



REPUBLIC OF KENYA
IN THE HIGH COURT OF KNEYA AT NAROBI
CIVIL APPEAL NUMBER 335 OF 1997

MICHAEL MUNGAI. APPLICANT

VERSUS

NANCY WANJERI. PETITIONER

**HOUSING FINANCE COMPANY OF KENYA LTD....1ST
 DEFENDANT/RESPONDENT/INTRUDER**

**KENYA BUILDING SOCIETY LIMITED..... 2ND
 DEFENDANT/RESPONDENT/INTRUDER**

**TAIFA AUCTIONEERS. 3RD
 DEFENDANT/RESPONDENT/INTRUDER**

**CHRISTOPHER AVISA. 4TH
 DEFENDANT/RESPONDENT/INTRUDER**

**KENYA COMMERCIAL BANK LTD. & DVsINTERESTED
 PARTIES/RESPONDENT/INTRUDER**

**CENTRAL BANK OF KENYA.
 GARNISHEE**

R U L I N G

The application before the court is the Notice of Motion by the Appellant/Decree Holder, dated 26th October, 2012. It carried many prayers but after careful perusal of the same, the court thinks that the only relevant prayer is presently the Number (2) Two in the application. It seeks the setting aside of the orders of the Deputy Registrar of the 27th October, 2012, which dismissed another application dated 26th October, 2012.

In this application before the court the Applicant has tried to seek prayers which were the subject of the said dismissed application of the 26th October, 2012. That is why the court cannot herein deal with the said prayers which can only be properly canvassed under the said dismissed application of 26th October, 2012 in case the same is reinstated.

The grounds(s) upon which this application is based, as much as this court can or do understand them, are as follows: -

The Applicant Michael Mungai, representing himself, appeared before Angawa, J on 27th November, 2012 in this appeal. M/s Rachier & Amollo Advocates, who had filed a Notice of Appointment, did not attend court that day. Mr. Mungai informed the court that he had filed the Application dated 26th November, 2012 fixed for hearing on 12th November, 2012 but the court was not sitting on 12th November, 2012. He said that the application dated 26th October, was an ex parte application although he did not have a Registry's certificate for the application being ex parte.

The court must then have examined the said application of 26th October, 2012 and noted that the application mainly sought for a garnishee order against the Central Bank of Kenya for a sum of Ksh.311,290/- plus interest the same being taxed costs under a certificate of taxation. From the record Angawa, J may not have been satisfied with the issuance of the Certificate of Costs and/or taxation in the file. Accordingly she made the following order: -

“The file be placed before the Principal Deputy Registrar, A. H Ndung’u or any relevant Deputy Registrar to confirm the issue of Certificate of Cost/Taxation.”

The file was indeed on the same morning, placed before the Deputy Registrar, Mr. A. H. Ndung’u at 10.07 a.m. and the Applicant herein, addressed him. He told the Deputy Registrar, the file was before the Judge for the application of 26th October, 2012 in which he was seeking five prayers against the Central Bank as Garnishee. There is no evidence and the record does not indicate that the Deputy Registrar gave the Applicant opportunity to explain further, including the reason why the Judge had referred the file to Deputy Registrar. Probably the Deputy Registrar read the comment of the Judge and understood the reason why the file was referred to him. What is clear from the record however is that the Deputy Registrar without allowing the Applicant a fair opportunity to explain, proceeded to write some comment or Ruling which carried very substantive orders.

From the record of the order of the Judge that morning, the Judge required the Deputy Registrar to confirm whether there existed at all, a Certificate of Costs/taxation, if so, whether it was proper and genuine enough to be acted upon as per the said application of 26th October, 2012. It would accordingly be the court (judge) who would know what to do if the genuineness of the documents were confirmed or not confirmed. In which case the Deputy Registrar would only point out to the Judge that the document is not genuine if at all and leave it at that. This is because the Applicant had sought certain reliefs order the Application of 26th October, 2012 the Judge at the time was seized with the matter, to the exclusion of the Deputy Registrar in particular.

