



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Civil Appli l595 of 2007**

**FRANCIS MWANZA MULWA (Practising as F.M. MULWA, ADVOCATE).....APPLICANT**

**VERSUS**

**CHAKAMA RANCHING CO.LTD.....RESPONDENT**

**RULING**

The Applicant herein, an advocate of this court, filed his advocate/client bill of costs dated 17<sup>th</sup> August, 2007 for taxation. On 25<sup>th</sup> September, 2007 he filed chamber summons of the same date seeking the following main orders:-

1. That the Respondent, which was his erstwhile client, be directed through its named directors to forthwith either furnish security in the sum of KShs. 15,152,975/00 claimed in the Applicant's bill of costs, or to appear before the court and show cause why it should not furnish security.
2. That in the alternative, the Director of Land Adjudication and Settlement be directed to facilitate such deposit with the court on behalf of the Respondent out of the amount held by him and payable to the Respondent, the same being proceeds of the sale by the Respondent of its parcels of land to the Department of Land Adjudication and Settlement.
3. That the said sum of KShs. 15,152,975/00, if availed, be held in deposit by the court until the further orders of the court.

When the application came up for hearing on 2<sup>nd</sup> October, 2007 it was ordered, *inter alia*, that the matter be stood over to 9<sup>th</sup> October, 2007 for the Respondent to attend court to show cause why it should not give security, and that in the meantime, that order be served upon the Director of Land Adjudication and Settlement to preserve the sum of KShs. 15, 152,975/00.

On 9<sup>th</sup> October, 2007 the following consent order was recorded:-

” By consent, the order given on 02.10.2007 be and is hereby discharged and substituted therefor with the following order –

- (a) That KShs. 15,152,975/00 be released forthwith by the Director of Land Adjudication and Settlement to the firm of M/s Nyamu and Nyamu, Advocates.
- (b) That Nyamu and Nyamu, Advocates, through Mr. Wilfred Nyamu Mati, do undertake not to

release the said sum of KShs. 15, 152,975/00 to the Respondent or its director until taxation of the Applicant's bill of costs is done or until further orders.

(c) Liberty to apply by either party".

On 22<sup>nd</sup> October, 2007 the Applicant filed notice of motion dated 19<sup>th</sup> October, 2007. He sought the main prayer that the aforesaid consent order of 9<sup>th</sup> October, 2007 be varied to provide that the sum of KShs. 15, 152,975/00 be deposited at the disposal of the court until taxation of his bill of costs or until further orders. As it happened, that application was never prosecuted. On 8<sup>th</sup> and 9<sup>th</sup> November, 2007 the court declined to grant any interim order upon the application.

On 30<sup>th</sup> November, 2007 the Applicant's bill of costs was taxed. He was not satisfied with the taxation, and he challenged it by chamber summons dated 10<sup>th</sup> December, 2007. That reference against the taxation was heard *inter partes* and allowed by a ruling dated 6<sup>th</sup> and delivered on 9<sup>th</sup> May, 2008. The Applicant's bill of costs was remitted to the taxing officer to re-tax item No. 1 of the bill.

The Applicant has now applied by notice of motion dated 12<sup>th</sup> May, 2008 seeking the main order that WILFRED NYAMU MATI of Messrs. Nyamu and Nyamu, Advocates, be compelled to forthwith avail the sum of KShs. 15,152,975/00 "held by them pursuant to this ..... court's order given on 9<sup>th</sup> October, 2007, and the same be deposited in an interest-earning account in Standard Bank, Harambee Avenue, Nairobi", in the joint names of the Applicant and the Respondent's advocate pending re-taxation of the Applicant's bill of costs, or until further orders or consent of the parties. The application is said to be brought under sections 3, 3A and 63 (b), (c) and (e) of the Civil Procedure Act and is supported by the Applicant's affidavit.

Wilfred Nyamu Mati has opposed the application. His answer to it, as set out in the replying affidavit filed on 16<sup>th</sup> May, 2008 and the supplementary affidavit filed on 23<sup>rd</sup> May 2008, is that after taxation of the Applicant's bill of costs on 30<sup>th</sup> November, 2007 his firm paid out to the Respondent all its monies, including the KShs. 15,152,975/00.

I have considered the submissions of the Applicant, who is in person, and those of the Respondent's learned counsel. The terms of the consent order of 9<sup>th</sup> October, 2007 were precise. By it, Messrs Nyamu and Nyamu, Advocates undertook not to release the money to the Respondent or its director until taxation of the Applicant's bill of costs was done or until further orders. That taxation was done on 30<sup>th</sup> November, 2007. Taxation is an event, not a process, contrary to the submission of the Applicant. The consent order of 9<sup>th</sup> October, 2007 did not contemplate, and could not have contemplated, a re-taxation of the Applicant's bill of costs. The Applicant was well-aware of this. That is why he sought a variation of the order by his application dated 19<sup>th</sup> October, 2007. He did not prosecute that application, which remains on record, making the present application an abuse of the process of the court.

I am satisfied from the evidence placed before the court that Messrs. Nyamu and Nyamu duly released to the Respondent the sum of KShs. 15, 152,975/00 after taxation of the Applicant's bill of costs on 30<sup>th</sup> November, 2007. They would have had no justification to withhold their client's funds after the taxation. Upon deciding to challenge that taxation the Applicant should have moved with speed to prosecute his application dated 19<sup>th</sup> October, 2007 in order to safeguard his interest. He did not.

For the above reasons, this application, which is an abuse of the process of the court, is without merit. It is hereby dismissed with costs to the Respondent. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF JUNE 2008.

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 13<sup>TH</sup> DAY OF JUNE 2008**