



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL APPL. NO. 130 OF 2017

JAMES AGGREY MWAMU t/a MWAMU & CO. ADVOCATES.....APPLICANT

-VERSUS-

ALFRED OKEYO.....RESPONDENT

RULING

The application dated 7th September 2018 has sought the following substantive orders;

- a. Stay of the Orders made by the Deputy Registrar on 10th August 2018;
- b. Extension of time to file a reference;
- c. Setting aside the Ruling dated 10th August 2018, through which the Applicant's Bill of Costs was struck out;
- d. This court should either proceed to tax the Bill of Costs or, in the alternative, refer it to another Deputy Registrar, for taxation.

1. I have given due consideration to the submissions made by the parties herein. I commend the parties for their industry in putting together detailed and well-researched arguments, which were supported by legal authorities.

2. However, my ruling will be brief, for reasons which I will set out herein.

3. First, the Respondent does not appear to have any objection to the quest by the Applicant, for leave to file the reference from the ruling on taxation. I say so because the Respondent has delved into the substance of the application.

4. In my considered view, the delivery of the ruling, without prior notice to the Applicant, led to the failure by the Applicant to challenge the ruling timeously.

5. Therefore, the Respondent was right to have refrained from opposing the request for an extension of time to lodge a reference.

6. In my considered view, the application for stay of the orders made on 10th August 2018 was misguided. I so hold because the learned Taxing Officer struck out the Applicant's Bill of Costs. The said decision brought to an abrupt end, the Applicant's efforts to have his Advocate/Client Bill of Costs taxed.

7. After the Bill of Costs was struck out, there was nothing left to be done.

8. Accordingly, the request for stay of the orders made on 10th August 2018 is rejected.

9. Meanwhile, as regards the plea that the orders made on 10th August 2018 be set aside, I find that the only way that this Court could make a determination on a ruling that had been made by the taxing officer, is through the determination of a reference from such ruling.

10. If the Court were to allow the reference from the decision made by the taxing officer, the Court would then determine whether to tax the Bill of Costs or if the taxation should be conducted by another taxing officer.

11. Although both parties appear to have made their respective submissions on the substantive issues, I decline to delve into the said submissions at this stage, because there is yet no reference before the Court.

12. The submissions on record appear to go beyond the scope of an application for extension of time to file a reference.

13. This Court is alive to the importance of ensuring that it does not pre-empt the reference. However, I nonetheless deem it prudent to point out that a reference constitutes a challenge to the decision rendered by the taxing officer, on the grounds that was made in error. The said error ought to be discernible from the decision when the decision is re-evaluated on the basis of the material which was before the taxing officer at the time when the impugned decision was being made.

14. In the final analysis, I do hereby extend the time for the filing of a reference from the decision made by the taxing officer on 10th August 2018. The said reference shall be filed and served within the next 14 days from the date of this ruling.

15. The costs of the application dated 7th September 2018 shall be borne by the respective parties. I so order because the basic reason for extending time for the filing of the reference was that the taxing officer had not issued notices to the Applicant, about the date when her ruling would be delivered. The failure to issue notice cannot be blamed on the Respondent to the application.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22ND DAY OF SEPTEMBER 2021

FRED A. OCHIENG

JUDGE