



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 1038 of 2009

WATTA & ASSOCIATES ADVOCATES.....PETITIONER

VERSUS

EQUITY BANK LTD.....RESPONDENT

RULING

The application before court is made by Chamber Summons dated 11th February, 2010 and taken out under **Rule 11** of the **Advocates Remuneration Order, Sections 1A, 1B** and **3A** of the **Civil Procedure Act**. The Applicant thereby pays for orders that-

- 1. There be a stay of proceedings arising out of the taxing master's rulings of 9th February, 2010 in respect of directions sought by the Respondent.**
- 2. The taxing master's ruling of 9th February, 2010 be set aside.**
- 3. The ruling of the taxing master delivered on 9th February, 2010 be expunged from the court record.**
- 4. The court orders/directs that the issue as to whether M/s. Watta & Associates had been instructed to act for the Applicant be determined first.**
- 5. The further hearing of this cause do proceed before another taxing officer.**
- 6. The costs of this application be in the cause.**

The application is supported by the amended affidavit sworn on 11th February, 2010 by Mary Wangari Wamae, Company Secretary to the Applicant, and is based on the grounds set out on the face of the application. In opposition to the application, the Respondents filed a Replying Affidavit sworn on 15th February, 2010 by Kenneth Waita, the advocate seized of this matter on behalf of the Respondents.

The dispute in this matter revolves around the Ruling given in the taxation proceedings before the Deputy Registrar. The bone of contention relates to a request which the Applicants made seeking directions on how to proceed with an application for determination as to whether counsel for the Respondent had instructions in the primary suit pursuant to Regulation 13A of the Advocates Remuneration Order. The Applicant's case is that-

1. On 20th January, 2010 the Applicant applied for leave for the Respondent to be summoned and to produced all the documents relating to instructions in the primary suit pursuant to Regulations 13A of the Advocates Remuneration Order and also raised an objection to the taxation of the Advocate-Client Bill of Costs on the basis that the issue of want of instruction of the Advocate was still pending for determination in the primary suit.

(b) On 21st January, 2010 the taxing master denied the application for summons directed parties to file their respective submissions on the Bill of Costs as there was no preliminary objection and ordered the matter to be mentioned on 4th February, 2010 for taking of a ruling date.

(c) When the matter came up for mention on 4th February, 2010 for taking of a ruling date, only the Applicant herein had filed its submissions and there was no attendance by the Respondent and/or his advocate.

(d) On 4th February, 2010 the Applicant requested for directions on how the issue of instructions should be determined.

2. The taxing master made a ruling on 9th February to the effect that M/s. Watta & Associates had instructions to act for the Applicant.

3. The taxing master purported to rule on an alleged request by the Applicant for “directions on whether or not the Applicants had instructions to act for the Respondent in HCCC No. 660 of 2009” as opposed to a request for directions on how the issue of instructions was to be determined and set a mention date on 17th February, 2010 to take a ruling date on the items of the Advocates Bill of Costs.

4. In so making the ruling above, the taxing master exceeded his powers as the Applicant had only sought for directions as to how the issue of representation ought to be determined.

I note from the replying affidavit that the Respondent blames the Applicant for not setting out facts but instead being argumentative. However, the Respondent is also guilty of the same practice wherein in paragraph 13 of his affidavit he introduces his opinion as an advocate as to the correct procedure.

The above notwithstanding, this application goes to the jurisdiction of the court. Jurisdiction is everything, and without it the court cannot move one step. Where the court has no jurisdiction, its judgment and orders are a nullity. In our system of jurisprudence, the court has jurisdiction only over the matter properly before it. On the facts circumstances of this case, the court was specifically requested for directions on how the issue of whether the Respondent had instructions would proceed. Instead of confining itself to that issue, the court went further to determine that the Respondent had instructions and delivered a ruling to that effect. Clearly, the court overstepped the mark. It should have given directions on how the issue was to be determined.

In essence, the taxing officer proceeded to rule on an alleged request by the Applicant for directions on whether the Applicants had instructions to act for the Respondent in **HCCC No. 660 of 2009** as opposed to a request for directions on how the issue of instructions was to be determined. Since the directions sought were not given, the ruling of the court was premature and in delivering it the court exceeded its powers.

For the above reasons, the application succeeds and prayers 2, 3, 4, 5, 6 and 7 of the application by Chamber Summons dated 11th February, 2010 are hereby granted in their entirety. Costs will be in the cause.

Orders accordingly.

L. NJAGI
JUDGE

DATED and DELIVERED at NAIROBI this 20th day of November, 2012.

MUTAVA
JUDGE