



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APP. NO.36 OF 2011

**IN THE MATTER OF AN APPLICATION BY JAMES MWANI GACHUNGA FOR LEAVE TO
APPLY JUDICIAL REVIEW ORDERS OF CERTIORARI**

AND

IN THE MATTER OF THE DECISION BY J.K. CHELIMO DISTRICT

COMMISSIONER MBEERE NORTH DISTRICT IN LAND ADJUDICATION

APPEAL NO.314 OF 2003

AND

**IN THE MATTER OF LAND ADJUDICATION ACT, CHAPTER 284 OF THE LAWS OF
KENYA**

JAMES MWANGI GACHUNGA.....APPLICANT

VERSUS

HON. ATTORNEY GENERAL ON BEHALF OF THE

DISTRICT COMMISSIONER, MBEERE NORTH DISTRICT.....RESPONDENT

AND

FAUSTINO NJERU NJOKA INTERESTED PARTY

RULING

This is the Chamber Summons dated 14/8/2013 brought pursuant to the provisions of Rule 11(4) of the Advocates (Remuneration) Order, section 1A and 3A of the Civil Procedure Act, Order 51 rule 1 Civil Procedure Rules.

The Applicant whose exparte application was dismissed on 17/7/2013 is supposed to pay Kshs.349,593/= as taxed costs. He wishes to challenge the taxing master's decision on taxation. He is therefore seeking leave to file a Reference out of time and an order staying execution of the certificate of

costs arising from the taxed Bill of Costs.

The application is based on the grounds on the face of the application and the supporting affidavit. He blames his former advocates for the mess he has found himself in. The interested party is opposed to the application. He filed a replying affidavit through which he blames the Applicant for the predicament he has found himself in. He states that the Bill of Costs came severally for taxation but neither the Applicant nor his Counsel showed up, yet they were always served.

The application came for hearing on 4/9/2013 when both Counsels made oral submissions. M/s Mwangi for the Applicant submitted that there were no reasons given for the decision by the Deputy Registrar. She cited item number 1 where Kshs.200,000/= was awarded. The awards made were not justified. She said she referred the Court to the case of **REPUBLIC –V- THE MINISTER OF AGRICULTURE & OTHERS MISC. CIVIL APPEAL NO.621/00**. She further added that the matter giving rise to the Bill of Costs never proceeded to full hearing as it was dismissed on technicalities.

Mr. Okwaro opposed the application saying it had no merit. And that the Deputy Registrar was satisfied that the Bill of costs was drawn to scale. He submitted further that the taxation is based on discretion and opinion of the Taxing Master. He further stated that the authority cited by Counsel supported the above position. He finally submitted that the awarded costs were justified.

I have considered all the submissions made plus all other material before me. The Bill of costs complained of was taxed on 27/5/2013. The decision was not challenged as is required by the Law hence the present application. The grounds are on the face of the application. In particular are Grounds 6, 7, 8. The Applicant had an Advocate in the main application but it appears they were not communicating. This is brought out clearly vide ground No.6 which is a sad state of affairs. All that he is asking the Court to do is to give him an opportunity to challenge the decision of the Taxing Master – by filing a reference. Paragraph 11 of the Remuneration Order provides;

- 1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.**
- 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a Judge by chamber summons which shall be served on all the parties concerned, setting out the grounds of his objection.**
- 3. Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subparagraph (3) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.**
- 4. The High Court shall have power in its discretion by Order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step, application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' Notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.**

From the explanation given by the applicant it is clear there was no notice of objection filed as is contemplated in paragraph 11(1) of the Remuneration Order. Its upon service of such notice on the taxing officer that the said officer will forward the reasons on his/her decision on the items objected to. The applicant has given reasons for his failure to comply with the requirement. It is not disputed that he was represented by counsel who did not attend court on 27/5/2013. The said advocate therefore failed to challenge the Bill of Costs filed by the Respondent herein. The bill was as a result taxed as filed.

The Applicant is a party seeking to be heard. He was not heard in this matter. A right to be heard is one of the tenets of natural justice. He explains that he only became aware of the Bill of Costs on 2/8/2013 when the Respondent sent him a copy of the same. He then instructed a new firm of advocates to take up the matter. The present application was filed on 15/8/2013 after counsel had perused the file. My view after evaluating all the material before me is that the applicant can not be said to have acted as an indolent

litigant. He has made out a case for being given a chance to challenge the Taxing Master's decision.

The court under Paragraph 11(4) of the Remuneration Order has the discretion to enlarge time. In paragraph 22 of his replying affidavit the Respondent depones that if the Applicant's prayer is granted the latter should deposit Shs.395,593/= in Court or in an interest earning account. It is true that costs follow the event. Allowing the application does not amount to denying the Respondent any costs. All the applicant wants is justification for the amounts awarded as costs. Asking him to deposit this sum would be punitive. After the reference the Applicant will be paid his costs. I am satisfied that the applicant's application is merited. I allow prayer 5 of the said application. Prayer 4 is also allowed. The reference should be filed within 28 days. Time starts running from today. Costs to be in the cause.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 18TH DAY OF SEPTEMBER 2013.

H.I. ONG'UDI

J U D G E

In the presence of :-

Ms. Mwangi for Applicant

Ms. Muthoni for Okwaro for Respondent

Applicant

Njue CC