



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC MISC APP NO 32 OF 2015**

**IN THE MATTER OF THE ADVOCATES ACT**

**AND**

**THE ADVOCATES (REMUNERATION) ORDER**

**AND**

**NAIROBI ELC NO. 327 OF 2014 GETRUDE NYAUSI ANGOTE**

**VS**

**JOSEPHAT IMBIAKA LUMADEDE AND 3 OTHERS**

**BETWEEN**

**N. W. AMOLO & B. W. KIBANYA**

**Practicing at Amolo & Kibanya Advocates.....APPLICANT**

**VERSUS**

**KAREN VIEWS LTD.....RESPONDENT**

**RULING**

1. There are two applications coming up for hearing. The chamber summons dated 1<sup>st</sup> April 2016 by the client and the chamber summons dated 23<sup>rd</sup> August 2018 by the Advocate.
2. On the 7<sup>th</sup> September 2016, the court directed that the two applications be heard and determined together. It further directed that they be canvassed by way of written submissions.
3. The chamber summons dated 1<sup>st</sup> April 2016 is brought under rule 11 of the Advocates (Remuneration) Order and all enabling provisions of the law.
4. It seeks orders:-

- (1) The decision of the taxing master in this matter delivered on 23<sup>rd</sup> March, 2016 in respect of the applicant's bill of costs dated 16<sup>th</sup> January, 2015 be reviewed in terms of item 1 of the Bill of Costs.*
- (2) Stay of execution pending the hearing and determination of this application.*
- (3) The costs of the application be provided for.*

5. The grounds are on the face of the face of the application and are set out in paragraphs 1 to 4. It is supported by the affidavit of Tom Maina Macharia Advocate for the client, sworn on the 1<sup>st</sup> April 2016.

6. The application is opposed. There is a replying affidavit sworn by Neville Walusala Amolo, Advocate, in the firm of M/S Amolo Kibanya Advocates sworn on the 10<sup>th</sup> April 2017.

7. The chamber summons dated 23<sup>rd</sup> August 2016 is brought pursuant to section 52 of the Advocates Act, paragraph 7 of the Advocates (Remuneration) order, order 52 rule 6 of the Civil Procedure Rules and all provisions of the law.

8. It seeks orders:-

*(a) Spent*

*(b) Spent*

*(c) Spent*

*(d) That judgment be entered for the applicant against the respondent in the sum of Kshs.1,893,051.20 with interest at 9% per annum from the 18<sup>th</sup> September 2014 till payment.*

*(e) That a charging order be issued and registered over LR No. 12410/47 (original No. 12410/11/2 Karen Nairobi to secure payment of taxed and certified costs together with interest*

*(f) That costs of this application be assessed and paid by the respondent.*

9. The grounds are on the face of the application and are set out in paragraphs 1 to 5. The application is supported by the affidavit of Neville Watusala Amolo, Advocate sworn on the 23<sup>rd</sup> August 2016.

10. The application is opposed. There are ground of opposition filed by the client dated 22<sup>nd</sup> March 2017.

#### **The Advocates submissions**

11. The chamber summons dated 1<sup>st</sup> April 2016 is incompetent of wilful neglect or failure to comply with the legal requirements that the person dissatisfied must seek the reasons for taxation from the taxing officer and it is only then that a reference can completely be filed. The person who swore the affidavit in support of the application is an advocate, retained by the party and not a director or officer of Karen Views Ltd. The application must therefore fail.

12. On the chamber summons dated 23<sup>rd</sup> August 2016, the application seeks a charging order in respect of LR NO. 12410/11/2 and ancillary injunctive orders to preserve the said parcel of land. There are compelling facts that Karen Views Ltd has no known property and that the whereabouts of the director Mr. Neel Magon is unknown. If a charging order is not issued and an injunction is not granted the advocate will be left without any asset to look to in the event that the parcel of land is sold.

13. On the 16<sup>th</sup> July 2019 the client sought leave which was granted to file their submissions before the close of the day. There are no submissions in the court file.

14. I have considered the two application, the affidavits in support and in reply. I have also considered the written submissions of counsel and the authorities cited. The issues for determination are whether both applications are merited.

15. It is the client's submissions that the taxing officer erred in principle by allowing the Bill of Costs dated 16<sup>th</sup> January 2015 to be taxed as drawn. The circumstances under which the court can interfere with the taxing officer's exercise of discretion are reaffirmed in the case of **First American Bank of Kenya Ltd vs Shah & Others IEA 64**.

I am guided by the above authority in finding that the taxing officer did not err in principle in taxing the bill of cost dated 16<sup>th</sup> January 2015.

16. The upshot of the matter is that I find no merit in the chamber summons dated 1st April 2016 and the same is dismissed with no orders as to costs.

17. Consequently, I find merit in the chamber summons dated 23<sup>rd</sup> April 2016 and the same is allowed in the following terms:-

*(a) That judgment, is hereby entered for the advocate against the client in the sum of Kshs.1,893,051/20 with interest at 9% p.a with interest from 18<sup>th</sup> September 2014 till payment.*

*(b) That a charge order is hereby issued and registered over LR No. 12410/47 (original No. 12410/11/2 Karen Nairobi to secure payment of taxed and certified costs together with interest.*

*(c) That costs of the application be borne by the plaintiff/respondent.*

**Dated, signed and delivered in Nairobi on this 17<sup>th</sup> day of DECEMBER 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Applicant

Ms Chepkoech for Mr. Macharia for the Respondents

**Kajuju – Court Clerk**