



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. APPLICATION NUMBER 47 OF 2012

LAWRENCE MWANGI T/A

LAWRENCE MWANGI & CO. ADVOCATES.....APPLICANT

VERSUS

DAVID MANYARA NJUKI.....RESPONDENT

RULING

The application dated 30<sup>th</sup> January 2012 and brought by the Respondent David Manyara Njuki sought stay of attachment by the Applicant Advocates following a taxation of an Advocate-Client Bill of costs arising from an **Election Petition No. 1 of 1998**-where the Bill was taxed for Kshs.3,795, 981/50 but which taxation is said to have been objected to by way of a Reference to the Judge.

The Respondent/applicants upon service filed a replying affidavit sworn on the 4<sup>th</sup> February 2013 and stated that there was indeed an attachment and that the Deputy Registrar of the court adopted the certificate of taxation as a judgment of the court and further denied having been paid Kshs.800,000/= or any other money by the applicant. He urged the occur to dismiss the application.

In his submissions, the Respondent stated that the notice of objection was defective as it did not specifically disclose items objected to that the same was not in compliance with the law and procedure, that no demand which is mandatory was issued, and that there was no valid objection and therefore the application is defective.

The court has considered the application and the affidavits sworn by the rival parties.

I have not seen the certificate of costs alleged to have been issued by the taxing master on the 19<sup>th</sup> June 2012 nor the judgment or decree that could have been capable of being executed.

I have also considered the notice of preliminary objection.

Taxation of Advocate-Client Bill of Costs is governed by the provisions of the **Advocate Act**, and specifically **Section 48 and 49 of the Act**, that the general procedure in recovery of advocates costs after taxation of costs and certificate of costs is issued is to seek entry of judgment based on the certificate after which a decree is issued for execution.

-See **Lubullellah & Associates Advocates -v-s Nasser Ahmed (2010) KLR**. A certificate of costs

*per se* is not a decree and cannot be the basis of an attachment/execution. The Deputy Registrar of the court has no jurisdiction, upon being moved by a letter, to enter judgment based on the letter. The advocates after obtaining a certificate of costs ought to have moved the court for judgment and thereafter a decree for execution – in terms of **Sections 48 and 49** of the **Act**.

The court finds that there was no decree capable of execution in this matter and the purported proclamation was therefore illegal and of no consequence. See **Sankale Ole Kantai t/a & Co Advocates -vs- KBS Ltd (2006) KLR**.

In the circumstances the application under consideration was merited.

The court further finds that the Advocates/Applicants had no basis upon which they could order a proclamation which by all means cannot be taken as a demand notice prompting the Respondent to bring the application under consideration to court.

The application is therefore allowed with costs.

**Dated, signed and delivered in open court this 9<sup>th</sup> Day of February 2016**

**JANET MULWA**

**JUDGE**