



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISCELLANEOUS APPLICATION NO. E494 OF 2019
AGN KAMAU ADVOCATES.....APPLICANT
-VERSUS-
CHABRIN AGENCIES LIMITED.....RESPONDENT
RULING

1. Through the application dated 9th June 2020, the applicant herein **AGN Kamau Advocates** seeks orders for enlargement of time within which to file a reference against the decision of the Taxing Officer delivered on 30th April 2010.
2. The application is supported by the affidavit of **Allan George Njogu** and premised on the main grounds that:
 1. The applicant herein filed an Advocate- Bill of Costs dated 25th October 2019 against the respondent for a legal fees of a sum of Kshs 156,484,716.30/- for services rendered for and on behalf of the respondent in the High Court Commercial and Admiralty Case No. 119 of 2016: **Gitere Investments Limited –vs Kenneth Kimari Gitere & 3 Others**.
 2. Upon receipt of the Bill of Costs the respondents filed Notice of Preliminary Objection dated 7th November 2019 objecting to the Applicant's Bill of Cost for reasons that there was no advocate- client relationship between the applicant and the respondent, the bill of costs to be struck out and or dismissed with costs, the bill is exaggerated not factual and the respondent objected to all items therein, and that the bill is premature hence defective.
 3. Subsequently the taxing officer directed that the Preliminary Objection to be canvassed by way of written submissions with the applicant and the respondent taking 14 days respectively to file and exchange their written submissions.
 4. Upon confirming that parties have filed their respective submissions the taxing officer scheduled the matter for ruling on 24th March 2020 at 2.30 p.m.
 5. Consequently, the Covid- 19 pandemic disrupted the normal court operations leading to suspension thereof by the Honourable the Chief Justice on the 16th of March 2020 as result matters slated thereafter were rescheduled to other dates.
 6. The said ruling was delivered in the absence of both parties on 30th April 2020 without the parties being issued with due and sufficient notice of its delivery through their contacts as provided in the court file.
 7. The applicant's advocate was unable to attend the matter for delivery of the said ruling on 30th April 2020 because it was not aware that the same had been scheduled for delivery as the same was not communicated to the parties.
 8. The applicant only came to learn that the ruling had been delivered after calling the court's registry to its status on 28th May 2020 when it was informed that the ruling had already been delivered and was provided with the copy of the same.
 9. In his ruling the taxing officer upheld the respondent's Preliminary Objection which raised the issue of whether there the respondent had instructed the applicant to act for and on its behalf in High Court Commercial and Tax Case No. 119 of 2016: **Gitere Kahura Investment Limited –vs- Kenneth Kimari Gitere & 5 Others**.

10. By doing so the taxing officer acted out of his jurisdiction as it is trite law that issues of retainer in advocate-client's relationship can only be decided upon by judge and not a taxing officer.

11. The taxing officer ought to have referred the matter herein to a judge to make a determination on whether there indeed existed a client-advocate relationship between the applicant the respondent herein.

12. It was erroneous for the taxing officer to determine a factual issue on whether there were instructions by the respondent to the applicant to act for and on its behalf at a preliminary stage which issue requires documentary and oral evidence from both parties before determination as submissions cannot therefore be taken as evidence at all therefore condemning the applicant unheard.

3. The application was not opposed by the respondent. When the matter came up for hearing on 9th July 2020, **Miss Mbirwe**, learned counsel for the applicant urged the court to grant the orders sought in the application as the same was not opposed by the respondent who did not attend court despite proper service.

4. I have considered the instant application together with the supporting affidavit and I am satisfied that the reasons advanced for seeking extension of time within which to file the reference are plausible. I have also perused the affidavit of service dated 3rd July 2020 and I note that the respondent was duly served with the application and the hearing notice dated 16th June 2020.

5. Consequently, I allow the application dated 9th June 2020 as prayed with no orders as to costs.

Dated, signed and delivered via Skype at Nairobi this 16th day of July 2020 in view of the declaration of measures restricting court operations due to Coved -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

Miss Mbirwe for the applicant

No appearance for the respondent

Court Assistant: Silvia