

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 716 OF 2013

1. HON KOIGI WA WAMWERE

2. HON MIRUGI KARIUKI.....PLAINTIFFS

VERSUS

1.THE STANDARD LTD

2.DANIEL NGURE.....DEFENDANTS

RULING

1. This ruling concerns the Plaintiffs’ **notice of motion dated 21st August 2012** by which they seek an order to review and/or set aside the order of 7th November 2011 (Rawal, J) “to the extent that the appeal herein is time-barred”. That order simply stated -

“The appeal is out to time; in any event the application will be futile to hear. This application is dismissed with no order as to costs,”

2. The application then before Rawal, J was the Plaintiffs’ notice of motion dated 18th March 2011 by which they sought an order to stay taxation of the Defendants’ bill of costs dated 21st December 2010 “pending the hearing and determination of the intended appeal”. The Plaintiffs’ suit was dismissed with costs on 29th June 2010 (Mwera, J). The Plaintiff apparently filed notice of appeal herein on 2nd July 2010.

3. I have read the affidavit sworn in support of the application and also the Defendants’ grounds of opposition dated and filed on 31st August 2012.

4. The application was canvassed by way of written submissions which I have duly considered. Those of the Plaintiffs were filed on 18th February 2013 while the Defendants filed theirs on 30th April 2013.

5. The observation of Rawal, J that hearing of the notice of motion dated 18th March 2011 would be futile was probably informed by the legal position that this court has no jurisdiction to interfere with the process of taxation of bills of costs except as provided for under paragraph 11 of the Advocates (Remuneration) Order.

6. The learned Judge’s first finding (or was it observation?) that the intended appeal to the Court of Appeal was time-barred was probably unfortunate. Only the Court of Appeal could rule whether or not an appeal before it was out of time under the rules of that Court.

7. The Plaintiffs have argued in their submissions that Rawal, J “**erred in both law and fact**” by finding as she did. Errors of law and fact are not mistakes or error apparent on the face of the record amenable to correction by review under Order 45 of the Rules. They can be corrected only on appeal. This court cannot correct its own erroneous findings of law and fact. It cannot sit in appeal over its own

decisions.

8. The application is clearly misconceived and lacks merit. It is dismissed with costs. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF JUNE 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 21ST DAY OF JUNE 2013