



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

MISC CAUSE CIVIL SUIT NO. 11 OF 2019

IN THE MATTER OF THE ADVOCATES ACT CAP 16

AND

IN THE MATTER OF TAXATION OF THE ADVOCATE CLIENT BILL OF COSTS

MUSYOKA MURAMBI & ASSOCIATES.....ADVOCATE / APPLICANT

VERSUS

KENNETH J. KAMAU NGIGI.....CLIENT/ RESPONDENT

AND

COULSON HARNEY LLP.....INTERESTED PARTY

IN

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

CIVIL SUIT ELC NO. 197 OF 2017

SAMUEL TEELA AKUTE.....PLAINTIFF

VERSUS

KENNETH J KAMAU NGIGI.....1ST DEFENDANT

LI RUXIN.....2ND DEFENDANT

TWYFORD CERAMICS COMPANY LIMITED.....3RD DEFENDANT

JUDGMENT

By a Notice of Motion Application dated the 17th September, 2019, brought pursuant to Section 51 (2) of the Advocates Act; Order 22 Rule 1 and Order 23 Rule 1& 2 of the Civil Procedure Rules as well as Section 1A, 1B & 3A of the Civil Procedure Act, the Applicant seeks for the following Orders:

1. That this Honourable Court be pleased to convert its Certificate of Costs dated and issued on 22nd May, 2019 in the sum of Kenya Shillings Ten Million, Five Hundred and Thirty Four Thousand, Six Hundred and Twenty Eight Shillings (Kshs. 10, 534, 628.00) into a Decree and Judgement of this Honourable Court.
2. That the decretal sum be paid by the Respondent to the Applicant with interest at the rate of 14% per annum from 22nd May 2019

until payment in full.

3. That the decretal sum plus interest and costs be a priority charge over all the monies held by the Interested Party for the benefit of the Respondent over Land Registration Number Kajiado/ Dalalekutuk/ 1320 in the event of Judgment being delivered in favour of the Respondent in **Kajiado ELC No. 197 of 2017 Samuel Teele Akute Vs. Kenneth Kamau Ngigi and Others.**

4. That all the monies held by the Interested Party for the benefit of the Respondent over Land Registration Number Kajiado/ Dalalekutuk/ 1320 be attached to such extent as to satisfy the decretal sum, interest and costs due to the Applicant.

5. That the costs of this Application be borne by the Respondent.

The application is premised on the grounds on the face of it and the supporting affidavit of MUHALIA MUGADIRI who is an associate at the firm of Musyoka Murambi & Associates where he deposes that on 7th February, 2019, they filed their Bill of Costs. He explains that on 29th April, 2019, a ruling was delivered and their Bill of Costs was taxed at Kenya Shillings Ten Million, Five Hundred and Thirty-Four Thousand, Six Hundred and Twenty-Eight Shillings (Kshs. 10, 534, 628.00). Further, a Certificate of Costs was issued on 22nd May, 2019. He confirms that they indeed served the Client/ Respondent with the Certificate of Costs on 17th June, 2019. He claims the Interested Party holds Kenya Shillings Two Hundred and Thirty Five Million Two Hundred and Ninety Five Thousand only (Kshs. 235, 295, 000/=) on account of the purchase price of land registration number Kajiado/ Dalalekutuk/ 1320 the suit property due to the Respondent if he is successful in the Kajiado ELC No. 197 of 2017 Samuel Teele Akute V Kenneth Kamau Ngigi. He contends that the decretal sum plus interest and costs be a priority charge over all the monies held by the Interested Party for the benefit of the Respondent over Land Registration number Kajiado/ Dalalekutuk/ 1320 the suit property in the event of judgment being delivered in favour of the Respondent in Kajiado ELC No. 197 of 2017 Samuel Teele Akute V Kenneth Kamau Ngigi and Others. He avers that the said monies being the purchase price of Land Registration Number Kajiado/ Dalalekutuk/ 132, the suit property, are held by the Interested Party being the firm of Messrs. Coulson Harney LLP.

The Respondent and the Interested Party though duly served failed to file their respective responses. The Applicant thereafter filed its written submissions to canvass the instant application.

Analysis and Determination

Upon consideration of the Notice of Motion Application dated the 17th September, 2019 including the supporting affidavit and submissions, the following are the issues for determination:

- Whether the Certificate of Costs dated and issued on 22nd May, 2019 should be converted into a Decree and Judgement of this Court and if the said decretal sum should be paid by the Respondent to the Applicant with interest at the rate of 14% per annum from 22nd May 2019 until payment in full.
- Whether the Applicant's Advocate can enforce the Judgement including Decree and attach the Client's money held by the Interested Party.

As to whether the Certificate of Costs dated and issued on 22nd May, 2019 should be converted into a Decree and Judgement of this Court and if the said decretal sum should be paid by the Respondent to the Applicant with interest at the rate of 14% per annum from 22nd May 2019 until payment in full.

The Applicant seeks for the Certificate of Costs dated and issued on 22nd May, 2019 in the sum of Kenya Shillings Ten Million, Five Hundred and Thirty Four Thousand, Six Hundred and Twenty Eight Shillings (Kshs. 10, 534, 628.00) be converted into a Decree and Judgement of this Honourable Court. The Applicant further seeks for the decretal sum to be paid by the Respondent to it with interest at the rate of 14% per annum from 22nd May 2019 until payment in full.

