



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC. APPL. NO. 113 OF 2017**

**MWANIKI GACHOKA & CO. ADVOCATES .....APPLICANT/RESPONDENT**

**VERSUS**

**ARISTIDE BRILLIANT NKOUMONDO .....RESPONDENT/APPLICANT**

**RULING**

1. The application dated 30/11/2020 seeks orders that **there be a stay of the proceedings and enforcement or execution of the Ruling of the Taxing Master dated and delivered on 24<sup>th</sup> September 2020 and the resulting certificate of costs pending the hearing and determination of the reference to this Honourable Court dated 30<sup>th</sup> November 2020 or until further orders of this Honourable Court.**

2. The application is premised on the grounds set out in the application and the supporting affidavit sworn by the Applicant. It is stated that the Advocate/Client Bill of Costs was taxed on 16/3/2017 at the sum of Kshs. 23,046,039/=. That the Applicant is dissatisfied with the said taxation and sought the reasons for the ruling. That the Applicant subsequently filed the Reference herein dated 30/11/2020 which raises serious issues but stands to be rendered nugatory if the orders sought herein are not granted.

3. The application is opposed. It is deposed in the replying affidavit that the application is aimed at causing delay in the enforcement of the costs. That the Advocate/Client Bill of Costs dated 16/3/2017 was taxed at Kshs. 23,046,039 and the ruling containing the reasons for the taxation made available immediately upon delivery. That the said taxation remained unchallenged and the Respondent demanded for payment and thereafter filed the application dated 10/11/2020 seeking entry of Judgment for the taxed amount. It is contended that the filing of the application for entry of Judgment is what prompted the Applicant to file the instant application. It is further contended that there was no threat of execution as the Judgment and decree are yet to be obtained.

4. In a further affidavit sworn by the Applicant, it is averred that the ruling of the Taxing Officer was delivered on 24/9/2020 and on 5/10/2020 the Applicant applied for a copy of the ruling. That the Applicant was informed by the Registry that the court file could not be traced and it was not until the 20/11/2020 that they were supplied with a copy of the ruling. That the Reference was thereafter filed within 14 days as provided under the Advocates Remuneration Order. It is further stated that the said Reference stands to be rendered nugatory if the orders sought are not granted.

5. I have considered the application, the response to the same and the rival submissions.

6. The Applicant has exhibited a letter dated 5/10/2020 requesting for the reasons for the ruling. The averment that the ruling was supplied to the Applicant on 30/11/2020 remains uncontroverted. The instant application was filed on 1/12/2020. The delay is not unreasonable and has been explained. Whether the Reference is competently before court is an arguable matter.

7. There is on record an application for entry of Judgment for the taxed amount. The Applicant has also annexed a demand letter from the Respondent for the taxed amount. Further proceedings herein before the hearing of the Reference may render the Reference nugatory. The instant application is therefore not prematurely before the court as argued by the Respondent.

8. The Applicant submitted that the Respondent is holding the Applicant's title deed as a lien over the fees. This position was not disputed. The Respondent therefore has security for the due performance of the decree.

9. In the upshot, this court is satisfied that the Applicant has met the threshold for the grant of the orders sought. The application is allowed with costs in cause.

Dated, signed and delivered at Nairobi this 8<sup>th</sup> day of July, 2021

**B.THURANIRA JADEN**

**JUDGE**