



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO.124 OF 2020**

**FRANCIS OMONDI P/A**

**OMONDI AND CO. ADVOCATES.....APPLICANT/RESPONDENT**

**VERSUS**

**CAROLINE NABWWIRE OMUNA AND**

**JULIET NAKHENYA WAMALWA**

**(Sued as administrator of the estate of**

**SAMUEL WABOMBA WAMALWA.....RESPONDENTS/APPLICANTS**

**R U L I N G**

[1] The application vide a notice of motion dated 14<sup>th</sup> April 2021, is brought under the provisions of the Civil Procedure Act and Rules seeking orders for temporary stay of further proceedings in this matter pending the determination of CMCC No.118 of 2017 and for lifting of warrants of arrest issued against the applicants by this court.

The later prayer is however, misconceived as the record does not show that there has been an attempt by the respondent to execute for costs by way of arrest and committal to civil jail or in any other manner whatsoever. In any event, there is no warrant of arrest issued against the applicants by this court and even if there was, any stay of proceeding would automatically result in the lifting or stay of any consequential orders.

Be that as it may, this application is based on the grounds set out in the notice of motion and supported by the applicant's averments in their supporting affidavit filed herein on 15<sup>th</sup> April 2021. The respondent opposed the application on the basis of the averments contained in the replying affidavit filed herein on 9<sup>th</sup> June 2021.

[2] Both parties filed their written submissions or arguments in which they respectively stated their position with regard to the application and from which the main issue for determination arises i.e whether the application is competent before this court and if so or not so, whether this court has jurisdiction to deal with it.

In that regard, it is apparent to this court that the application results from taxation proceedings conducted by the deputy registrar of this court at the instance of the respondent. Thus, the respondent regularly presented a bill of costs for taxation before the taxing officer (**deputy registrar**) who in turn gave necessary directions prior to taxing the bill and ended doing exactly that on the 21<sup>st</sup> October 2020, in the absence of the applicant who were the respondents.

The bill was thus taxed as drawn in the sum of ksh.237,659/= for which the applicant was at liberty to execute against the respondents.

[3] Ideally, a party aggrieved by the ruling of the deputy registrar on taxation of a bill would seek a review by way of a reference made to the judge by dint of s.11 of the **Advocates, Remuneration Order** which provides for objection to decisions of taxation to the extent that should any party object to the decision of the taxing officer, he could within fourteen (14) days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. The taxing officer shall thereafter record and forward to the aggrieved party the reasons for his decision on those items. The objector may then within fourteen (14) days from the receipt of the reasons apply to a judge by chamber summons which shall be served on all the parties concerned setting out the grounds of his objection. A party aggrieved by the decision of the judge on any objection may with the leave of the judge but not otherwise appeal to the Court of Appeal.

[4] It is herein clear that the present application does not strictly arise from a reference to a judge as contemplated by the aforementioned provision of the Advocates Remuneration Order. There was no notice of objection to taxation issued to the deputy registrar by the applicant

neither was there any reasons given by the deputy registrar for her decision on the items objected to. Instead, the applicant in the taxation proceedings who is herein the respondent “jumped the gun” and misled the deputy registrar into taxing his bill of costs in the absence of the respondents who are the applicants herein.

There was indeed no proper conduct of the taxation proceedings from which the applicants herein could raise an objection and file a reference to the judge upon receipt of the deputy registrar’s reasons for her decision on taxation. In the circumstances, the applicants were not given an opportunity to be heard prior to the respondent’s bill of costs being taxed by the deputy registrar.

[5] It would therefore follow that the present application inasmuch as it is anchored on the provisions of the Civil Procedure Act and Rules rather than the Advocates Remuneration Order is proper and competent before this court which would invariably have the necessary jurisdiction to deal with it.

In that regard, this court is of the view that the applicants have demonstrated sufficient cause for exercise of its discretion in their favour if only to safeguard the integrity of the taxation proceedings that may follow this ruling and prevent further abuse of the court process in the entire matter as happened when the impugned bill of costs was taxed not only prematurely but also in the absence of the applicant whereas the matter was before the deputy registrar on the material date for purposes of mention to confirm compliance with the orders issued by the deputy registrar on 7<sup>th</sup> October 2020 and not for the taxation of the respondent’s bill of costs. In fact, it was the respondent who misled the deputy registrar that the matter was coming up on that date i.e 21<sup>st</sup> October 2020 for taxation of their bill of costs knowing too well that the matter was slated only for mention possibly for direction on the hearing date respecting the Bill of costs.

[6] In sum, the present application is allowed in terms of prayer (b) to the extent that there shall be stay of further proceedings in this matter respecting execution of the certificate of taxation issued by the deputy registrar on 21<sup>st</sup> October 2020 and all consequential orders pending proper taxation of the impugned bill of costs by the deputy registrar on a date be fixed by the deputy registrar. In that regard, the order made on 21<sup>st</sup> October 2020 by the deputy registrar taxing the impugned bill of costs as drawn and the resultant certificate of taxation are hereby set aside.

In conclusion this court must express its disappointment with the manner in which counsel for both applicant and respondent chose to direct their respective arguments to each other personally thereby demonstrating animosity and anger towards each other. Instead of ventilating the facts and law favourable to their respective cases they became emotional and cast aspersions on their respective professional competence and ability. Such scenario was misplaced and completely uncalled for. It almost tempted this court to opine that the two could be in the hounourable profession of law by default. Otherwise, the present application is allowed as indicated hereinabove. Matter shall revert back to the deputy registrar to deal with it in the manner provided by law.

The respondent shall bear the applicants costs of the application.

Ordered accordingly.

**J.R. KARANJAH**

**J U D G E**

**DELIVERED & SIGNED THIS 3<sup>RD</sup> DAY OF NOVEMBER 2021**