



REPUBLIC OF KENYA



KENYA LAW
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JJ Chesaro & Company Advocates v Kenya Orient Insurance Company Limited (Miscellaneous Application E055 of 2023) [2025] KEHC 258 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E055 OF 2023
JK NG'ARNG'AR, J
JANUARY 23, 2025**

BETWEEN

JJ CHESARO & COMPANY ADVOCATES APPLICANT

AND

KENYA ORIENT INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The Respondent filed a Notice of Motion application dated 17th May 2024 under Certificate of Urgency pursuant to Order 51 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act, and all other enabling provisions of the law.
2. The Respondent seeks for orders that there be stay of proceedings in Mombasa HCC Misc. Civil Application No. E055 of 2023, *JJ Chesaro & Company Advocates v Kenya Orient Insurance Limited*, pending the outcome of the intended appeal to be lodged at the Court of Appeal, and costs of this application.
3. The application is premised on grounds on its face and the annexed affidavit of Amin Said Amin sworn on 17th May 2024 that the Applicant filed a bill of costs dated 28th February 2023 charging it as Kshs. 655,691.74. That the Deputy Registrar rendered a ruling on 13th July 2023 taxing the said bill of costs at Kshs. 235,357. That the Respondent herein having been dissatisfied with the ruling of the Deputy Registrar filed a reference on 1st September 2023 but the reference application was struck out with no orders as to costs on 14th December 2023.
4. The Respondent averred that having been dissatisfied with ruling of the reference sought leave of the court to appeal at the Court of Appeal vide an application filed on 30th January 2024, and on 17th April 2023, the court granted the said leave and a Notice of Appeal was filed on 23rd April 2023. That the Respondent requested for copies of certified typed proceedings to compile the Record of Appeal. That the Respondent will suffer irreparable loss and damage if the ruling of the Deputy Registrar rendered



on 13th July 2023 is entered as judgment of the court as the advocate in this taxation matter will execute to the detriment of the client in this taxation matter. That the client is willing to offer security for the intended appeal in the form of a bank guarantee.

5. The Applicant filed a Replying Affidavit sworn on 14th November 2024 by Joyce Chesaro that the appeal has no chances of success as it is a mere academic exercise which is on issues of law and not on issues of the advocates/client taxed bill of costs assessed on 13th July 2023. That the Applicant has not brought evidence in support of the allegation that the taxed amount of Kshs. 235,537.00 cannot be received from the said firm. That the court has a duty to prevent abuse of the court process, and that the Respondent has not demonstrated how it will suffer irreparable loss and damage if the ruling of the Deputy Registrar rendered on 13th July 2023 is entered as judgment.
6. The Applicant further deposed that if the court should allow the Respondent's prayer, it should order the entire sum of Kshs. 235,357 to be deposited in an interest earning account in a reputable commercial bank in joint names of the Applicant and Respondent's Advocates' firms. That the Respondent has not met requirements for grant of the orders sought and that the application ought to fail as it lacks merit.
7. The application was canvassed by way of written submissions. The Respondent filed submissions dated 22nd October 2024 while the Applicant filed submissions dated 16th December 2024.
8. I have considered the Notice of Motion application dated 17th May 2024, Replying Affidavit sworn on 14th November 2024 and submissions by the parties. The issue for determination is whether the application is merited for grant of the orders sought.
9. The Respondent filed an application seeking that there be stay of proceedings in Mombasa HCCC Misc. Civil Application No. E055 of 2023, *JJ Chesaro & Company Advocates v Kenya Orient Insurance Limited*, pending the outcome of the intended appeal to be lodged at the Court of Appeal.
10. Granting an order of stay of proceedings is discretionary where the court has to consider that the appeal should not be rendered nugatory in the interest of justice. This requires the court to look at whether the appeal is arguable.
11. This court notes that the Deputy Registrar rendered a ruling on 13th July 2023 and the Respondent being dissatisfied with the ruling filed a reference on 1st September 2023 which was struck out on 14th December 2023.
12. This court having delivered the ruling dismissing the reference therefore became functus officio. The court observed in Election Petitions Nos. 3, 4 & 5 *Raila Odinga & others v IEBC & others* (2013) eKLR that: -

“The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”
13. This court cannot therefore consider the application for stay of proceedings and whether the conditions therein have been met as it downed its tools. The said application therefore has to be pursued at the Court of Appeal.



14. In consideration of the above, the Notice of Motion application dated 17th May 2024 lacks merit and is dismissed. The Respondent to bear costs.

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 23RD DAY OF JANUARY, 2025.

J.K. NG'ARNG'AR, HSC

JUDGE

In the presence of: -

.....Advocate for the Applicant

.....Advocate for the Respondent

Court Assistant – Shitemi

