



Oloirien Group Ranch v Mckay & Co Advocates (Miscellaneous Reference Application 1 of 2018) [2023] KEELC 16763 (KLR) (2 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
MISCELLANEOUS REFERENCE APPLICATION 1 OF 2018**

**MN KULLOW, J
MARCH 2, 2023**

BETWEEN

OLOIRIEN GROUP RANCH OBJECTOR

AND

MCKAY & CO ADVOCATES ADVOCATE

RULING

1. The Objector/Respondent had on the 9/12/2020 raised a Preliminary Objection on a point of law to the applicant Notice of Motion dated 3/11/2020 on the grounds that the court lacks the jurisdiction to entertain the aforesaid application as the same is incompetent misconceived and an abuse of the process of the court.
2. The preliminary objection herein was raised after the Applicant had lodged an application for Review, setting aside and/or has varying an order made by the court on 14/11/2018 and upon service of the application the respondent filed the instant preliminary objection on a point of law.
3. It is the objector/respondent contention that the matter before the court was a reference against the decision of a Taxing master rendered on 12/10/2018 and a stay of execution subsequently issued by the court on 13/3/2020 directing the respondents to deposit security for costs. It is the objector contention that the applicant had no basis to seek to review the said order as the same is not provided for under paragraph 11 (3) of the Advocates Remuneration Order.
4. The applicant in his response to the said Preliminary Objection; contends that the said preliminary objection is only meant to derail the hearing of the application to the detriment of the Advocate as the objector has failed to deposit the sum of Kshs. 17,000,000/= as security for costs pending the hearing of the reference.



5. I have considered the Preliminary Objection filed by the Objector and his submissions in support of the same and the applicant submissions in support to the same and the sole issue for determination is whether the preliminary objection dated 9/12/2020 is merited.
6. The said Preliminary Objection is based on whether this court has the requisite jurisdiction to hear and entertain the Notice of Motion dated 14/11/2018. As variously determined by the court's, jurisdiction goes to the heart of any matter before court and where the court lacks the requisite jurisdiction whether clothed by it under the Constitution or any other statute, a court must down its tool if it finds it has no jurisdiction.
7. In the instant matter, the objector's is of the view that this court lacks jurisdiction as provided under paragraph 11 (3) of the Advocates Remuneration Order. He contends that the court having made a determination of the issues before it, its only recourse is by way of an Appeal. I have perused the record and I find that having made a determination on the subject matter on 14/11/2018 and I granted a conditional stay of execution and the objector himself failed to comply with the order, this matter being a Taxation reference the avenue open to the applicant is an Appeal against the said decision pursuant to the Provision of Rules 11 (1) (2) and (3) of the Advocates Remuneration Order and in view of the above, this court has become functus Officio and I cannot cloth itself with jurisdiction and the upshot of that is the preliminary objection dated 9/12/2020 is merited and I thus uphold the same and I accordingly dismiss the Notice of Motion dated 13/11/2020.

DATED SIGNED DELIVERED, VIRTUALLY AT MIGORI THIS 2ND DAY OF MARCH 2022.

MOHAMMED.N. KULLOW

JUDGE

In presence of :-

Tom Maurice – Court Assistant

