



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC APPLICATION NO. 270 OF 2016

L.R. KIPSANG & CO. ADVOCATES.....APPLICANT/RESPONDENT

VERSUS

CHEBARA FARMERS CO. LTD.....RESPONDENT

AND

IN THE MATTER OF

THE ADVOCATES (REMUNERATION- AMENDMENT) ORDER 2010

AND

IN THE MATTER OF

ADVOCATE/CLIENT COSTS RELATING TO HCC NO 119 OF 2001

BETWEEN

CHEBARA FARMERS CO. LTD.....PLAINTIFF

VERSUS

KIROBON FARMERS CO. LTD..... DEFENDANT/RESPONDENT

AND

HOSEA B. CHEMWENO INTERESTED PARTY

RULING

1. By the Chamber Summons dated **17th February, 2020** and filed in court on 17th February, 2020 brought under **section 11(4) of the Advocates Remuneration Order** the applicant/respondent seeks the following orders:

a) THAT the application herein be certified and its service be dispensed with in the 1st instance.

b) THAT this honourable court be pleased to stay execution of decree and certificate of costs taxed ex-parte on the 4th July 2018 pending hearing and determination of this application.

c) THAT this honourable court be pleased to grant leave to the applicant to appeal against the ruling on 6th February, 2020 to the Court of Appeal.

d) THAT costs of the application be provided for.

2. The application is supported by the sworn affidavit of **DAVID KIMUTAI ARAP METET**, sworn on 17th February, 2020.

3. When the matter came up for directions the court ordered the same to be disposed of by way of written submissions.
4. The applicant literally admitted that the it had already complied with the orders this court granted pending appeal including the depositing of the security of a sum of kshs.100000. The only issue was on an order no 4 which had indicated that the application was to be served for interpartes hearing on 17th march 2017.
5. The respondent on the other hand submitted that there was no valid appeal on record almost one and half year later after the leave was granted. There was no draft appeal on record hence the application should be dismissed.

Determination

4. Upon perusal of the application and the court's records, I note that this court had already granted the orders sought in the application vide an order dated 20th February, 2020 as follows: -

- 1. THAT the application herein be and is hereby certified and its service be dispensed with in the 1st instance.***
- 2. THAT prayer 1 and 2 are granted on condition that a sum of Kshs. 100,000/= earlier offered to the advocates via cheque number (DKMAV) be paid to the respondent/advocates within SEVEN (7) DAYS.***
- 3. THAT this honourable court be and is hereby pleased to grant leave to the applicant to appeal against the ruling on 6th February, 2020 to the Court of Appeal.***
- 4. THAT this application be served for inter parties hearing on prayer 2 on 17th March, 2020.***

5. In view of the forgoing, it is my view the court cannot address itself on the same application as the same was already determined and has therefore been overtaken by events. There are no other prayers in the application capable of being granted now.

6. I however note that order 4 states that the application be served for parties hearing on prayer 2 on 17th March, 2020. The respondent in its submission has also raised a concern on the same. The court finds that the said order does not interfere with the effect of order no. 2 which was given under a condition which was already met by the plaintiff.

7. In the premises the court cannot go beyond the stated parameters of the Chamber Summons application dated 17th September, 2020 by issuing further orders or reviewing the same. In other words there is no merit in the application and it is hereby dismissed with costs.

Dated signed and delivered via video link at Nakuru this 14th day of December 2021.

H K CHEMITEI

JUDGE