

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Miscellaneous Application 516 of 2009

EDWIN K. NJAGI *t/a*
E.K. NJAGI & CO. ADVOCATES PLAINTIFF
VERSUS
LUCY WAITHERA MWANGI
JOHN IRUNGU GITHINJI
JULIUS KARIUKI MWANGI DEFENDANTS

RULING

The application coming up for hearing is the one by notice of motion dated 28th June, 2010. The Applicant thereby seeks, *inter alia*, judgment against the Respondents in the sum of Kshs.32,447,332.00 which was the sum allowed by the Taxing Officer on the Applicant's Advocate-Client's bill of costs.

When the matter was called out for hearing, Mr. Njuguna for the Respondent applied for the application to be stood over generally pending the hearing of his reference filed in Court on 9th July, 2010. In response, Mr. Kamwendwa for the Applicant submitted that the said reference was filed after 14 days in order to frustrate the application for judgment, and that a reference does not, in any case, operate as a stay. It was his further contention that the Respondents had filed a notice of Preliminary Objection which was an indication of their readiness to proceed with the hearing of the application for judgment. In his reply, Mr. Njuguna reiterated that their reference was filed in time, and that the Applicants were aware of its existence. He submitted that the application for judgment was meant to derail the Respondent's reference which had already been given a hearing date.

I note from the Court record that the Applicant's bill of costs dated 2nd December, 2009, was taxed on 14th June, 2010, and a certificate of taxation issued on 22nd June, 2010. **Rule 11 (1)** of the **Advocates Remuneration Order** requires that should any party object to the decision of the Taxing Officer, such party may within fourteen days after the decision give notice in writing to the Taxing Officer of the items of taxation to which he objects. The Taxing Officer should thereupon record forthwith and forward to the objector the reasons for his decision on those items and the objector may, within 14 days from receipt of the reasons, apply to a judge by Chamber Summons setting out the grounds of his objection.

In this matter, the bill of costs was taxed on 14th June, 2010. Three days later, i.e. on 17th June, 2010, the Respondents' Advocates filed a notice of objection to the decision on taxation and requested for reasons. Mr. Njuguna stated from the bar that the Respondents received the Taxing Officer's response on 7th July, 2010 and filed their reference on 9th July, 2010. As of now, that reference is fixed for hearing on 27th September, 2010.

In these circumstances, it is my considered view that as long as the reference is on record, it would be improper to entertain the application for judgment. Upon hearing the reference, the Court might well set aside or alter the certificate of the Taxing Officer, whereupon such certificate would cease to form a basis for judgment. I am therefore inclined to order that the application for judgment be stayed to await the outcome of the reference. If there was any irregularity in the filing of that reference, any such irregularity should be ironed out at the hearing thereof.

The hearing of the application for judgment under **Section 51 (2)** of the **Advocates Act** is accordingly stood over generally, pending the outcome of the reference filed under **Rule 11** of the **Advocates Remuneration Order**.

It is so ordered.

Dated and delivered at Nairobi this 21st day of July, 2010.

L. NJAGI
JUDGE