

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Case 29 of 2012

MAJANJA LUSENO & CO. ADVOCATES.....

APPLICANT

VERSUS

LENNAH WANJIKU KOINANGE.....

.....RESPONDENT

RULING

On 7th March 2013, this court issued the following order:

“Since there is no stay of execution issued on this matter, the Respondent shall be at liberty to execute for the tax costs.”

The order was made after the Respondent failed to appear in court. The Respondent has now made an application seeking to have the said order set aside. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of Lily Munene, an advocate in the firm of Nyaberi & Co. Advocates. The said firm represents the Respondent in this matter. The application is opposed, the Applicant has filed grounds in opposition to the application.

During the hearing of the application, this court heard oral rival submissions made by Miss Munene for the Respondent and by Mr. Anzala for the Applicant. I have carefully considered the said submission. There is a pending reference before this court from the decision of the taxing officer in respect of the costs that were taxed in favour of the Applicant. Pending the hearing and determination of the reference, the Respondent filed an application for stay of execution of the said tax cost. That application is yet to be canvassed. Meanwhile, it appeared that the Respondent was using the fact that there is a pending application for stay, to frustrate the hearing of the reference. This court made the order that is the subject of this application on that basis. Since the Respondent is now willing to prosecute the reference, for the interest of justice, this court will set aside its order of 7th March 2013.

However, the Respondent is ordered to fix the reference for hearing within seven (7) days of today’s date. The hearing of the said reference shall be within the next two (2) months. The Respondent shall pay the costs of this application which the court assesses at Kshs.5,000/-. The said amount shall be paid within seven (7) days of today’s date or in default, the orders granted in favour of the Respondent shall stand automatically vacated. It is so ordered.

DATED AT NAIROBI THIS 18th DAY OF APRIL, 2013

L. KIMARU

JUDGE