



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA

MISC APPL. 42 OF 2003

NYAMOGO & NYAMOGO ADVOCATES
APPLICANT

VS

KENYA BUS SERVICES LTD

JONATHAN KITUMBA NDUNGI
RESPONDENT

(In the matter of An order against Kenya Bus Services Ltd in favour of Nyamogo & Nyamogo, Advocates)

AND

(In the matter of a reference from the decision of the Deputy Registrar Ms. Maloba made on 28th March 2003 on the taxation of the Plaintiff's Bill of Costs. (A certified copy of the Order, Proceedings and Ruling and reasons for the ruling are attached hereto)

KENYA BUS SERVICES LTD OBJECTOR

VS

NYAMOGO & NYAMOGO ADVOCATES RESPONDENT

RULING

Mr. Nyamodi Nyamogo who appeared for the Respondent raised a preliminary objection against the objector's chamber summons dated 11th March 2004 brought under paragraph 11 of the Advocates Remuneration order.

The objector in the aforesaid summons had sought for the following orders:

- (a) For leave to have the summons heard during the court vacation.*
- (b) For costs allowed by the taxing officer in miscellaneous Appl. No. 42 of 2003 against the objector to be reviewed and reduced or struck out or remitted with appropriate directions to another taxing officer as the court shall deem fit for consideration.*
- (c) A stay of execution of the Deputy Registrar's order of 28.3.2003 pending the determination of*

this reference.

(d) The taxed amount to be deposited into this court upon such terms as may be fair and just.

The gist of the Respondent's objection is that this court had dismissed an application with similar facts save that the objector was different vide Busia H.C. Misc. No. 271 of 2003 and that the objector has preferred an appeal against the said decision which was made on 12th March 2004. Mr. Nyamogo was of the view that by virtue of that decision this court became *functus officio*. This court was therefore urged to strike out the application because it is not seised with jurisdiction until the intended appeal by the objector is heard and determined.

Mr. Nyangwencha who appeared for the objector opposed the preliminary objection by stating that the same lacked merit. He pointed out to this court that the objector's application dated 16th April 2003 was struck out and not dismissed as alleged by the Respondent hence the objector had a right to commence this application.

I have keenly perused the ruling delivered on 12.3.2004 in Busia H.C. Misc. application No. 271 of 2003. I have also considered the submissions presented to me by the learned advocates. To begin with I have found out that the chamber summons dated 16th April 2003 was struck out but not dismissed as submitted by Mr. Nyamogo for the Respondent.

I have also noted that the taxing officer had not given her reasons at the time when this court struck out the application dated 16th April 2003 and this was the basis of my decision. However in the present application the taxing officer has already given her reasons for her decision on taxation. I think this is the main point of departure from the application which was struck out.

It is clear from the above findings that this court is not *functus officio*. I have jurisdiction to hear and determine the matter on its merits. Consequently I have come to the conclusion that the preliminary objection has no basis. The same is dismissed with costs to the objector. The summons dated 12th March 2004 may be listed for hearing at the Civil Registry on a priority basis.

DATED AND DELIVERED THIS 11th DAY OF May 2004

J.K. SERGON

JUDGE