

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 34 of 2005

ESTHER MUTHONI GICHOBI.....PLAINTIFF

VERSUS

ANGELUS MBUSI IMMANUEL.....1ST DEFENDANT

MWANIKI IMMANUEL.....2ND DEFENDANT

NJERU IMMANUEL.....3RD DEFENDANT

ASQUELINA IMMANUEL.....4TH DEFENDANT

VIRGINIA IMMANUEL.....5TH DEFENDANT

RULING

The Application dated 27/9/2006 is brought to court under Order XLIX Rule 6 and the ADVOCATES RULES II (1) (2). Prayer (c) is seeking enlargement of time for filing objection to the taxation of the Bill of Costs taxed by the taxing officer on 23/8/2005. It is premised on the grounds on its face and supported by counsel's affidavit dated 27/10/2006. This application even on the face of it was brought to court slightly over 1 year late. Mr. Mugambi for the Respondent has opposed the same strongly terming it as vexatious and an abuse of the court process. I have considered the application, the said grounds and the affidavits for and against it. I have gone through the lower court record and have noted the following:-

1. That the notice of taxation was taken out by counsel for the respondent on 25/5/2005.

The Applicant was then acting in person and there is an affidavit of service dated 11/7/2005 showing that indeed she was served with the notice of taxation which clearly indicated the hearing date as 12/7/2005.

On 12/7/2005, the applicant failed to appear in court for taxation. The court found the service of the notice of taxation improper and ordered that the applicant be served again.

She was served on 16/8/2005 and another affidavit of service was filed. This time, the learned trial magistrate found the service proper and proceeded to tax the bill of costs. She found the same proper as it was drawn to scale and proceeded to tax it as drawn on 23/8/2005. After she appointed counsel, instead of him applying for the time within which to lodge the objection before the Deputy Registrar to be enlarged as he has done now, he filed an application for the bill of costs to be set aside. A preliminary objection was filed against that application. The same was allowed and so the application was struck out with costs on 20/12/2005. Almost 9 months later, he filed this application. That delay is definitely inordinate. It has not been plausibly explained. It seeks to bring back the same issue which the lower court has dealt with on 3 previous occasions. I agree with Mr. Gitonga that this application is totally an abuse of the court process. Litigation has to come to an end. The bill of costs taxed by the taxing officer was found to have been drawn to scale. Indeed even the objection she intends to raise is hardly meritorious. I find this application devoid of merit and dismiss the same with costs to the Respondents in the application dated 27/9/2006. Orders of temporary stay of execution granted earlier are hereby

vacated.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 29th day of June 2009.

In presence of:-Mr. Muraguri for applicant. N/A for Respo.