

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

CIVIL SUIT NO. 95 OF 2005 (OS)

ALPHONCE SULUBU BAYA & OTHERS.....PLAINTIFFS

VERSUS

KITSAO KINEWA NGOKADEFENDANT

RULING

1. The plaintiff's "suit" commenced through the firm of Kupalia & Co. Advocates was struck out on 22nd May, 2006 by Ouko J., following objections raised by the defendants through their advocates, Mouko & Co. Advocates. Subsequently the defendants filed and taxed a party and party bill of costs. On 30th November, 2007 the bill was taxed at Kshs. 116,380/= and a taxing certificate issued. This was followed by the execution proceedings which have prompted the plaintiffs to approach this court with their Notice of Motion filed on 27th January, 2014.
2. Prayer 1 and 2 of the said Notice of Motion are spent. Prayers 2 and 3 are almost similar. The plaintiffs seek orders to extend the time within which the plaintiffs may file a reference in respect of the taxation. The main grounds relied on are that the applicants were unaware of the decision of the taxing master and that they have now filed an objection to the taxation. The plaintiffs are presently represented by the firm of Richard O. & Co. Advocates.
3. During the oral hearing of the application Mr. Otara for the applicants canvassed the grounds in the Notice of Motion. He asserted that delay in filing the reference cannot be blamed on the plaintiffs. For his part, Mr. Mouko for the respondents opposed the application citing the long delay and failure by the applicants to explain the same truthfully to the court. He also argued that the application is incompetent as the firm of Richard O. is not properly on record.
4. Having considered the material placed before me I have no doubt that the plaintiffs' application must fail. The main reason is that the applicants counsel in the material period, Mr. Kiamba, was present on 31st October, 2007 when the taxation was adjourned to 30th November, 2007. He did not attend the taxation, from the record. And it seems the plaintiffs were only moved to action by the execution proceedings. It is almost seven years since taxation was done. The mere statement that the plaintiffs were kept in darkness by their counsel cannot qualify as a plausible explanation. They were the plaintiffs and were aware the suit had been dismissed with costs. Indeed they admit to have subsequently filed another suit. Clearly, they did not follow up on their advocates. The delay on their part is inordinate. As argued by Mr. Mouko on behalf of the defendants, litigation should come to an end.
5. Even if the delay had been properly explained, the plaintiff application would still have been a non-starter. For the reason that their present advocate came on record, after judgment, without leave of the court or consent of the previous advocate. Mr. Otara's glib response that the question was already determined by the court is not supported by the record of the proceedings herein. All in all it appears that the plaintiffs after commencing what was found to be a non-suit have continued to make one blunder after another. They cannot expect the court to indulge in this slipshod conduct by allowing them to continue infinitely with their incompetent actions. The plaintiff's application has no merit and is accordingly dismissed with costs.

Delivered and signed at Malindi this 14th day of July, 2014 in the presence of Mr. Mouko for the

defendants, Mr. Otara absent.

Court clerk – Samwel

C. W. Meoli

JUDGE