I have carefully perused the record. It shows a kind of ruling made by the Deputy Registrar after he perused the record. The Deputy Registrar noted some orders earlier made by Okwengu, J (as she then was) and by Honourable Muiruri, who was then a Deputy Registrar before Mr. Ndung’u. He noted that the sum of Ksh.311,290/- which later formed the subject of the Certificate of Taxation now the subject of dispute. He concluded that several parties against whom the costs were ordered may not have been parties in the proceeding that raised the costs and that the Applicant may not have been entitled to the orders for the costs against The Central Bank and other three banks shown therein as parties or **“Intruders”**, as the application termed them. The Deputy Registrar also found that on the basis stated above, no garnishee orders should/could lie against any of those shown as **“creditors”**. The Deputy Registrar did not stop there however, but went further and struck-out the said application of 26th October, 2012, ruling that any Certificate of Taxation/Costs could only arise from taxation in the Appeal only against Nancy Wangesi, the Respondent in the Appeal. The Applicant, Michael Mungai, now complains that

- a. **All that was required from the Deputy Registrar was a report whether the Certificate of Taxation/Costs existed in the file and that the same had been validly sought and obtained by the Applicant.**
- b. **That the Deputy Registrar had no power to act beyond examination of the documents and reporting back to the Judge who required the report.**

- c. **That the Deputy Registrar never made a substantive ruling and orders without being asked to do so or without any application seeking the reliefs he made, being before him.**
- d. **That the Deputy Registrar never gave him as a concerned party, a fair opportunity to canvass the issue and show cause that the Certificate of Taxation/Costs in the file, was properly and validly ordered and issued by Mutungi, J, Okwengu, J and Honourable Muiruri, then Deputy Registrar.**
- e. **That the Deputy Registrar, Hon. Ndungu, had no power nor jurisdiction to strike out a substantive application dated 26th October, 2012 then before Judge.**

For the above reasons, the Applicant seeks the setting aside of the orders of Hon. Ndungu, the Deputy Registrar, and reinstatement of the said application so that the same can properly be canvassed before a Judge.

I have carefully considered the above grounds based on the facts herein above stated. I have no doubts in my mind that what Ang'awa, J sought from the Registrar that morning of 27th November, 2012 was a confirmation that the Certificate of Taxation/Costs in the file which the Applicant applied to execute through a Garnishee application, was validly and genuinely issued by the office of the Deputy Registrar. If the Deputy Registrar after going through the record found that the certificate was not genuinely or was not validly issued he should have simply gone ahead and made a report to that end.

I am not sure the Deputy Registrar had authority to openly doubt and then expressly controvert the orders of Mutungi J and Okwengu, J. But if he felt strongly about it, he would include the sentiments in his report to Ang'awa J and seek rectification from her.

I am also in full agreement with the Applicant, Michael Mungai, that the Deputy Registrar did not give the Applicant fair opportunity to put his case before him, even merely to explain why the file had been referred to him. If he gave the Applicant such opportunity however, his record does not support such a position. As the Applicant claimed in his submissions, the Deputy Registrar appears to have acted against the principles of natural justice and against the Constitutional provisions. The court will not support the course taken by Deputy Registrar in this matter.

For the above reasons as based on the facts hereinabove stated, it is proper and lawful to set aside the ruling and orders made by the Deputy Registrar on 27th November, 2012, which I hereby do. The ruling and orders of 27th November, 2012 by the Deputy Registrar are hereby set aside and rectifications are hereby made that the Deputy Registrar do respond properly to the request made by Ang'awa J on 27th November, 2012 as he returns this file to Judge to hear the said application on a date to be fixed by the court. Orders are made accordingly.

Dated and delivered at Nairobi this 4th day of March, 2015.

D A ONYANCHA

JUDGE