



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISCELLANEOUS APPLICATION NO. 13 OF 2018

RODGERS MUGUMYA.....ADVOCATE/RESPONDENT

V E R S U S

STEGRO SACCO LIMITED.....CLIENT/APPLICANT

R U L I N G

1. The Application coming for consideration in this ruling is dated 6/10/2020 seeking the following Orders:-

(i) THAT the Application be certified as urgent and heard ex-parte in the first instance.

(ii) THAT the Court be pleased to set aside the Decree dated 26th September, together with the warrants of attachment dated 29th September, 2020 pending inter-partes hearing.

(iii) THAT the Court be pleased to stay the proceedings in the matter and execution thereof pending the hearing and final determination of the instant application.

(iv) THAT the Court be pleased to set aside the Decree dated 26th September, 2020 together with the warrants of attachment dated 29th September, 2020 pending the hearing and final determination of the application.

(v) THAT the Honourable Court do determine whether the applicant had a retainer agreement for provision of Legal services with **STEGRO SACCO LIMITED**.

(vi) THAT the Honourable Court enlarges the time within which to file a reference against the decision of the taxing officer delivered on 28th September, 2018.

(vii) THAT the Respondent bears the Auctioneers costs.

(viii) THAT the costs be provided for.

2. The Application is supported by the Affidavit of Brigide Chepkoech dated 6/10/2020 in which she deposed that the Respondent was an Employee of the County Government at the time he alleged to act for the Applicant and further that the notice of appointment of Advocates filed by the Respondent is a forgery.

3. Further that the notice of appointment of Advocates is defective as it is indicated that it was filed in Kericho Law Courts on 11/7/ but does not indicate the year.

4. The Respondent filed a Replying Affidavit dated 14/10/2020 opposing the Application dated 6/10/2020 in which he deposed that the ruling dated 18/9/2020 dealt with all the issues raised in the Application dated 6/10/2020 and therefore the said Application is res Judicata.

5. Further, that the Applicant participated in the taxation proceedings and that the only issue raised during the taxation was that the Respondent did not have a Kenya Revenue Authority Tax Pin which the respondent produced and therefore the current Application is only intended to delay the Respondent from enjoying the fruits of his Judgment.

6. The Respondent further stated in the Replying Affidavit that no reasons have given for the delay in filing a reference against the ruling by the taxing master which was delivered on 26/9/2018 and the Application dated 13/12/2019 was dismissed.

7. The parties were instructed to file written submissions in the Application dated 6/10/2020 which I have duly considered. The Applicant submitted that the taxation was an error without evidence that the Respondent was instructed by the Applicant and further that the Respondent did not furnish the Court with an instruction letter to prove the existence of a Client-Advocate relationship.

8. The Applicant further submitted that the Application dated 13/12/2019 was dismissed because the Applicant did not put in submissions due to internet connectivity problems.

9. The Applicant further submitted that the Respondent was an employee of the County Government and he was not entitled to the costs awarded and further that due closure of offices due to Covid 19 Pandemic, the Applicant was not able to file a Reply to the Respondent's Application.

10. The Respondent submitted that the issues for determination in the Application dated 6/10/2020 are as follows:-

(i) Whether the issues raised in the application are res Judicata.

(ii) Whether the Application is merited.

(iii) Who should pay the Auctioneer's fees?

(iv) Who should pay the costs of the Application?

11. The Respondent submitted that the issues raised in the Application dated 6/10/2020 were dealt with in the ruling dated 18/9/2020 and therefore the said Application is res Judicata.

12. The Respondent further submitted that the Application is not merited as it is brought under the wrong provisions. Further that the Applicant ought to have filed a reference but no reference has been filed to date.

13. The Respondent further submitted that the Applicant should pay the Auctioneer's fee.

14. The Respondent also submitted that the Applicant should be ordered to pay costs of the application and further that he has incurred Expenses and it is only fair and just that he should be reimbursed.

15. The issues for determination in the Application dated 6/10/2020 are as follows:-

(i) Whether the decree dated 26/9/2020 should be set aside and the Application dated 13/12/2019 heard inter partes.

(ii) Whether the court should enlarge time for filing a reference against the taxing master's taxation ruling dated 28/9/2018.

(iii) Who pays the Auctioneer's costs and the costs of this Application?

16. Section 11 of the Advocates Remuneration Order provides that a party aggrieved by the decision of the Taxing Officer in respect to a Bill of costs under the Advocates Remuneration Order has a right to challenge the decision by way of an objection to the High Court within 14 days. The said Section states as follows;

“1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen 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.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired”.

17. The Rule sets a time limit of 14 days from receipt of reasons from the Taxing Officer for the filing of an objection (a reference by way of a Chamber summons to a Judge). Where a party is late, then sub-paragraph 4 gives the High Court discretion to enlarge time.

18. In the current case the issues the Applicant is raising in the Application dated 6/10/2020 were considered by the Taxing master in the ruling dated 26 of September 2018 and the Taxing master found that the Respondent was entitled to the retainer.

19. The Applicant did not file any reference against the said ruling and the prayer seeking leave to file reference out of time is belated as the same is being brought more than two years since the said ruling was delivered.

20. I find that the Application dated 6/10/2020 lacks in merit and the same is dismissed with costs to the Respondent.

Delivered, signed and dated at Kericho this 6th day of November, 2020.

A. N. ONGERI

JUDGE