



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. CIVIL APPLICATION NO. 314 OF 2012**

**LENAH KOINANGE.....APPLICANT**

**VERSUS**

**MAJANJA LUSENO & CO. ADVOCATES.....RESPONDENT**

**RULING**

1. The Applicant's Notice of Motion dated and filed on 10-5-2013 seeks a review of my Ruling made on 12-04-2013 dismissing the Applicant's Notice of Motion dated 5-09-2012 which sought a stay of execution of the Ruling by Hon J. Njoroge delivered on 24-08-2012.

2. The current Notice of Motion is purportedly brought under the provisions of Order 45, rule 1 and Order 51 rule 1 of the Civil Procedure Rules, 2010 Section 1A, 1B and 3A of the Civil Procedure Act, and all enabling provisions of the law. It was supported by the Affidavit of one J. Lilly Mwaura Advocate of the firm of Nyaberi & Co. Advocates.

3. The Motion was opposed by the Respondents who filed on 21-06-2013 grounds of opposition dated 11-06-2013 and stated that-

***(1) there was no mistake or error on the face of the record;***

***(2) the Respondent/Applicant has not demonstrated or shown any new or important matter or evidence to warrant grant of the orders sought.***

***(3) The Motion is bad in law and should be dismissed with costs;***

4. The Respondent's Advocates Firm took a hearing date for the Applicant's Motion and served the Hearing Notice (dated 6-11-2013) upon the Applicant's Advocates Firm on the same day. An Affidavit of Service sworn on 14-11-2013 was filed on 18-11-2013 before the hearing of the Motion subject of this Ruling. Mr. Anzala who appeared for the Respondents informed the court that he had telephoned Ms J. Lilly Mwaura Advocate who had sworn the Affidavit in support of the Motion, and was informed by her that she had left the firm of Nyaberi & Co Advocates. The said firm's landline went unanswered. With those submissions, I allowed Mr. Anzala to proceed ex parte and argue the application.

5. Mr. Anzala relied upon his written submissions dated 11-6-2013 together with the authorities cited therein. I have considered counsel's submissions as well as the authorities cited and the grounds of opposition and set out in the paragraphs following my opinion on the Applicant's notice of Motion.

6. In ordinary Civil Procedure Act and the Civil Procedure Rules, an applicant for review of the court's Judgment and Ruling must show-

- *discovery of new evidence or important matter which the Applicant could not with exercise of due diligence have had or discovered at the hearing of the matter subject of review*
- *an error on the face of the record, or*
- *some other sufficient cause (similar to new evidence or important matter and or error on the face of the records).*

7. The application herein does not relate to an ordinary Civil Suit. The Application related to taxation of an Advocate Bill of Costs under the Advocates Act, (Cap 16 Laws of Kenya) and the Rules thereunder. And even if there were errors in the Ruling of 12-04-2013, no averments were made by the Applicant of any such errors. The result is that there is no basis of the Application even if it were arising out of an ordinary Civil action. But as pointed out, the Motion of 12-04-2013 related to a reference under Rule 11 of the Advocates Remuneration Rules. Any application in relation thereto ought to have been made in the Matter of the Advocates Act, under Advocates Remuneration Rules, and the court's inherent power under those provisions and not under the Civil Procedure Act or the rules thereunder. The Applicant's Notice of Motion dated 10th May 2013 was to that extent incompetent. Article 159 of the Constitution that the courts should dispense substantive justice without undue regard to technicalities is no license for disregard of the law. That is the import of decisions such as **Aboke Vs Akunja & Another [2008] KLR (E & P)**, and the older decisions such as **LAKHANSHI BROTHERS LTD Vs. R. RASA & SONS [1966] EA. 313 at page 314.**

8. For the reasons given, I find that the Reference in the Ruling of 12/4/2013 was incompetent. I find the application for Review of that Ruling is equally incompetent. The Applicant's proper course was to appeal against the Ruling of 12/04/2013. That is the procedure laid down by rule 11 of the Advocates Remuneration Order. I find no merit in the Notice of Motion dated 10/05/2013, and I dismiss it with costs to the Respondents.

9. It is so ordered.

**Dated, signed and delivered at Nakuru this 17th day of December, 2013.**

**M. J. ANYARA EMUKULE**

**JUDGE**