



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 70 OF 2012**

**DAVID SUGUT.....1<sup>ST</sup> PLAINTIFF**

**EDWARD CHUMA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MARCELLA CHEPTOO CHUMA.....DEFENDANT**

**RULING**

1. The application dated 17<sup>th</sup> June, 2018 and filed in court on the same date seeking the following orders:-

**(1) That this application be certified as urgent and be dispensed with in the 1<sup>st</sup> instance.**

**(2) That pending *inter partes* hearing, the honourable court be pleased to stay taxation of the defendant's bill of costs dated 4<sup>th</sup> October, 2017**

**(3) That pending hearing and determination of this matter the honourable court be pleased to stay taxation of the defendant's bill of costs dated 4<sup>th</sup> October, 2017.**

**(4) That the valuation report dated 21<sup>st</sup> September, 2017 and filed on 5<sup>th</sup> October, 2017 be struck out with costs.**

**(5) That costs be on cause.**

2. The grounds on which the said application is made are that the said document has been filed without leave of the honourable court and upon determination of the suit herein; that the said document has been sneaked in purely for purposes of taxation; that the plaintiff shall have no opportunity to rebut the said report unless the orders sought are granted; that it shall be grossly prejudicial to the plaintiff to permit the defendant to file further documents upon determination of this suit; that the defendant's conduct amount to abuse of court process and that the applicants and other beneficiaries shall suffer irreparable harm unless the order are granted.

3. The application is supported by the affidavit of the applicant sworn on 17/1/2018. That affidavit reiterates the same matters set out in the grounds above.

4. The plaintiff filed their submissions on 28/1/2019 and the defendant on 25/2/2019. Having gone through the application and the response thereto as well as the submissions.

5. I am of the view that the objections raised herein have not been shown by affidavit to have been raised before the Taxing Master before for his decision.

6. In any taxation it is supposed that the taxing master will apply all the relevant principles applicable in the taxation in coming to a decision. Before he has done so this court can not grant the applicant audience for that would amount to interfering with the taxing master's duties even before he is proven to have erred. It is only by way of a reference as provided for in the rules that this court's jurisdiction can be invoked in regard to the taxing master's decision on the issues surrounding the taxation. The application before me has no merit.

7. I therefore strike out the application dated 17/1/2019 with costs to the respondent.

**Dated, signed and delivered at Kitale on this 27<sup>th</sup> day of March, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**27/03/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the parties

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**27/03/2019**