



REPUBLIC OF KENYA
IN THE ENVEIROMENT AND LAND COURT

AT MILIMANI

ELC MISC NO. 55 OF 2015

OCHANDA ONGURU T/A OCHANDA ONGURU & CO.ADVOCATES...RESPONDENTS

=VERSUS=

AIRPORT VIEW HOUSING LTD.....APPLICANT

RULING

1. The Client/Applicant Airport View Housing Limited was previously being represented by the Firm of *Ochanda Onguru & Co Advocates* in ELC 17 of 2015, which was between the Applicant and Nairobi City County. On 5th February 2015 a notice of change of advocate was filed in which the firm of *Lesinko ,Njoroge & Gathogo Advocates* took over from the firm of *Ochanda Onguru & Co. Advocates* . The notice of change of Advocates was duly served upon the firm of *Ochanda Onguru & Co. Advocates* on 8th February 2015.
2. On 11th February 2015 Mr Ochanda Onguru T/a Ochanda Onguru & Co. Advocates who is the Advocate/Respondent filed an Advocate/ Client Bills of Costs. The bill was taxed in a ruling delivered on 31st January 2017 and a certificate of taxation issued subsequently. The Client/Applicant has now come to Court seeking the setting aside of the taxation and the subsequent certificate of taxation. The Applicant contends that no bill of costs was served upon it or any taxation notice.
3. The application is opposed by the advocate/Respondent based on a replying affidavit sworn on 9th March 2017. The Respondent contends that the bill of costs was duly served upon the firm of *Njoroge Regeru & Co. Advocates* to whom their process server had been directed. That the said law firm acknowledged receipt by stamping on the notice of taxation.
4. I have looked at the process server's affidavit of service sworn on 8th February 2016. The process server claims that he proceeded to the offices of the Applicant at Manrik Holding Westland's where a secretary directed him to the property Manager one Bedan Mwangi . The said Mwangi directed him to serve the firm of *Njoroge Regeru & Co. Advocates*. He proceeded to the firm of *Njoroge Regeru & Co. Advocates* where a secretary received the taxation notice but declined to stamp on his copy.
5. In yet another affidavit of service sworn on 25th April 2016, the process server states that on 6th April 2016 , he was given a mention notice and written submissions which he took to Manrik Holdings at Westlands. He handed over the documents to Bedan Mwangi who received them but declined to sign.
6. The process server is not being candid about the service. At first, he claims that he went to the applicant's offices at Westlands where he met Mwangi who referred him to take the documents to

Njoroge Regeru & Co. Advocates offices. During another time, he claims that he took the documents to the same office at Westlands where they were received by Bedan Mwangi who refused to sign for them. It is not clear why the process server decided to take the documents back to Westlands since he had early on been directed to serve the same upon the firm of Njoroge Regeru & Co. Advocates.

7. The Applicant has annexed documents to the supporting affidavit that show that Bedan Mwangi had resigned as property Manager as at the time he is purported to have been served. The firm of Ochanda Onguru & Co. Advocates were aware that the firm of Lesinko ,Njoroge ,& Gathogo & Co. Advocates were on record for the Applicant . If there was need to serve the Advocates, then that is the firm which should have been served and not Njoroge Regeru & Co. Advocates.

8. A party cannot be condemned unheard. It is clear that there was no service upon the applicant. I therefore allow the applicant's application with the result that the ex-parte taxation and the certificate of taxation issued pursuant to the ex-parte taxation are hereby set aside. This matter is referred back to the taxing officer to have the taxation done in the presence of all parties. Costs of this application shall be borne by the Respondent.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* on this *31st* day of *July 2017*.

E.O.OBAGA

JUDGE

In the absence of parties who had been informed of the date of ruling.

Court Assistant: Hilda

E .O. OBAGA

JUDGE