



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Civil Case 173 of 173

**STEPHEN CHEGE WAWERU (Suing as the
administrator of Waweru Kinini alias**

Waweru Kenini.....PLAINTIFF/APPLICANTS

VERSUS

EPHANTUS MWANGI & 16 OTHERS.....DEFENDANTS/RESPONDENTS

RULING

STEPHEN CHEGE WAWERU, the Plaintiff herein, took out the Summons dated 8th July 2010, in which he beseeched this Court to grant him the following orders:

- (a) *“The Plaintiff be given time to give notice of objection to the Taxing Officer in respect of the Defendants’ Bill of Costs dated 25/3/2010 and taxed on 4-6-2010.*
- (b) *Pending the giving of the notice and the disposal thereof there be a stay of execution as respects the costs as taxed.*
- (c) *Costs of this application be provided for.”*

Mr. Mindo, learned advocate for the Plaintiff and Mr. Nderi, learned advocate, each swore an affidavit in support of the Summons. EPHANTUS MWANGI NATHAN and 16 others, being the Defendants herein, filed grounds of opposition to resist the Summons.

When the Summons came up for interpartes hearing, Mr. Mindo urged this Court to extend time to enable the Plaintiff give notice to the taxing officer to object to bill of costs dated on 25th March 2010 and taxed on 4th June 2010. It is said that the bill of costs proceeded for taxation *ex parte* before the taxing officer yet he had been informed by the registry staff that the Deputy Registrar who is the taxing officer in this matter was away. This fact was not controverted by the Defendants. There is no doubt that the bill of costs was due for taxation on 4th June 2010. On that date there were uncontroverted averments by Mr. Mindo that he instructed Mr. James Nderi, a colleague to hold his brief before the taxing officer. It is averred that Mr. Nderi was told by the registry staff that the taxing officer was out of station hence the bill of costs would not be heard on 4th June 2010. There is evidence that the bill of costs proceeded for taxation *ex parte* despite the fact that Mr. Nderi had been made to believe that fresh hearing date would be given. By the time, Mr. Mindo learnt of the taxation, the time fixed to object had lapsed. The Defendants have simply attacked the supporting affidavits on the basis that they were defective. The defects were not pinpointed out so that this Court can form an opinion. I have perused the aforesaid affidavits and I have not seen any fatal defects that would render them incompetent under *Order XVIII* of the Civil Procedure Rules. Nothing therefore turns out on this objection. The other ground raised is that the application is premised on the wrong provisions of the law. I have critically examined the Summons and it is apparent that the application is filed pursuant to paragraph 11 (4) of the Advocates Remuneration Order. In my view that is the correct provision where a party can obtain an order to extend time to issue a notice of objection to the taxing officer out of time. With respect, nothing turns out on the second ground of objection. A careful consideration of the aforesaid provision will reveal that the Court was given a wide unfettered discretion to grant the order sought. Perhaps the only condition is that sufficient cause must be shown by an applicant to enable the court give the order. I am convinced that the Plaintiff’s advocate was misled by the court clerk who released him on the basis that the taxing officer was unavailable only for him to turn up and proceed to tax the bill *ex parte*.

In the end I grant the order sought in prayer (a) of the summons. The Plaintiff should issue the notice of objection to the taxing officer within 10 days from the date of this ruling. I also grant prayer (b) as prayed. Costs of the Summons to abide the outcome of the objection proceedings.

Dated and delivered at Nyeri this 7th day of October 2010.

J. K. SERGON

JUDGE

In open court in the presence of Khangati for Respondent and no appearance Mindo for Applicant.