



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

JUDICIAL REVIEW NO. 8 OF 2019

REPUBLIC.....APPLICANT

-VERSUS-

THE ADVOCATES DISCIPLINARY

TRIBUNAL.....RESPONDENT

AND

PERPETUAL WANGECHI WAITERE.....INTERESTED PARTY

EX PARTE

AGNES WAITWIKI ZAMBETAKIS

RULING

1. The Exparte Applicant's application dated 27th March 2019 was allowed in terms of prayers 2 and 3 on the 23rd March 2019.

What is left is for determination on the matter of stay of execution of the Tribunal's (Respondent) judgment delivered on the 18th March 2019 pending hearing and determination of the Judicial Review application.

2. I have considered the judgment that the applicant seeks to quash and prohibit the Advocates Disciplinary Tribunal from taxing or assessing the interested party's bill of costs, without complying fully with court orders dated the 10th October 2017.

3. The orders of 10th October 2017 were issued in **Misc. Civil Appl. No.2 of 2017**, being matters that arose from the **Nakuru High Court Succession Cause No. 2 of 2000** in the matter of the Estate of the Late Rahab Wanjiru Evans (deceased).

4. By the said orders, the interested party – then the Respondent, was ordered to deposit into court:

- Kshs.6,102,450/= received from Nakuru Succession Cause No. 96/2000 within 60 days of this ruling.
- Kshs.7,395,000/= being proceeds she received from sale of certain properties within 60 days of the ruling pending taxation of the Bills of costs.
- Further, the Interested party was ordered to deposit titles to three properties stated therein pending taxation of her bills of costs,
- and to deliver a cash account of amounts received by her on behalf of the applicant in the succession cause and proceeds of the sale of the two properties stated thereon.

5. The interested party has partially complied with the court orders by depositing the three titles into court as well as Kshs.5,000,000/=.

She proceeded to file six bills of Costs before the Respondent tribunal, in Tribunal Cause No. 26 of 2017, between the Exparte applicant and the interested party. The Bills of costs were scheduled for taxation on the 20th May 2019.

The court has not been informed whether the bills have been taxed or not.

6. In view of the non-compliance with the court **orders of 10th October 2017**, the Exparte applicant has urged that no orders of stay in this Judicial Review application ought to be granted as the applicant has no regard to court orders and the application is an abuse of the court process.

7. The Advocate's Disciplinary Tribunal judgment is dated 18th March 2019. The complainant was Agnes Waitwika Zambetakis, a client to the Advocate, Perpetual Wangechi Waitere who was the "accused", on issues of advocates costs and retention of property titles.

8. The Tribunal determined that the advocate now the interested party rendered professional services to the complainant, the Exparte applicant. By its judgment it extended leave to the advocate to file her bills of costs for taxation before the tribunal which were filed on the 31st July 2018. The applicant now seeks a stay order of taxation of the said bills of costs.

9. It is urged by the interested party that the *exparte* applicant should not be granted the stay order in view of her conduct and by filing the complaint before the Advocates Disciplinary Tribunal when a similar matter was pending hearing and determination in the High Court and seeks review of the same orders that she had sought and obtained.

10. Applying the above to **prayer No.4** in the present application, what would be the effect of a stay order pending hearing and determination of the Judicial Review application?

11. The applicant wishes to quash the tribunal's judgment of 18th March 2019 as well as prohibit it from taxing or assessing the interested parties bill of costs.

In my view the applicant is applying double standards on the same issues, before the tribunal as well as before the High Court. The Tribunal is a quasi-judicial organ with own procedure and powers.

Non-compliance with the orders of 10th October 2017 by the High Court were not in issue at the Tribunal's hearing.

12. I agree with the Tribunal's findings, and the interested parties submissions that an advocate is entitled to claim for professional fees for services rendered, and that it is only through taxation of Bill of costs that the advocates fees can be determined.

13. The matter of non-compliance with court orders of 10th October 2017 is a matter for a different forum, under the civil procedure rules and should to be used to curtail the advocates taxation of their bills of costs to recover professional fees for services rendered.

In any event, taxation of a Bill of costs does not, in itself, result to payment of the costs if one is not satisfied. Remedies abide for challenging the same as well as the staying execution.

14. I therefore find that a denial of the order of stay will not cause any prejudice to the applicant. Let the Applicant take deliberate steps to have the Judicial Review application heard and finalised without undue delay.

15. In the premises, I decline to grant to the Exparte Applicant the orders sought in **Prayer No. 4** of the Chamber Summons dated the 27th March 2019. Costs will abide outcome of the Judicial Review application.

It is so ordered.

Delivered, dated and signed at Nakuru this 18th Day of July 2019.

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J.N. MULWA

JUDGE