

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL APPLICATION NO.1424 OF 2002

G.B.K. AKHAABI T/a

AKHAABI & COMPANY ADVOCATES.....APPLICANT/ADVOCATES

V E R S U S

O. U. ALOZIERESPONDENT/CLIENT

R U L I N G

This is an application by way of Notice of Motion dated 5.12.2002 in which the Applicant seeks orders that;

- (1) That execution application was a nullity and or irregular for want of decree/order to be executed
- (2) That the issuance of a prohibitory order against LR No. 7158/32 was a nullity and or irregular for want of decree or order to be executed.
- (3) In the alternative, the advertised sale of LR No. 7158/32 was irregular and a nullity.

Affidavit in support by Steven Ruphinus Adere sworn on 5.12.2002 in which he says that he filed and served his Notice of Change in this case on 14.12.98 but that M/s Akhaabi and Company filed a bill of costs on 24.12.98 and that the said bill was agreed at Kshs.200,000/-. So in execution application was filed on 4.9.99 then on 6.10.99 attachment prohibitory order over LR No. 7158/32 was issued and submissions on reserve price although started 8.6.2001 were not completed because the Deputy Registrar died, thus there was no valid warrants or valid notification of sale since reserve price was not fixed besides, he says the auctioneers did not serve notification of sale.

Mr. Adere in further submission said that Ms Akhaabi & Company Advocates ought to have filed a suit against their client under Section 48(1) of Advocates Act to recover costs. But here they merely taxed a bill and executed it straight after taxing the bill without filing a suit but without a Court order you cannot execute any decree under Order 21 Rule 6 of the Civil Procedure Rules.

Section 48(1) of Cap 16 provides: -

“Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs which may be in summarized form, signed by the advocate or a partner in his firm has been delivered or sent by registered post to the client unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the courts’ jurisdiction, in which event action may be commenced before expiry of the period of one month.”

Subject to subsection 1;

(2) A suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.”

There was no opposition to this application and therefore, the facts deponed to herein are not controverted. It is, therefore, clear that orders relating to execution are invalid and void in so far as they

originate from the taxed bill. No process taken in execution can be validated. They are all void and I so order.

The application, therefore, succeeds with costs.

DATED this 20th day of June 2003.

A.I. HAYANGA

JUDGE

Read to Mr. Adere for Applicant