



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CIVIL SUIT NO. 151 OF 2008**

**WAMAE & ALLEN ADVOCATES.....APPLICANT/ADVOCATE**

**- VERSUS -**

**EUNICE WANJIRU GATHITHI** the legal representative  
of the estate of the late **FREDRICK GATHITHI KABUE....RESPONDENT/CLIENT**

**RULING**

1. This ruling is in relation to 2 applications.
2. As the parties before me had the relationship of Advocate/Client, and because the matters in issue have arisen from that relationship, I will cite **WAMAE & ALLEN ADVOCATES** as “*the advocates*”, whilst **EUNICE WANJIRU GATHITHI** (*The legal Representative of the Estate of the late Fredrick Gathithi Kabue*) will be cited as “*the client*”.
3. On the one hand, the advocates have sought a Prohibitory Order in respect to the suit property, **L.R. No. 12832/6 (I.R. No. 43410/1)**. The purpose and intent of that order is to secure it, so that the client cannot dispose of it or otherwise deal with it in such a manner as would put the suit property beyond the reach of the advocates.
4. The reason why the advocates wish to have the suit property secured is that they hold a Certificate of Taxation for the sum of Kshs. 20,459,926.32. The said Certificate of Taxation was issued by the learned Taxing Officer, Ms Elizabeth Tanui, on 25<sup>th</sup> August 2016, after the taxation of the Advocate/Client Bill of Costs.
5. Through the same application, the advocates asked the court to grant judgement in their favour, for the sum of Kshs. 20,459,926.32.
6. The purpose of the prohibitory order was to secure the suit property during the time when the rest of the application was still being canvassed.
7. Thereafter, the advocates wish to be given authority to register a charge over an acre of land, to be curved out from the suit property.
8. The advocates hope to recover the taxed costs through the sale of the portion to be curved out from the suit property.

9. Meanwhile, the client wants the court to stay any further proceedings until she will have had an opportunity of filing a reference to challenge the decision of the taxing officer.

10. In order to get the opportunity to challenge the decision made by the taxing officer, the client first asks for an enlargement of time, for the giving of notice to the taxing officer.

11. She had filed a notice, citing the intention to file a reference from taxation, but it had been lodged 2 days late. Therefore, if she is to file a reference, the client needs the court to enlarge the time for the giving of the notice, so that the notice which is already on record should be deemed to have been filed within the time stipulated by law.

12. If the court were to proceed to grant judgement pursuant to the Certificate of Taxation, the court would have confirmed the finality of the Certificate of Taxation. I say so because pursuant to the provisions of Section 51 (2) of the Advocates Act, the court may only give judgement when it is satisfied that the Certificate of Taxation had not been altered or set aside.

13. Of course, even in this case the Certificate of Taxation has not been set aside or altered.

14. But there exists a very live intention of challenging the said Certificate of Taxation.

15. If the court were to grant judgement in favour of the advocates, before the client had been given an opportunity to exercise her right to file a reference, the latter would have been rendered futile.

16. On the other hand, if the suit property was not secured, it is possible that the client could deal with it in such a manner as to put it beyond the reach of the advocates.

17. Therefore, I find that the 2 applications are both merited, and I now order as follows;

**a) The time for the client to lodge an objection and a reference from the decision of the Taxing Officer is extended.**

**b) The client has 7 days from today to file and serve the objection and reference.**

**c) The advocates application dated 7<sup>th</sup> October 2016 is stayed until the client's reference is determined.**

**d) In order to safeguard the "suit property" from alienation, a prohibitory order shall issue forthwith, in relation to one (1) acre, which the client may excise out of L.R. No. 12832/6. The prohibitory order shall initially attach to the whole suit property save for the 3 acres which are to be transferred to Cannon Assurance Limited. But if the client shall thereafter excise 1 acre from the remaining parcel of land, the prohibitory shall attach to that 1 acre, thus leaving the rest of the land available for use or alienation by the client.**

**e) Each party will bear the costs of their respective applications.**

**DATED, SIGNED and DELIVERED at NAIROBI this 8<sup>th</sup> day of March 2017.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of**

A. Gichuhi for the Applicant/Advocate

Miss Wairimu for the Respondent/Client

Collins Odhiambo – Court clerk.