

MAINA NYANGENA & CO. ADVOCATES.....APPLICANT/RESPONDENT

Versus

JOYCE W. WATHANGA.....RESPONDENT/APPLICANT

RULING

For the avoidance of doubt what is before me for a ruling is Chamber Summons dated 25th September 2009 as can be seen from proceedings before me dated 28th September 2009, 5th October 2009 and 15th October 2009.

The said Chamber Summons was filed by Joyce W. Wathanga against her former Advocates Maina Nyagena & Company Advocates and the application is stated brought under Order IX B Rule 8 and Order XXI Rule 25 of the Civil procedure rules, Section 3 A of the Civil Procedure Act and all enabling provisions of the law.

As can be seen, nothing is said about the Advocates Act and the Advocates (Remuneration) Order yet this is matter concerning Advocate and client's bill of costs, taxed by the Taxing Officer who thereafter on 24th February 2009 issued the relevant certificate of Taxation for Kshs.86,419/=.

Based upon that certificate of Taxation and following the said Advocates Notice of Motion dated 27th March 2009 and filed on the same date, under Section 51 (2) of the Advocates Act, paragraph 7 of the Advocates (Remuneration) Order, Sections 3 A and 27 of the Civil Procedure Act and Order L rule 1 of the civil Procedure Rules and all enabling provisions of the law and procedure

“Judgment” was “entered in favour of the Applicant against the Respondent” therein “for a sum of Kshs.86,419/= plus interest thereon at 9% p.a. from the 29th day of November 2008.”

That judgment was entered on 6th July 2009 by Justice Onyancha and the relevant decree was issued on 17th July 2009.

But before me in the chamber summons dated 25th September 2009 the Applicant is praying

“2. THAT there be a stay of this Honourable Decree of 6th June 2008 pending the hearing and determination of this application.

3. THAT this Honourable court be pleased to set aside the Decree of 6th June 2008 and the certificate of taxation entered against the Respondent/Applicant leave be granted to the Respondent to Defend the Bill of Cost on such terms as are mete and just.”

The Chamber Summons also prays for costs, prayer number 4, while prayer number 1 was for certificate of urgency. During the hearing Mr. Ambani the Applicant's Counsel told the court that all he needed was the granting of prayer number 3 in the Chamber Summons. Mr. Nyagena opposed the Chamber summons and from what both learned Counsel told me for their respective clients, I do not need to write more than what I have already done.

The position: Not only is the learned Counsel representing Joyce Wathanga confused and set out to confuse, but he is also lost as to what he should lawfully do. Chamber Summons dated 25th September 2009 is therefore irregular, improper, incompetent and not maintainable in law. Same is hereby dismissed with costs to Maina Nyangena & Co. Advocates.

Dated this 30th day of October 2009.

J.M. KHAMONI

JUDGE

Present:

Jusa Ruguru & Co. Advocates for the Applicant

Maina Nyangena & Co. Advocates for the Respondent

Court Clerk: Kabiru