



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

MISC. APPL. NO. 35 OF 2010

KILONZO AND COMPANY ADVOCATES ::: APPLICANT/RESPONDENT

VERSUS

VIPUL PREMCHAND HARI :::::::::::::::::::: RESPONDENT/APPLICANT

RULING

1. The application before the court is a **Notice of Motion** dated **12th February 2014**. It seeks as the remaining prayer an order that:-

Pending the hearing and determination of the Court of Appeal, Civil Application Number Nai 11 of 2014 (UR 6/2014) there be a stay of execution of the Certificate of Taxation dated 24th October 2012.

2. The application is premised on the several grounds stated therein among them that the Respondent/Advocate was awarded Advocate/Client costs amounting to Kshs.7,831,247. Being aggrieved by the award the Applicant filed a reference to this court which was dismissed by this court vide a Ruling delivered on 5th December 2013. The Applicant then filed an appeal being Civil Application Number Nai 11 of 2014 (UR 6/2014) which is pending before the Court of Appeal and has been certified urgent by that court. In the meantime, the Applicant alleges that the Respondent has purported to proclaim the Applicant's goods in execution of the said Certificate of Taxation dated 24th October 2012, despite the fact that no Judgement has been entered on the basis of the said taxed costs or a decree issued thereto. This is why a stay of execution is now sought in this matter.
3. The application is supported by affidavit of **MR. VIPUL PREMCHAND HARIA**, dated **12th February 2014** with annextures.
4. The application is opposed through a replying affidavit by **MUTULA KILONZO JUNIOR** dated **20th February 2014**.
5. I have perused and considered the application and opposition to the same. The first thing that comes to my mind is that there is no Judgement or a decree of this court in relation to the Certificate of Taxation dated 24th October 2012. My understanding is that the Certificate of Taxation under Advocate/Client bill of costs must first be adopted as a Judgement of the court and a decree extracted therefrom before it can be executed against the property of the Debtor. There is no evidence to that effect before the court. If there are any execution proceedings as alleged by the Applicant, then that is illegal, null and *void abinitio*.

Secondly, the Applicant's application before the court is substantially similar with the Applicant's

application before the Court of Appeal being Civil Application Number Nai 11 of 2014. There cannot be two similar applications in different courts for obvious legal reasons, including the possibility of conflicting decisions. There is an abuse of process of this court by the Applicant.

6. In the light of the foregoing observations both parties herein are at grave faults. There is no Judgement or a decree in the matter herein. The entire purported execution process is a nullity in law, *void abinitio*. There is therefore nothing to stay in the circumstances. On the other hand, given that there is a similar application in the Court of Appeal, the Applicant must decide which of the two applications shall proceed and which one shall be stayed. Of paramount interest to the Applicant however, is my finding that there is neither a Judgement nor a decree in the matter before the court, and that there is nothing to stay and any purported executions are illegal *void abinitio*. This leaves the Advocate/Respondent the liberty to still secure the Judgement and decree in this matter and to proceed in the regular manner. It also means that at some stage in the future the Applicant herein may still come to this court for the same orders once the process herein lawfully matures.

Pursuant to the foregoing the Advocate/Respondent shall meet any costs occasioned by the purported execution process. But in response to this application, the same is dismissed with each party bearing their own costs.

DATED, READ AND DELIVERED AT NAIROBI THIS 6TH DAY OF JUNE 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Miss Makobu for Applicant/Respondent

No appearance for Respondent/Applicant

Teresia – Court Clerk