

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 159 of 2009

1. **JOHN NJOGU KIMANI**
2. **OLIVE WACHUKA KIMANIPLAINTIFFS**

V E R S U S

JAMES K. GITAU
(t/a GITAU KARIUKI & CO. ADVOCATES)DEFENDANT

R U L I N G

The Plaintiffs have filed suit herein against the Defendant, who is their erstwhile advocate, claiming various declarations, damages and costs on account of professional negligence in connection with **Nairobi HCCC No. 161 of 2008** that they had filed against the Attorney-General and other Government officials and agents. The Plaintiffs have also sought a permanent injunction to restrain the Defendant from prosecuting **Nairobi HC Misc. Cause No. 526 of 2008** in which the Defendant has sought taxation of his advocate/client bill of costs in connection with the aforesaid suit.

Together with the plaint the Plaintiffs filed **chamber summons dated 25th March, 2009** in which they seek stay of proceedings in Nairobi HC Misc. Cause No. 526 of 2008 pending disposal of this present suit (prayer number 4). They also seek at prayer number 5 a temporary injunction to restrain the Defendant from prosecuting the said Misc. Cause No. 526 of 2008 pending disposal of this suit. The application is opposed by the Defendant.

I have read the supporting and replying affidavits. I have also considered the written submissions filed on behalf of the parties, including the authorities cited.

With the greatest respect, the Plaintiffs' application is misconceived. Taxation of costs is a special jurisdiction reposed only in taxing officers of the court. It is not reposed in judges. This court has no jurisdiction to interfere, by way of stay or injunction, that process of taxation. The court can only stay execution of a decree for costs. It cannot make an order to prevent the determination of such costs by taxation.

In the present case there is no decree for costs in place in favour of the Defendant. What the Defendant has sought in Nairobi HC Misc. Cause No. 526 of 2008 is a determination (by taxation of his advocate/client bill of costs) whether the Plaintiffs owe him any costs in connection with Nairobi HCCC No. 161 of 2008. This court cannot step in to impede that determination. It has no jurisdiction to do so.

If any costs are found to be due to the Defendant (by the taxation), he will still have to seek judgment for those costs. Only when there is a judgment for such costs can the court stay execution therefor for proper cause.

In the event, the chamber summons dated 25th March 2009, has no merit, and is hereby dismissed with costs. It is so ordered.

DATED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2010

H. P. G. WAWERU

J U D G E

DELIVERED THIS 12TH DAY OF FEBRUARY, 2010