



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISC. APPLICATION NO. 356 OF 2015

M/S AMING'A OPIYO & MASESE ADVOCATE....ADVOCATE/RESPONDENT

-VERSUS-

HERBERT OCHOLLA OJWANG

DENICE OTIENO OUNDA

KOMOLA INVESTMENTS LIMITED.....CLIENTS/APPLICANTS

RULING

1) The application before the court is a Notice of Motion dated 26th January, 2018 brought by the Clients applicants and is supported by both the grounds set out in the body thereof and the facts deponed in the affidavit of **Nancy D. Akinyi Ouko** sworn on the same date.

2) In the aforesaid motion the applicants are seeking for the following orders:-

i) Spent

ii) THAT the Honourable Court be pleased to review its ruling of 6th October, 2017.

iii) THAT the Honourable Court be pleased to enlarge time to file an Objection to the ruling on taxation herein.

iv) THAT the costs of this application be provided for.

The Respondent filed Grounds of Opposition to resist the motion.

3) The parties recorded a consent order to have the motion canvassed by way of written submissions. However, the applicants did not file submissions but the Respondent's filed.

4) It is the applicant's averment that the ruling sought to be reviewed was delivered without notice and in the absence of both parties and that a typed copy of the ruling was only made available on 16th January, 2018.

5) In the ruling of 6th October, 2017, the court had ordered the applicants to file an objection to the ruling on taxation within ten (10) days from the date of ruling. The aforesaid order has not been complied with. The applicants aver that they were not aware of the existence of the court order.

6) The Respondent argued that there has been inordinate and inexcusable delay in prosecuting the application and no new material has been advanced to warrant review of the ruling. The Respondent challenged the reasons afforded by the Applicants in their application and affidavit as being unfounded.

7) The Respondent further contended that the application is unacceptable for the reason that it is similar to the previous application of 17th October, 2016 which application the court allowed with conditions. It is also the Respondent's submission that the allegation that the file was missing from the registry is without evidence and that their letter of perusal; though dated 4th December, 2017; was inexplicably filed on 16th January, 2018.

8) It is also argued by the respondent that no draft objection has been annexed to the application despite leave being granted by court to file the same in line with the ruling of 6th October, 2017. The Respondent is convinced that the application is intended to frustrate and hinder the Respondent from applying for judgment and consequently, prays that the application be dismissed with costs.

9) Having considered the grounds set out on the face of the application; the facts deponed in the supporting affidavit; the grounds of opposition by the Respondent and its submissions the main issue which commends itself for consideration is whether or not the applicants application meets the ingredients of an application for review and whether or not to extend time for the applicants to file an objection.

10) This court has noted that the applicants have not afforded any reason for their lateness in filing the application even after having discovered that the ruling had been delivered. The Respondent has averred that the Applicants had not annexed a draft copy of the objection to their application.

11) This court has taken into consideration the material placed before it and whereas it agrees that there has been a delay in filing the application, it appreciates the fact that there was confusion on the date of delivery of ruling and that the parties did not receive notice of the same.

12) In fact, the court record reveals that the ruling of 6th October, 2017 was delivered in the absence of both parties, which goes to show that the Respondent was similarly not aware of the delivery in advance. The Applicants ought to have filed the application at the earliest opportunity . On the issue of the draft objection, it is worthwhile to note that such an objection ought to be made to the taxing officer as per Paragraph 11 of the Advocates (Remuneration) Order and not to this court directly. As such, the Applicants were not expected to avail a copy of the same at this stage.

13) It is this court's finding that the ruling of 6th October, 2017 was judiciously delivered and there is no basis for reviewing the same. Therefore there is no need to dwell further on arguments by the parties on this subject. Consequently prayer is therefore denied.

14) This court vide its ruling on 6.10.2017 ordered the applicants to file an objection to the taxed bill within 10 days of the date of the ruling. It is undisputed that the applicants did not comply, arguing that they were not aware of the existence of the ruling until 16th January, 2018 and the court has confirmed from its record that the ruling was delivered in the absence of both parties. In the interest of justice therefore, the court will allow prayer (iii) of the motion by granting the Applicants leave of a further fourteen (14) days from the date of this ruling to file an objection to the taxed bill, failure to which the order shall lapse.

15) The deputy registrar is directed to immediate inform the parties of the delivery of this ruling since both were absent from court. In the circumstances of this case, I order that each party meets its own costs.

Dated, Signed and Delivered in open court this 16th day of November, 2018.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Applicants

.....for the Respondent