



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL CASE 1001 OF 2006

O. P. NGONGE & ASSOCIATES T/A O. P. NGOGE & ASSOCIATES ...
RESPONDENT/ADVOCATE

VERSUS

JOSEPH KARIUKI
APPLICANT/CLIENT

RULING

I was starting to hear the Notice of Motion dated 10th July 2007 stated brought under Order L Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act as well as Section 48 of the Advocates Act when Mr. Ngugi, an Advocate from the Respondent Advocate's firm in this matter, raised a preliminary objection and prosecuted it. The ruling here therefore determines that preliminary objection. the Applicant in the Notice of Motion, Joseph Kariuki the former client of Mr. Ngungi, is being represented by Mr. Mwaniki. The said Notice of Motion contains two important prayers for the purpose of the preliminary objection and this ruling. Those are prayers 2 and 3 and they state as follows:

"2. THAT this Honourable Court be pleased to strike out the Advocate/client bill of costs dated 18th September 2006.

3. THAT in the alternative and without prejudice to prayer No. 2 above, this Honourable Court be pleased to transfer HIGH COURT MISCELLANEOUS CIVIL APPLICATION NO. 1001 OF 2006 TO HIGH COURT CENTRAL REGISTRY for Taxation together with HIGH COURT MISCELLANEOUS CIVIL APPLICATION NO. 697 OF 2006 between PETER O NGOGE T/A O. P. NGOGE & ASSOCIATES –VS- JITHANDA SHOPPING COMPLEX LIMITED."

The Preliminary Objection raised by Mr. Njagi from M/S. Peter O. Ngoge T/a O. P. Ngoge & Associates states that:

"TAKE NOTICE that the Honourable court lacks jurisdiction to hear and determine the application dated 10th day of July 2006 and shall apply for same to be dismissed with costs."

It is dated 18th July 2007.

From what I have stated above therefore, although Joseph Kariuki is shown in the Notice of Motion as the Respondent and his former Advocates as the Applicant, that is wrong and the parties should correctly

be referred to as they appear in the heading of this ruling where Joseph Kariuki is shown as the Applicant and his former Advocates as the Respondent.

I have pointed out that the preliminary objection before me in this ruling is dated 18th July 2007. That should not be confused with the one dated 20th November 2006 filed, also in a confusing manner, by same Joseph Kariuki through his current Advocates A. N. Ngunjiri & Company. That is a Preliminary Objection intended to be heard and determined by the Taxing Officer during the taxation proceedings and does not therefore concern the Notice of Motion before me in this ruling.

The position in this matter is that following the filing of that Notice of Preliminary Objection dated 20th November 2006 the firm of M/S. A. N. Ngunjiri & Company instead of pursuing that objection to hearing before the Taxing Officer, decided to file this Notice of Motion now before me, on the basis of the same issue namely:

"existence or otherwise of Advocate/Client relationship ---"

they, raised in their Notice of Preliminary Objection dated 20th November 2006 aforesaid. The result is that Taxation proceedings have not yet taken place before the Taxing Officer because the parties have diverted their attention to these proceedings in the High Court and the situation is indicated to leading to delays as the parties go to the extent of challenging the jurisdiction of this court even where such a challenge should not arise.

As I said recently in AHMEDNASIR ABDIKADIR & COMPANY, ADVOCATES –VS- NATIONAL BANK OF KENYA LIMITED (unreported), the jurisdiction of this court to hear and determine a matter is not removed by the mere allegation, or may be a fact, that there are certain defects in pleadings or affidavit or application or that a matter is filed under wrong provisions of the law or the matter is otherwise incompetent. Such allegations appear to be common in Taxation matters. It should not be forgotten that apart from the numerous specific provisions in various statutes giving jurisdiction to the High Court, there are other provisions like Section 60(1) of the current Constitution of Kenya and Section 3A of the Civil Procedure Act which give the High Court, not only unlimited original jurisdiction but also inherent jurisdiction generally. The allegation of lack of jurisdiction should therefore be made only where relevant provisions of the law have been carefully considered and the conclusion reached that indeed there is lack of jurisdiction.

Otherwise where a party is, for example, improperly moving the High Court in a matter or suit or pleadings the court has jurisdiction to hear the parties and tell them the correct position. If therefore the objector before me feels the Notice of Motion dated 10th July 2007 is improperly filed or is defective let him allow the High Court hear the Notice of Motion to decide it on its merits instead of alleging the court's lack of jurisdiction and therefore seeking the dismissal of the Notice of Motion on that basis without going into the merits.

The fact that this Notice of Motion is not an Objection under Rule 11 of the Advocates (Remuneration) Order does not necessarily mean that the High Court lacks jurisdiction to entertain and determine this Notice of Motion on its merits. The Objector had to pin-point specific provisions of the law which takes away the jurisdiction of the High Court in that respect, but has failed to do so; to show provisions of the law denying the High Court the jurisdiction to grant or to refuse to grant on merits, the orders prayed for in the Notice of Motion; to show that in matters before the High Court not amounting to pleadings, the High Court has no jurisdiction to grant or refuse to grant, on merits, the orders prayed for; to show that in matters before the High Court under the Advocates Act, the Court has no jurisdiction to grant or refuse to grant, on merits, a prayer for transfer of the case from one Taxing Officer or Taxing Station to another; to show that provisions of the Civil Procedure Act and Rules do not apply in proceedings under the Advocates Act and that therefore the High Court lacks jurisdiction to order transfer.

The Objector having failed to cite such important provisions of the law, if any exist, I hold the opinion

that his objection dated 18th July 2007 lacks merits and the same is hereby dismissed with costs to the Applicant in the Notice of Motion.

Dated this 22nd day of October 2007.

J. M. KHAMONI

JUDGE

Present:

M/S. Ouko for Mr. Mwaniki for the Applicant

Court Clerk - Kipkurui