Section 51 (2) of the Advocates Act stipulates that: **'The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.'**

Further, Rule 7 of the Advocates Remuneration Order provides that: **"An Advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full"**

In the current scenario, the Respondent and the Interested Party never filed any response to controvert the Applicant's averment. I note as per the proceedings from the Taxing Master, the Respondent neither sought to set aside the Advocates' Bill of Cost nor has the same been altered. Further, the retainership was never contested.

In the case of **Musyoka & Wambua Advocates Vs Rustam Hira Advocate (2006) eKLR** it was held:-

"Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has discretion to enter Judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit....."

Further, in the case of **Otieno Yogo & Company Advocates v Kisumu Water and Sewerage Co. Limited [2018] eKLR**, the Judge allowed the Advocates' application since the same which sought similar orders as in this prayer and was the same scenario.

Based on my analysis above including the legal provisions I have cited and in associating myself with the two decisions, I proceed to convert the Certificate of Costs dated and issued on 22nd May, 2019 into a Decree and Judgement of this Court and direct that the said decretal sum should be paid by the Respondent to the Applicant with interest at the rate of 14% per annum from 22nd May 2019 until payment in full.

As to whether the Applicant's Advocate can enforce the Judgement including Decree and attach the Client's money held by the Interested Party. The Applicant seeks to have the Interested Party garnished to enable it become entitled to the monies it holds by virtue of the firm being a Garnishee in this matter. The Applicant submitted that the Interested Party holds a sum that is potentially due to the Respondent, if he succeeds in Kajiado ELC No. 197 of 2017 Samuel Teele Akute V Kenneth Kamau Ngigi. They submitted that for all intents and purposes the Interested Party is a Garnishee. The **Black's Law Dictionary** defines Garnishee as follows: ' **One garnished; a person against whom process of garnishment is issued; one who has money or property in his possession belonging to the Defendant, or who owes the Defendant a debt, which money, property, or debt is attached in his hands, with notice to him not to deliver or pay it over until the result of the suit is ascertained.**'

Order 23 Rule 1 of the Civil Procedure Rules provide that: ' **A court may, upon the *ex parte* application of a decree-holder, and either before or after an oral examination of the judgment-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (hereinafter called the "garnishee") to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree- holder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.**'

In the current case, the Respondent owes the Applicant Kshs. 10, 534, 628 in taxed costs. The Applicant contends that in satisfaction of the Certificate of costs, the amounts held by the Interested Party as a Garnishee in respect to the transaction over the suit land in Kajiado ELC No. 197 of 2017 Samuel Teele Akute V Kenneth Kamau Ngigi. should be used to offset the said costs. In the case of **Orion East Africa V Mugama Farmers Cooperative Union Limited & Another (2015) eKLR**, the Court held that: ' **The best course to take is for the Court to order the attachment of the shares and dividends due on those shares on a written order prohibiting the Defendant in whose name the share are standing from transferring the same or receiving any dividend thereon. The Garnishee is also bound by this prohibitory order and it shall not transfer or pay any dividend on the shares to the Defendant or any other person. I, therefore, grant prohibitory order in terms of prayer (b)'**.

Further, in the case of **Odhiambo Owiti & Company Advocate V CFC Stanbic Bank Limited (2015) eKLR**, the Court of Appeal stated that : ' **Halsbury's Laws of England Fourth Edition paragraphs 526/527/536 and 541 for the propositions that Garnishee proceedings are proceedings where a third party holding funds or property on behalf of a judgment debtor can be called upon to honour the claim of a judgment creditor over those funds or property; (iii) such proceedings may be initiated at any time after obtaining judgment or order;**

It further proceeded to hold that: ' **From the principles of the Civil Procedures Rules and those of Halsbury's Laws of England summarized above, the issuance of the Garnishee order nisi had the effect of securing and binding the funds due to the judgment debtor into the hands of the respondent. By such securing and binding, we understand this to mean that the said funds were thus removed from the control of the judgment debtor into the hands and control of the respondent thus making the respondent fully accountable to whoever would be ultimately adjudged to be a rightfully entitled beneficiary to those funds at the conclusion of the Garnishee proceedings then fixed for *inter partes* arguments on the 13th day of March, 2009.'**

Based on the facts as presented while noting that the Applicant's averments remain uncontroverted and in associating myself with the decisions including legal provisions cited above, I find that the Interested Party can indeed be held as a Garnishee as it holds funds in respect to the transaction over the suit land in the Kajiado ELC No. 197 of 2017 Samuel Teele Akute V Kenneth Kamau Ngigi.

It is against the foregoing that I find the Notice of Motion Application dated the 17th September, 2019 merited and will proceed to make the following final orders:

- i. The Certificate of Costs dated and issued on 22nd May, 2019 in the sum of Kenya Shillings Ten Million, Five Hundred and Thirty Four Thousand, Six Hundred and Twenty Eight Shillings (Kshs. 10, 534, 628.00) be and is hereby converted into a Decree and Judgement of this Honourable Court.
- ii. That the decretal sum be paid by the Respondent to the Applicant with interest at the rate of 14% per annum from 22nd May 2019 until payment in full.
- iii. That the decretal sum plus interest and costs be a priority charge over all the monies held by the Interested Party for the benefit of the Respondent over Land Parcel Number Kajiado/ Dalalekutuk/ 1320 in the event of Judgment being delivered in favour of the Respondent in **Kajiado ELC No. 197 of 2017 Samuel Teele Akute Vs. Kenneth Kamau Ngigi and Others.**
- iv. Costs of this Application is awarded to the Applicant.

Dated signed and delivered via email this 12th Day of May, 2020.

CHRISTINE OCHIENG

JUDGE