



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 37 OF 2011

ABDALLAH MWAKAMSHAAPPLICANT

VERSUS

HAMZA JIWAJI T/A HAMZA JIWAJI & CO.ADVOCATE.....RESPONDENT

RULING

I have considered the application dated 4th February, 2011 and the affidavit in Reply sworn by the Defendant on 25th February 2011.

In the said Replying Affidavit, I have seen a Ruling made by the Hon. Justice J. K. Serگون on 4th October, 2006. In the said ruling the learned Judge made the following finding:-

“

There is evidence that the applicant had lodged a complaint before the Advocate’s Complaints Commission sometimes in 1994 and the commission came to the conclusion that Mr. Hamza Jiwaji did not receive the judgment sum in a letter addressed to him and copies to Hamza Jiwaji dated 24th June, 1994. The Complaints Commission in effect cleared Hamza Jiwaji Advocate of any wrong doing under section 60 (1) of the Advocates Act (cap 16 laws of Kenya). The position now remaining is the same that the Respondent did not receive the judgment money. The end result is that the motion is struck out and dismissed for being incompetent and without merit. `”

In light of the aforesaid ruling, I do hold that the issues herein are ***res judicata*** and this application is an abuse of the court Process. It is high time that the applicant closes this chapter in his life unless he wishes to go to the Court of Appeal. The High Court is really now ***functus officio*** and cannot help him

In the Ruling referred hereinabove, the court was particularly unhappy with the harassment of the Advocate being the Applicant.

Applicant should carefully read the said ruling. His application to review the said findings and to allow the evidence contained in correspondence with Atkinson Cleasly & Satchu Advocates was refused by Justice Serگون on 26.06.2007. It is really the end of the road for this matter. In any case, I have no jurisdiction to sit on appeal over another Judge with co-ordinate jurisdiction.

I therefore have no other option but to dismiss the application which I hereby do with costs to the Respondent.

Right of appeal explained.

Dated and delivered this 11th March 2011

M. K. IBRAHIM
JUDGE