



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CIVIL APPLICATION 65 OF 2005
E.N NGANGA & CO. ADVOCATES.....APPLICANT
VERSUS
JOYCE WANJIKU GITAKA AND
JOHN MUHOKO GITAKA.....RESPONDENT

RULING

The first issue which I shall determine is the competence of the Notice of Motion dated 10th November, 2006.

The application seeks judgment against the respondents as administrators of Geoffrey Kimani Gitaka the deceased herein.

The firm of E.N Ng'ang'a and Co. Advocates was representing the then administrator of the estate namely Mrs. Joyce Wanjiku Gitaka. On 9th November, 2004 the said firm was allowed to cease acting for the said administrator and along with the said order it was also ordered that the Advocates costs be taxed and paid from the deceased estate.

The bill of costs was filed on 18th October, 2005. The Notice of this bill was issued to all the respondents herein by Notice dated 23rd May, 2006. That is the reason that the Advocates of the Respondents have objected to the veracity of the certificate of taxation. On one side the Respondents have made comments and raised objections against the certificate of taxation and on the other hand they are contending before me that the application is not competent because in the certificate of taxation the 2nd and 3rd Respondents are not named therein. In both the replying affidavits the main contentions raised by them are the propriety of taxation made by the learned Deputy Registrar.

I shall not make any observations on the propriety or otherwise of the taxation proceedings as the Respondents have till to – date not come before the High Court as per the provisions of Advocates Act and Advocators Remuneration orders.

Thus in my opinion the contentions of the Respondents are nothing but approbation and reprobations.

Be that as it may, the application is for the judgment against the Respondents as the administrators of the estate. The applicant is not seeking judgment against the respondents in their personal capacity. It is on record that the administrators were substituted and the order of the court dated 9th day of November, 2004 was specific that the advocates costs be taxed and paid from the deceased estate.

The respondents as administrators are thus rightly brought on record and the application in my view is competent.

The certificate of taxation is given which is so far not challenged or reviewed. I once again make it clear that the Respondents are before the court as administrators of the estate and the judgment be entered against them as such and the decretal sum be paid from the estate.

Dated and signed this 14th day of March, 2008.

K.H.RAWAL

JUDGE

14.3.08