



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE

LAND CASE NO. 103 OF 2015

NYAKINYUA MUGUMO TREE CO. LTD.....PLAINTIFF

VERSUS

JOSEPH MWANGI GICHUHLI.....1ST DEFENDANT

AARON MIARE NJOROGE.....2ND DEFENDANT

JAMES NDUNGU KERO3RD DEFENDANT

ABED K. MWALWA.....4TH DEFENDANT

MAURICE M. LISHENGA

T/A MALI SURVEY SERVICE.....5TH DEFENDANT

DIRECTOR OF SURVEY6TH DEFENDANT

CHIEF LAND REGISTRAR.....7TH DEFENDANT

R U L I N G

1. The application dated 4/11/2017 seeks the following orders:-

(1) That this application be heard ex-parte in the first instance.

(2) That the Honourable Court be pleased to review the decision of the Deputy Registrar in respect of all the items in the bill of costs and to award the plaintiff/applicant such costs as are in accordance with the Advocates (Remuneration) Order.

(3) That this Honourable Court be pleased to set aside and/or vary the certificate of costs dated 10th March, 2017 made by the learned Deputy Registrar.

(4) That the defendant/respondent bill of costs dated 28th September, 2016 be taxed a fresh under the relevant provisions of the law.

(5) That there be stay of execution of the intended sale of land parcel land No. 1803 in possession and use by the plaintiff's/applicant's members pending the hearing and determination of this application inter-partes.

(6) That the costs of this application be in the cause.

2. The application is brought under the provisions of **Rule 11 (2) of the Advocates Remuneration Order, Section 22, Rule 22 and 25 (sic) of the Civil Procedure Rules and Section 1A, 3 and 3A of the Civil Procedure Act**. It is supported by the sworn affidavit of Grace Muthoni Nganga, one of the applicants' directors, dated 30/11/2017.

3. The application is opposed. The 1st, 2nd and 3rd defendants filed their response through the sworn replying affidavit of the 3rd defendant.

It appears that no other party filed a response to the application for I have gone through the court file record and found no other.

4. In a nutshell this court is being requested by the applicant/plaintiff to review the decision of the Deputy Registrar in respect of all the items in the bill of costs and to award the plaintiff such costs as are in accordance with the Advocate's Remuneration Order.

5. The grounds upon which the application is brought are that the deponent of the affidavit is not satisfied with the amount awarded as costs and that she would suffer irreparable injury if the defendant's bill of costs is not reviewed.

6. At the pain of sounding too pedantic or rigid, I must state that from the annexure attached to the supporting affidavit the property in question does not seem to belong to the deponent but to the plaintiff yet she expresses the apprehension that she rather than the plaintiff, would suffer loss upon execution. There is a great difference between the company and its directors. It is a fatal flaw to have an affidavit that does not distinguish between the applicant and its directors. Besides, this is an application for review of the Deputy Registrar's decision.

7. In an almost similar application filed before this court on 11/4/2017 I stated as follows while striking out the application with costs:-

“29. I have already found that there is a specific procedure under the Advocates Remuneration Order, which provides not just for a reference, but also for extension of time for late applicants, which procedure has not been followed to invoke this court's jurisdiction. I therefore find that there is merit in ground 3 and 6 of the respondents' grounds of opposition and I uphold them”.

8. The instant application followed hot on the heels of that application yet besides the fatal flaw I have outlined concerning the instant supporting affidavit I do not find that the applicant has observed the court's remarks as quoted above by seeking extension of time to lodge the current application.

9. I find that the said application is improperly before this court and I hereby strike it out with costs to the respondents.

Dated, signed and delivered at Kitale on this 29th day of May, 2018.

MWANGI NJOROGE

JUDGE

29/5/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Samba for the defendants

N/A for the plaintiffs

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

29/5/2018