



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**MISC. CAUSE NO. 108 OF 2012**

**IN THE MATTER OF THE ADVOCATES ACT**

**AND**

**IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT**

**BETWEEN**

**PARIN SHARRIF.....1<sup>ST</sup> APPLICANT**

**NAZLIN NIZAR JETHA.....2<sup>ND</sup> APPLICANT**

**YASMIN JANMOHAMMED.....3<sup>RD</sup> APPLICANT**

**ANAR HANALI.....4<sup>TH</sup> APPLICANT**

**-VERSUS-**

**CECIL MILLER T/A MILLER & CO. ADVOCATES.....RESPONDENT**

**RULING**

1. On 7<sup>th</sup> May 2020 this court allowed the applicants/clients to deposit into court Kshs.58,553,150/= as a condition to having their application dated 17<sup>th</sup> May 2015 seeking extension of time to file a reference to the taxed costs by the respondent/advocate to be heard and determined. It was on that basis that the judgment entered for the respondent/advocate against the applicants/clients was set aside. The amount was deposited. I have dismissed with costs the application to enlarge time to file reference. I ordered the deposited amount to go to the respondent/advocate to settle the decretal amount contained in the certificate of costs.

2. Mr. Mwangi for the applicants/clients then pointed out to me that there being no judgment of the costs, the one being in place having been set aside, there would be no basis to order the amount to go to the respondent/advocate. This is because the respondent/advocate has no decree that he can execute. Mr. Ouma for Mr. Murgor for the respondent/advocate indeed agreed that the judgment was set aside. He however insisted on the release of the money because the certificates of taxation remained unpaid.

3. It is common ground that the certificates have not been paid, and there is no reference and therefore no challenge to the taxation. Mr. Mwangi sought leave to appeal my ruling and a stay of the orders for the release of the money to the respondent/advocate.

4. In view of the fact that the judgment and decree on costs were set aside, I review my order to have the respondent/advocate collect the money deposited into court.

5. On the issue of leave to appeal, I grant it. Every party has the right to challenge on appeal any order that has aggrieved him.

6. On the issue of stay of the dismissal of the application to enlarge time to file reference, I ask the applicants/client to make a formal

application and serve within 3 days. Upon service the respondent/advocate shall have 3 days to respond. The parties shall then exchange written submissions on the same. The matter shall be mentioned on 15<sup>th</sup> July 2021 to take a ruling date. In the meantime, the money shall remain deposited into court.

**DATED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF JULY, 2021**

**A.O. MUCHELULE**

**JUDGE**