



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 335 OF 2016

IN THE MATTER OF SECTIONS 47, 48(3) & 51 OF THE ADVOCATES ACT (CAP 16) LAWS OF KENYA

AND

IN THE MATTER OF NJERI KARUIKI, ADVOCATE

AND

IN THE MATTER OF AN APPLICATION BY MARY WAMAITHA KAITTANY FOR AN ORDER FOR THE TAXATION OF

AN ADVOCATE-CLIENT BILL OF COSTS AND FOR THE DELIVERY UP OF DEEDS, DOCUMENTS AND PAPERS

BETWEEN

MARY WAMAITHA KAITTANY.....PLAINTIFF/APPLICANT

=VERSUS=

NJERI KARIUKI.....DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 28th March 2018 brought under Section 47, 48(3) and 51 of the Advocates Act, Order 51 Rule 1 of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya.

2. It seeks orders:-

(1) Spent

(2) That the defendant/respondent delivers up to the plaintiff/applicant, or into the custody of this honourable court, all deeds, title documents and papers in her possession, custody or power relating to properties Land Reference Number 12422/207 and 12422/343 and 12422/344.

(3) That the costs be borne by the defendant/respondent.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 11.

4. The application is supported by the affidavit of Mary Wamaitha Kaittany the plaintiff/applicant herein sworn on the 28th March 2018.

5. The application is opposed. There is a replying affidavit sworn by Njeru Kariuki advocate/respondent sworn on the 16th July 2018.

6. I have considered the notice of motion and the affidavit in support. I have considered the replying affidavit and the oral submissions of counsel. The issue for determination is whether this application is merited.

7. By a judgment dated 23rd June 2017, Honourable Lady Justice Gitumbi directed the advocate/defendant to file her Bill of Costs within 30

days from the date of delivery of the said judgement for the purpose of taxation failing which the plaintiff/applicant was to become entitled to the delivery of all her documents.

8. The advocate/defendant did file her bill of costs vide Misc. Application No. 150/2017. The same was taxed at Kshs.63,635.60/- vide a ruling dated 28th February 2018. Upon delivery of the said ruling, the plaintiff/applicant caused a Bankers cheque in the amount of Kshs.63,635.60 to be drawn in favour of the advocate/defendant. The advocate/defendant claims to have returned the cheque as she had already filed a reference in court. The advocate/defendant has not shown any proof that the plaintiff/applicant received the said cheque.

9. I also find that the reasons for returning the cheque to be unjustifiable. The advocate/defendant did not seek stay of the ruling by the taxing master. In any event, there would be nothing to stay.

10. I agree with the plaintiff's/applicant's counsel that the pending of the reference is not a stay of execution. If there is any change in the amount the plaintiff/applicant would pay. The advocate/defendant should not hold on to the plaintiff's/applicant's documents any longer.

11. I find merit in the application and the same is allowed accordingly. I grant the orders sought namely:

(a) That the defendant/respondent be and is hereby ordered to forthwith deliver to the plaintiff/applicant or into custody of this honourable court, all deeds, title documents and papers in her possession, custody or power relating to properties Land Reference Numbers 12422/207, 12422/343 and 12422/344 respectively.

(b) I make no orders as to costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 28TH day of JANUARY 2019

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the plaintiff

.....Advocate for the Defendant

.....Court Assistant