



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

Prob & Admin Cause 2182 of 1997

IN THE MATTER OF THE ESTATE OF MARY WAMBUI WANGOME (DECEASED)

VIRGINIA NJERI CHURU.....APPLICANT

Versus

SIMON MUCHIRI.....1ST DEFENDANT

MARY WAMBUI NJUGUNA.....2ND DEFENDANT

RULING

Simon Muchiri and Mary Wambui Njuguna whilst describing thereafter as 1st and 2nd Defendants have filed the Notice of Motion dated 20th December 2005. This application is brought under the provisions of Section 3A, 63 (e) Order XLI rule 4, X rule 1 of the Civil Procedure Rules.

The Applicants have sought for order of Stay of Warrants of arrest issued herein and all the consequential orders be lifted.poa

Secondly, there be a Stay of Execution of the decree of costs herein pending the hearing of the objection filed on 14th June 2004.

This application arises from the order of Execution that was issued on 18th day of February 2004 by the taxing master.

The Applicants filed a Notice of Objection to mention on 14th June 2004 and they have done nothing more towards regularizing the Notice of Objection that was filed late.

Counsel for the Applicants argued that they applied for reasons of taxation but the said reasons for taxation have not been supported to date. One of the Applicants was arrested on 24th October in execution of the decree of costs that was taxed for Kshs. 209,956/=.

The Applicants have a good case for Objection and setting aside the taxed costs because the subject matter the suit property which was the subject of litigation is very little value of Kshs. 300,000/=. Thus Counsel argued this Court to grant the orders of stay.

This application was opposed by the Decree Holder who relied on grounds of Objection and her Replying Affidavits.

These principal issues were raised in the said Opposition as follows:-

- 1) There is no valid Objection as the provisions of rule 11 of the Advocates Remuneration Order is clear that the Objection should be lodged within 14 days. The order and Certificate of Taxation was made on 16/2/04 while the Objection was filed on 14/6/04.**
- 2. The Applicant's Counsel had intimated their intention to seek leave to file the Objection out of time but to date this has never been done and thus there is no valid Objection to support the application for Stay of Execution.**
- 3. Thirdly, and perhaps more importantly the Applicant is also supposed to give an Objection in writing to the taxing master and no such Objection has been given to include the items they are objecting to.**

I have carefully considered this application and the submissions by both Counsels for the Judgment/Debtor and the Decree Holder.

The Applicants have not bothered to regularize the Notice of Objection as required under rule 4 of the Advocates Remuneration Orders. The Objection that was supposed to be filed after fourteen (14) days from the date of the order of the taxing master. The Notice of Objection to taxation herein was filed about fourteen months after the order and the Applicants have made no effort to regularize that anomaly.

Secondly, the Applicants have not on their part notified the taxing master of the items they are objecting to, nor have they taken any steps since the filing of the Notice of Objection copy of the Ruling and the reason for taxation. For these reasons I find that there is no valid Objection to taxation on record and I concur with Counsel for the Decree Holder that this application is an abuse of the Court process.

I accordingly dismiss the same with costs to the Judgment Debtor.

It is so ordered.

Ruling and signed on 2nd December 2005.

MARTHA KOOME

JUDGE