



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

ELC NO. 8 OF 2018

(FORMERLY HCCC NO 779 OF 2009)

MBUGUA NGANGA & CO ADVOCATES.....ADVOCATE/APPLICANT

VS

KENYA PLANTERS COOPERATIVE UNION LIMITED.....RESPONDENT

RULING

1. The Notice of Motion dated the 9/7/2020 is brought under Section 1A, 1B and 3A of the Civil Procedure Act and Section 51(2) of the Advocates Act, Cap16 of the Laws of Kenya.

2. The Applicant seeks for orders that:

- a. The judgment be entered in terms of Certificate of taxation dated 11/6/20 and interest assessed at 14% p.a from date of taxation until payment in full.
- b. That the certificate of taxation dated the 11/6/2020 be adopted as a decree of this Court.
- c. Costs of the application be provided for.

3. The application is supported by the grounds annexed thereto and the affidavit of G N Mbugua who deponed that he is an Advocate in the firm of Mbugua Nganga & Co Advocates. That the Court taxed the bill of costs on the 21/4/2016 against the Respondent in the sum of Kshs 46,695,845.16 on the 11/6/2020. That the said certificate of taxation is not contested neither has it been set aside and therefore it is final. That a judgement and decree on the taxed costs is necessary before it is realized.

4. The certificate of Taxation and the Ruling dated the 11/6/2020 and 26/5/2020 respectively are annexed to the application.

5. The application is not opposed by the Plaintiff and other parties who participated in the suit.

6. Rule 13 of the Advocates (Remuneration) Order does not by itself amount to a judgment from which a decree can be extracted and therefore a party who has obtained a certificate of costs is mandated to comply with the provisions of Section 51 (2) of the Advocates Act before he can enforce payment of his costs.

7. Section 51(2) of the Advocates Act states as follows;

“(1) Every application for an order for the taxation of an Advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an Advocate shall be made in the matter of that Advocate.

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

8. Was the Respondent served with the application? The nature of orders sought would lead to execution against the Respondent. This Court is being enjoined to issue an exparte judgment for a liquidated sum after taxation. Service of process is key in such proceedings.

9. Order 5 Rule 15 of the Civil Procedure Rules enacts that; -

15 (1) The serving officer in all cases in which summons has been served under any of the foregoing rules of this Order shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons. The affidavit of service shall be in Form No 4 of Appendix A with such variations as circumstances may require (emphasis mine).

10. The Applicant through its Advocate on record informed the Court that the Respondent was served through the firm of Wambugu & Muriuki & Co Advocates who declined service on grounds of lack of instructions on behalf of the Respondent. The Applicant states that they proceeded to serve the Respondent which is in liquidation through the office of the Commissioner of Cooperatives which accepted service.

11. Service of summons on a corporation is provided for in law. Under order 5 rule 3 states as follows;

“Subject to any other written law, where the suit is against a corporation the summons may be served — (a) on the secretary, director or other principal officer of the corporation; or (b) if the process server is unable to find any of the officers of the corporation mentioned in Rule 3 (a) — (i) by leaving it at the registered office of the corporation; (ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the Court to the registered postal address of the corporation; or (iii) if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or (iv) by sending it by registered post to the last known postal address of the corporation.

12. I have perused the affidavit of service on record deposed by Julius Nzivu Maingi where he states that upon visiting the firm of Wambugu & Muriuki Advocates he met a lady who advised her that the firm was no longer seized with instructions to act for the Respondent. That he proceeded to the offices of the Respondent at NSSF Building 12th Floor – Nairobi where he found a gentleman who confirmed that he had authority to receive Court documents on behalf of the Respondent. That he proceeded to effect service on him. The hearing notice shows a stamp “received” by Commissioner for Cooperative Development.”. No explanation has been given why this office was being served with summons intended for the Respondent.

13. The affidavit of service does not disclose the name and designation of the officer who was served and whether or not he had the authority to receive service.

14. The firm of Wambugu & Muriuki & Co Advocates is said to have ceased acting but there is no indication that they withdrew instructions in the case, no leave of Court to cease acting was exhibited and the process server has not disclosed the name and the time he attempted service on the law firm and the name and capacity of the lady who advised him that the firm was no longer seized of the matter.

15. All these flaws are fundamental and would necessitate that the Court retracts from determining the application. The Court must be sure that the Respondent/Plaintiff had due notice of the proceedings and neglected to attend Court by an authorized officer or by Counsel.

16. Should the Respondent be under liquidation (no evidence has been tendered) the law provides a separate framework through which a party may engage with a society in liquidation. A cooperative society that is under liquidation is governed by the provisions of Section 63 of the Co-operative Societies Act which provides that where the registration of a co-operative society is cancelled, the society shall cease to exist as a body corporate from the date the order takes effect. Proceedings would then have to be taken out by and against the appointed liquidator.

17. It suffices to say that neither the Respondent nor their Advocates on record were served with the application.

18. In the end the application is incompetent. It is struck out with no orders as to costs.

19. **It is so ordered.**

DATED, SIGNED & DELIVERED THIS 10TH DAY OF DECEMBER 2020.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Parties absent but served.

Court Assistant; Njeri & Kuiyaki