



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISCELLANEOUS APPLICATION NO. 239 OF 2013

WILSON MUTISO KASIMU.....APPLICANT

VERSUS

JOHNBOSCO MBUTHU MAKAU

ERICK NZIVO MUMO

DAVID KALOKI NGANGA.....RESPONDENTS

RULING OF THE COURT

1. The Applicant herein has filed an Application dated 30/11/2015 seeking for the following prayers:-

(1) THAT judgment be and is hereby entered for the Applicant and a decree be issued for the taxed costs Kshs. 414,607/=.

(2) THAT costs be provided for.

The Application is supported by an annexed affidavit of **Philip Nzuko** learned Counsel in conduct of the matter on behalf of the Applicant sworn on even date and further on the following grounds:-

(a) That the Applicant's bill of costs was taxed at Kshs.414,607/= and a Certificate of Taxation issued to that effect.

(b) That it is necessary that the Application be allowed to pave way for execution.

(c) That it is in the interest of justice to grant the orders sought.

2. The Application is opposed by the Respondents. The first Respondent filed a replying Affidavit on his own behalf and on behalf of his co-respondents, sworn on 6/2/2017 and filed on 7/2/2017 which raised the following grounds of opposition namely:-

(1) That the Application is defective, bad in law and should be dismissed in the first instance.

(2) That Application herein once filed should have been heard and determined within six (6) months.

(3) That the Application was served upon Respondents Advocates after an inordinately long period from the date of filing.

(4) That the Bill of Costs has been partially paid and hence Applicant is barred from claiming the entire amount.

(5) That the Application is uncalled for and is intended to embarrass harass and malign the Respondents names in the eyes of the public.

(6) That the Respondent are keen on the balance of the outstanding taxed costs.

(7) That the Application be dismissed with costs.

3. I have considered the Applicants Application as well as the Replying Affidavit of the Respondents. Indeed this is an Advocate Client Bill of Costs in which the Applicant had rendered legal services to the Respondents in an election related matter. The said bill of costs has since been taxed and a certificate of costs dated 31st July, 2013 issued. There is no evidence that the Respondents have appealed against the same. The Respondents seem to suggest that the said costs have partially been paid but they have not provided any evidence to that effect. The first Respondent vide paragraph 7 of the Replying Affidavit seems to suggest some partial payment but did not annex any copy of such. The 1st Respondent further in paragraph 11 of this Replying Affidavit seems anxious to know the outstanding balance so as to settle the same. This runs contrary to his assertion that the Applicants Application is calculated to embarrass and malign him in the eyes of the public. Again the Respondents contention that the Application should have been disposed of within six (6) months is not backed by any evidence as proof of indolence on the part of the Applicant.

4. In any event, the Respondents were at liberty to apply to have the Application dismissed for want of prosecution. They did not do so until they were served for the hearing herein. I am satisfied that the Applicant has shown that he is entitled to the amounts as taxed by the Deputy Registrar. The Respondents Advocates had participated in the taxation exercise and therefore the amounts arrived by the Deputy Registrar are legitimate since a certificate of costs dated 31/07/2015 was duly issued.

5. In the result it is the finding of this court that the Applicant's Application dated 30/11/2015 has merit. The same is allowed as prayed.

Dated, signed and delivered at Machakos this 10th day of April 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Musya for Applicant.....

C/A: Kituva.....