



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Misc Civ Appli 201 of 2006

NYAMOGO & NYAMOGO ADVOCATES..... PLAINTIFF

VERSUS

JOSEPH MBOI MWANGI DEFENDANT

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC CIVIL APPL. NO. 202 OF 2006

NYAMOGO & NYAMOGO ADVOCATES..... PLAINTIFF

VERSUS

JOSEPH MBOI MWANGI DEFENDANT

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC CIVIL APPL. NO. 203 OF 2006

NYAMOGO & NYAMOGO ADVOCATES..... PLAINTIFF

VERSUS

JOSEPH MBOI MWANGI DEFENDANT

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC CIVIL APPL. NO. 205 OF 2006

NYAMOGO & NYAMOGO ADVOCATES..... PLAINTIFF

VERSUS

JOSEPH MBOI MWANGI DEFENDANT

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC CIVIL APPL. NO. 200 OF 2006

NYAMOGO & NYAMOGO ADVOCATES..... PLAINTIFF

VERSUS

JOSEPH MBOI MWANGI DEFENDANT

RULING

The parties by consent agreed that the court do one ruling in respect of all the above files. The application is similarly in all the files and is dated 18th December 2007. By that application the advocate seeks the dismissal of the client's application dated 23rd October 2006. The background of this matter was the taxation of the advocate- client Bill of Costs on 27th September 2006. A Certificate of Costs was issued on 16th October 2006. The client in that regard made an application by Notice of Motion dated 29th September 2006. By that application the client sought the setting aside of the order of taxation and the stay of execution. The client did not prosecute that application but instead went further and filed an objection under rule 11 of the Advocates Remuneration Order. The client yet again filed another application dated 23rd October 2006. By that application the client sought stay of execution of the taxed costs and a declaration that the full amount of those costs had been paid. The application now for this ruling, made by the advocate, that is the Chamber Summons dated 18th December 2007 is brought under order VI rule 13 (1) (b) (c) and order XVI rule 5 (d). It seeks to strike out the client's application dated 23rd October 2006. Having considered the application and the arguments placed before court I am of the firm view that the Civil Procedure Act does not apply to matters relating to the Advocates Act. I therefore make a finding that the prayers sought by the client for stay of execution cannot be granted. The Advocates Remuneration Order has elaborate procedures laid out for objecting to taxed costs. The application therefore dated 29th September 2006 and 23rd October 2006 are therefore incompetent for seeking to rely on the Civil Procedure Act. In the application for consideration before court the advocate has also relied on the Civil Procedure Act. Although so relying on that act I find that the prayers sought can be entertained under the inherent jurisdiction that the court always has. That inherent jurisdiction cannot be defeated by quoting the rules of the Civil Procedure Act. Having made a finding that there cannot be stay of taxed costs I find that the client's both applications must fail. In making that finding I rely on the case of *Francis Kabaa v Nancy Wambui and Jane Wanjiru Civil Application No. Nairobi 298 of 1996 (113/96 UR)* where the Court of Appeal had the following to say

“In any case, even if that were so, the appellant, if he succeeds in his appeal, would be refunded his costs. Furthermore, we do not think that stay can be granted in respect of costs.”

The court therefore does hereby dismiss the client's applications dated 29th September 2006 and 23rd October 2006 with costs of the same being awarded to the advocate. The advocate is also awarded costs

of this Chamber Summons dated 18th December 2007.

Dated and delivered at Nyeri this 16th day of April 2008.

MARY KASANGO

JUDGE