



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Appli 828 of 2006

MUTURI & APOPO ADVOCATES.....APPLICANT

VERSUS

CYRUS JIRONGO & SOLOLO OUTLETS LTD.....RESPONDENT

RULING

The Applicant is a business man and he holds interests in various companies which include:

- (i) SOLOLO OUTLETS LTD
- (ii) CYPHER ENTERPRISES LTD
- (iii) CYPHER PROJECTS INTERNATIONAL
- (iv) KUZA FARMS AND ALLIED LTD
- (v) NASHVILLE INVESTMENTS LTD
- (vi) KIPA & SONS LTD.

In April 2004 His Excellence the President appointed a Commission known as Goldenburg Commission of Inquiry to investigate various companies and persons in respect of their activities in the Goldenburg affairs.

The 2nd and 3rd Respondents which are companies under receivership were among those mentioned for investigations by the commission. The Respondent who is an advocate represented the Applicants in the inquiry and later served them with a bill of costs amounting to Shs.51,591,290/=.

The Applicants on being served with the bill of costs filed this application by way of Chamber Summons seeking orders to strike out the Advocates Bill of Costs for being an abuse of the process of the court and for being frivolous and scandalous and vexatious. They also sought costs of this application.

The application is based on the grounds that the bill of costs has not, prior to the filing of this taxation been served on the 1st Defendant and that no leave has been obtained by the advocate to commence these proceedings against the 2nd and 3rd Defendant's which are companies currently under receivership. The application is also supported by an affidavit sworn by Cyrus Jirongo on 4th December 2006. The application is opposed by the Respondent who has filed a replying affidavit sworn by the counsel himself on 9th January 2007 in which he avers that a bill of costs is not a suit within the meaning ascribed to it by

the Civil procedure Act and the rules made thereunder and that the bill of costs is merely an assessment of the just fee payable by the client to an advocate and it is consequence to such assessment that a suit for recovery of costs can be filed and that upon such event his firm shall elect who to sue and in what capacity if payment of fee is not made.

Section 228 of the Companies Act Cap 486 provides that when a Winding up Order has been made or an Interim Liquidator has been appointed under Section 235, no action or proceedings shall proceed with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

The Respondent served the 3 Applicants with a bill of costs between the advocate and client intending to recover a sum of Shs.51,551,290/=. The 2nd and 3rd Respondents being companies under receivership, to commence an action against them, leave of the court was required and the Respondent having not obtained such a leave his action is unsustainable and should fail.

Consequently the Applicant's application is allowed in terms of Prayers 1 and 2 of the Chamber Summons dated 4th December 2006.

The Advocate's Bill of Costs dated 30th October 2006 is struck out with costs.

Dated and delivered at Nairobi this 13th day of July 2007.

J.L.A. OSIEMO

JUDGE