19th February 2013 prays inter alia for the defendants/respondents to deposit the sum of Kenya Shillings 7, 372,283.30 as well as the sum of Kenya Shillings 500,000 being security for costs pending the determination of this suit.

The application is based on the grounds that the defendants firms are in the process of dissolving and by the time the suit is finalized they shall not be able to satisfy the undertaking. The attached supporting affidavit of the application dated 19th February 2013 annexes photocopies of cause lists showing that there were taxation proceedings by the respondent against their clients.

The application has been opposed vehemently by the defendant vide the replying affidavit of Patrick Otieno. He has deponed that contrary to the plaintiff's assertion his firm was growing in lips and bounce and that it boast of six (6) advocates and several co-operate clients.

I have perused the said application as well as the supporting annexures. I have also perused the replying affidavit. What is not in dispute is that there is a professional undertaking which is the contentious issue between the two parties herein in regard to the sale of land parcel number Kisumu Mun/Block 8 / 464.

Are the plaintiffs fears herein founded?. His main concern is that the defendants firm is being dissolved and the evidence before me is the attached copies of the cause list showing some taxation matters between the defendant and its clients.

Frankly the cause list cannot form a basis for any fear. Advocates and clients have their own modus operanti and one of them is taxation of costs. Furthermore it is not the cause list that demonstrate this but the proceedings in those respective files. It is difficult for this court to ascertain what proceedings were or

are taking place between the defendant and their clients in the respective files that appear in the cause lists.

Furthermore the undertaking in my understanding was between the individuals and not the business name. As I can deduce from the history of this case, which I have partly heard it is **Mr. P. J. Otieno** and **Mr. Yogo** who have given the undertaking. If this is so then it is their professional responsibility to carry the cross regardless of whether or not the firm or the partnership mutates or is dissolved.

Consequently, I do not find sufficient material placed before me to allow the application. The Notice of Appeal filed by the defendants does not stop this court from proceeding with the prosecution of this case. There is no order barring the parties from proceeding.

Considering the animosity that this case has generated it is in the interest of parties and justice that the same proceed expeditiously to its logical conclusion. The application is otherwise dismissed with costs to the respondent.

Dated, signed and delivered at Kisumu this 25th day of March 2013

**H.K. CHEMITEI
JUDGE**

In the presence of:

.....for State

.....for the Accused

HKC/aa0.