



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC MISC APPLICATION NO. 7 OF 2018**

**NYAKINYUA MUGUMO TREE COMPANY**

**LIMITED.....APPLICANT**

**VERSUS**

**JOSEPH MWANGI GICHUHI.....1<sup>ST</sup> RESPONDENT**

**AARON MIARE NJOROGI.....2<sup>ND</sup> DEFENDANT**

**JAMES NDUNGU KERO.....3<sup>RD</sup> DEFENDANT**

**ABED K. MWALWA.....4<sup>TH</sup> DEFENDANT**

**MAURICE M. LISHENGA**

**T/A MALI SURVEY SERVICE.....5<sup>TH</sup> DEFENDANT**

**DIRECTOR OF SURVEY.....6<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....7<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff filed an application dated **19<sup>th</sup> June, 2018** on **20<sup>th</sup> June 2018** seeking orders that this court do enlarge time within which to file a reference against the decision of the Deputy Registrar made on **2/3/2017**, that the reference be deemed as foiled out of time; that the decision of the Deputy Registrar be reviewed in respect of all the items in the bill of costs; that the certificate of costs dated **20<sup>th</sup> March 2017** be varied or set aside or in the alternative the bill of costs be taxed afresh under the relevant provisions of the law. A stay of execution pending the hearing and determination of the application inter partes was sought.

2. The applicant has brought the application under Paragraph **11(1), (2), (3) (4) and (5)** of the Advocates Remuneration **Order 2009, Order 22 rule 22 and 25** of the Civil Procedure Rules and **Section 1A, 3 and 3A** of the Civil Procedure Act.

3. The grounds upon which the application is made are contained at the foot of the application and in the supporting affidavit of Mary Wangare Githu dated **19/6/2018**. They are inter alia that the applicant is bound to suffer irreparable loss and damage in the event that the leave to file a reference out of time and stay of execution is not granted.

4. In the supporting affidavit it is averred that the Deputy Registrar, though bound, failed to give reasons as to how she arrived at the figure in the bill which the applicant deems high, and that such failure amounts to an arbitrary determination of the figure and is not an exercise of judicial discretion; that the award is manifestly excessive and unjustified; that the award was based on an error of principle and amounted to wrongful exercise of discretion; that the matter was not complex to attract such an amount in costs; that attachment of the immovable property of the applicant is not sanctioned by this court and that the intervention of this court is justified.

5. The **1<sup>st</sup> 2<sup>nd</sup>** and **3<sup>rd</sup>** respondents filed a notice of preliminary objection and grounds of opposition raising overlapping grounds to the effect that the application is *res judicata*; that the application is by way of a miscellaneous cause; that there has been long and unreasonable delay in the filing of the application; that counsel's lack of diligence should not be visited on the respondents; that no error or misdirection on the part of the Deputy Registrar has been demonstrated and that the supporting affidavit is incompetent. It is also asserted that reasons were given by the Deputy Registrar for her award and the application is made in bad faith.

6. None of the parties filed any submissions to persuade this court on their point of view. Both parties are therefore in violation of the order made by this court on the **8<sup>th</sup> October 2018**.

7. This court is justified in deeming the application as suffering from want of prosecution.

8. The application dated **19/6/2018** is hereby dismissed for want of prosecution.

It is so ordered.

**Dated, signed and delivered at Kitale on this 31<sup>st</sup> day of January, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**31/01/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for Applicant

N/A for Respondent

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**31/01/2019**