



REPUBLIC OF KENYA

High Court of Kisii

Miscellaneous Civil Application 100 of 2012

IN THE MATTER OF TAXATION OF THE ADVOCATES-CLIENT BILL OF COSTS

BETWEEN

O.M. OTIENO & COMPANY ADVOCATES ..... ADVCOATES/APPLICANT

AND

TITUS O. OUMA ..... 1<sup>ST</sup>

CLIENTS/RESPONDENT

JOSEPHINE A. OGUGO ..... 2<sup>ND</sup> CLIENTS/RESPONDENT

RULING

1. The applicant's ex-parte Notice of Motion dated 26<sup>th</sup> November 2012 is expressed to be brought under **Order 22 Rules 48 and 51** of the **Civil Procedure Rules** and **Sections 1A, 1B, 3A and 63 (e)** of the **Civil Procedure Act, Cap 21 Laws of Kenya** as well as all other enabling provisions of the law. The applicant prays for the following orders:-

*1. That the honourable court be pleased to issue an order of inhibition/prohibition against **P/NO.3994 KASGUNGA/KAMRERI ADJUDICATION SECTION**, recorded in the name of **Titus Oyuma Ouma**, the 1<sup>st</sup> Client/Respondent herein, prohibiting the same from transferring or charging in any way and all persons from taking any benefits from such purported transfer or charge, until the outstanding taxed costs of **Kshs.501,628/=** is settled in full and/or the land herein is sold by way of public auction to settle the debt.*

*2. That, upon granting prayer 1, the Land Registrar Mbita/Suba Land*

**HC (KISII) MISC. CIVIL APPLIC. NO. 100 OF 2012**

**NO. 745**

*Registry and/or the Clerk Mbita Town Council be directed to register and/or effect the inhibition by registering the same against the land title number **P/NO.3994 KASGUNGA/KAMRERI ADJUDICATIONS ECTION**.*

*3. That costs of this application be paid by the Clients/Respondents.*

2. The application is predicated on the grounds set out on the face thereof and in particular that the clients/respondents have failed, neglected and/or ignored the call to settle the taxed costs herein now outstanding in the sum of Kshs.501,628/=; that the clients/respondents are seized of adequate means as they own land and the 1<sup>st</sup> client/respondent not only owns land but is also a councilor, but in spite of all these means, the said 1<sup>st</sup> client/respondent has declined to make any sort of proposal for the settlement of the outstanding amount. The applicant therefore prays for orders to attach the 1<sup>st</sup> client's/respondent's parcel of land known as P/NO.3994 KASKUNGA/KAMRERI ADJUDICATION SECTION and sell the same to recover the outstanding debt.

3. The application is also premised on an affidavit sworn by Ouma Maurice Otieno, the applicant herein dated 26<sup>th</sup> November 2012.

4. **Order 22 rules 48 (1) and 51** of the **Civil Procedure Rules 2010**, provide as follows:-

**“48(1) where the property to be attached is immovable, the attachment**

**shall be made by an order prohibiting the judgment-debtor**

***HC (KISII) MISC. CIVIL APPLIC. NO. 100 OF 2012  
NO. 745***

**from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.**

**(2) a copy of the order shall be affixed on a conspicuous part of the**

**property.”**

**“51(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.**

**(2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.**

**(3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.”**

5. The cited sections of the **Civil Procedure Act, Cap 21** give power to and impose a duty upon this court to implement the overriding objective of the Civil Procedure Act which is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act, as well as power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

6. A perusal of the pleadings herein shows that the costs herein claimed vide the applicant's Bill of Costs dated 13<sup>th</sup> April 2012 were duly taxed

***HC (KISII) MISC. CIVIL APPLIC. NO. 100 OF 2012***

***NO. 745*** and a certificate of taxation to that effect was issued on 9<sup>th</sup> July 2012 as per annexure marked **“OMOI”** to the applicant's supporting affidavit. There is also annexed to the said supporting affidavit a

bundle of correspondence dated 31<sup>st</sup> July 2010 and 19<sup>th</sup> November 2012. In the latter correspondence dated 19<sup>th</sup> November 2012, the Land Adjudication and Settlement Officer, Suba/Mbita District confirmed that the parcel of land known as P/NO.3994 KASGUNGA/KAMRERI ADJUDICATION SECTION is hived off from the larger Kasgunga/

Kamreri Adjudication Section which is already a registered section and the parcel is recorded in the name of Titus Oyuma Ouma as the sole owner. The records of the said adjudication section are said to have been sent tot the Director of Survey for fair printing according to the provisions of the Land Adjudication Act, Cap 284 Laws of Kenya. It is also confirmed from the said correspondence that the stated parcel of land has no pending case and that the Title Deed will be issued in the name of the owner, namely Titus Oyuma Ouma, once the adjudication section gets registered.

7. Upon confirmation of the above details and in light of the averments contained in the ex-parte Notice of Motion dated 26<sup>th</sup> November 2012

***HC (KISII) MISC. CIVIL APPLIC. NO. 100 OF 2012***

**NO. 745** and the sworn affidavit of Otieno Maurice Ouma dated 26<sup>th</sup> November 2012, I am persuaded that the applicant herein has made out a case for the grant of the orders sought. It is clear from the record that as long ago as July 2010, the applicant was asking for payment of the costs which had, by that time, remained outstanding for a period of 5 months. The respondents were put on notice that if the claimed amount was not paid within 7 days of the date of the letter, then the applicant would commence appropriate proceedings to recover the amount.

8. In the premises, I allow the Notice of Motion dated 26<sup>th</sup> November 2012 in terms of prayers 1 and 2 thereof. The respondents shall pay the costs of the application.

9. It is so ordered.

**Dated and delivered at Kisii this 09<sup>th</sup> day of May, 2013**

**RUTH NEKOYE SITATI**  
**JUDGE.**

In the presence of:

Mr. O.M. Otieno (present) for Ex-parte Applicant

N/A for 1<sup>st</sup> Respondent

N/A for 2<sup>nd</sup> Respondent

Mr. Bibu - Court Clerk

**RUTH NEKOYE SITATI**  
**JUDGE.**

***HC (KISII) MISC. CIVIL APPLIC. NO. 100 OF 2012***