



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Civil Cause 157 of 2010

ADAN GUYO T/A MANSILLE MEDICAL CENTRE PLAINTIFF

VERSUS

**DANIEL GIKUNDA ANAMPIU T/A
GIKUNDA ANAMPIU & CO. ADVOCATES..... DEFENDANT**

R U L I N G

This is an application by Daniel Gikunda Anampiu T/A Gikunda Anampiu & Co. Advocates under paragraph 11 of the Advocates Remuneration Order (Advocates Act (Cap 16) of Laws of Kenya and Section 1A and 1B of Civil procedure Act. The application seeks the following orders:-

- 1. That this honorable court be pleased to certify this application as urgent and allocate the nearest date possible for interpartes hearing.***
- 2. That this honourable court be pleased to order the setting aside, varying or lifting of the orders of stay of execution dated 17.3.2011.***
- 3. That the costs of this application be provided for.***

The application is based on the following grounds:-

- 1. That the orders of stay of execution have been overtaken by events when the respondent failed to file objection to taxation as required in law.***
- 2. That the Deputy Registrar who was the taxing master gave reasons for taxation in compliance with the ruling of the Honorable Judge and informed the parties man months ago but the respondent has not taken any action.***
- 3. That there is extremely no reason to warrant continuance of the said orders of stay of execution***

to recover the advocate/client's costs.

The application is supported by an affidavit of Mr. Daniel Gikunda Anampiu Advocate which briefly stated as follows:- That the firm of Advocates represented the respondent at Isiolo Court in PMCC 6 of 2009 but the respondent failed to pay the advocate professional fees. That advocate/client bill of costs was filled and taxed. That respondent filed an application on 21.1.2011 which was subject of a ruling of 17.3.2011. That the taxing master duly presented his reason for taxation as directed by the judge but since the month of June the respondent has never taken any action and as per the Rules the orders of stay have been overtaken by events. That the respondent is enjoying the stay of execution and there is no reason to warrant continuance of the orders of stay of execution.

The learned counsel Mr. G. Anampiu in his oral submission before the court prayed that prayer No. 2 and 3 of his Notice of Motion dated 14th March 2011 be allowed. He relied on grounds set out in the application and his supporting affidavit. He submitted that they were seeking for a review of the court's order dated 17.3.2011 ordering of stay of execution on taxed costs. He submitted their application for review was under Rule 11 of the Advocates Remuneration Order and Section 1A and 1B of Civil Procedure Act. He submitted that Article 159 of the Constitution of Kenya shows that courts should in determining matters dwell on merits rather than on technicalities. He submitted that the taxing master gave his reasons on 2.6.2010 and that the respondent has not taken up application within the required period of 14 days. He further submitted the application was unopposed and there was no replying affidavit filed.

The learned counsel appearing for the respondent Mr. Muriuki submitted that the orders sought are untenable under Rule 11 of the Advocates Remuneration Order. That the order of the Honourable Court dated 17.3.2011 he submitted can only be challenged by way of appeal and once after leave has been granted by court. He submitted there is no provision for setting aside or varying or lifting the orders. He argued that as per court's ruling on page 4 the respondent had filed the necessary application within time and could not be required to file further similar application. He further submitted this honourable Court's order in which it was dated:-

“There shall be stay of execution of the tax costs in this matter until further orders of this court.”

This does not mean the applicant can file an application for review of the court's order but meant the matter ought to have been slated for mention. The learned counsel for respondent referred the court to paragraph 4 of the ruling of the court in support of his submission. The area of reference states:-

“In my view, Guyo has already filed his objection as required by that paragraph. It now falls upon the learned taxing master to give reasons for his decision on each item that Guyo has objected to. See paragraph 11 (2). It is only after 14 days of receiving the reasons from the taxing master that Guyo would be obligated to refer the matter to the judge for determination. Guyo has however already done so by the application dated 21st January 2011. It therefore follows that once the reasons are given by the taxing master, this court will properly be seized of this matter. There is therefore no basis for the preliminary objection raised by the law firm.”

Under Rule 11, (1) (2) (3) of the Advocates (Remuneration) Order, it is provided:-

“11. Objection to decision on taxation and appeal to Court of Appeal.

(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 (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.”

I find that the Honourable Court in its ruling found that the respondent had filed his objection as required under the relevant paragraph. That is to stay paragraph 11 of the Advocate Remuneration Order. Under paragraph 11 (3) of the Advocates (Remuneration) Order any party aggrieved by the decisions of a Judge upon any objection referred to such a judge under sub paragraph (2) may with the leave of the judge but not otherwise, appeal to the Court of Appeal.

The applicant has no basis for seeking for an order to set aside, vary or lift the orders of stay of execution by way of an application such as this one. This is because Advocates (Remuneration) Order under paragraph 11 do have provisions for such application. The only option open to the applicant if he was not satisfied with the court’s order was and is to seek leave to appeal to Court of Appeal.

The court found that the respondent had filed his objection and after reasons having been given to the applicant, the applicant or the respondent should have set the objection down for hearing or for further orders.

The application before this court, I agree with the counsel for respondent is untenable and misconceived. The parties should set the respondents objection for hearing and determination in one way or other. In the circumstances the application is refused with no order as to costs.

Dated at Meru this 26th day of March 2012.

J.A. MAKAU
JUDGE

Delivered in open court in the presence of:-

1. Mr. Kaimenyi for Applicant
2. Mr. K. Muriuki for Respondent

J.A. MAKAU
JUDGE