



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. MISC NO. 147 OF 2015

S. GICHUKI WAIGWA & ASSOCIATES.....APPLICANT

VERSUS

LIAM TELECOMMUNICATIONS LTD

NAAPASHA PROPERTIES LTD

WILSON N. KARINGA

LYDIA NANEU KYAMAS..... RESPONDENTS

RULING

This ruling is in respect of two applications. The application dated 2nd June, 2016 seeks to have judgment entered for the Applicant pursuant to the certificate of taxation dated 18th May, 2016 issued by the Deputy Registrar. In the second application dated 9th September, 2016, the Respondents seek leave to object to the decision of the taxing master out of time. The ruling on the taxation was delivered on 23rd March, 2016. The Respondents also seek stay of execution of the certificate of taxation and that their application is heard first.

The Respondents instructed the Applicant to deal with the imminent sale of L.R. No. 1160/416 situated in Karen when Commercial Bank of Africa threatened to exercise its statutory power of sale over this property due to a debt of Kshs. 25,220,242 the Respondents owed. The Respondent did not pay the Applicant's fees prompting the Applicant to file the bill of costs dated 12th May 2015. The bill was taxed at Kshs. 881,073.80 and a certificate of taxation dated 18th May, 2016 issued. The Respondents Advocates M/s Owang and Associates Advocates received the ruling notice dated 16th March, 2016 on 17th March, 2016.

After the taxation, the Applicant notified the Respondents by his letter of 25th May, 2016 that his costs had been taxed in the sum of Kshs. 881,073.80 and urged the Respondents to settle this sum to avoid the embarrassment of execution. The Respondents sent an email on 25th July, 2016 to the Applicant proposing to settle the matter. The Respondents proposed to pay the sum of Kshs. 300,000/= through monthly instalments of 100,000/= in full and final settlement of the Applicant's fees. The Applicant responded to the email on 2nd August, 2016 and pointed out that it is the sum of Kshs. 881,073.80 that they should be proposing to pay in instalments while informing the Respondents that application for judgment would be heard on 13th September, 2016.

The Respondents blame their advocate for the delay in filing a reference to challenge the costs taxed in

favour of the Applicant.

The Respondent's application is brought under section 1A, 1B and 3A of the Civil Procedure Act and the Advocate's Remuneration Order. Section 1A states that the objective of the Civil Procedure Act and the Rules is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. Under Section 1B, the court has a duty to ensure the just determination of proceedings, efficient disposal of its business, efficient use of judicial resources and the timely disposal of proceedings in an affordable manner.

The Respondents instructed the Applicant to act for them in the matter relating to the sale of their land by the Bank. The advocate acted on the instructions and rendered services. When the Respondents failed to pay the advocates fees, the Applicant filed its bill of costs which was taxed and the sum of Kshs. 881,073.80 allowed in March, 2016. The Respondent's advocates were notified of the date of the ruling on taxation. The Respondents themselves were notified of the outcome of the taxation on 20th May, 2016 and 25th May, 2016. The Respondents even made a proposal to settle the matter on 25th July, 2016. Their application to extend time to lodge an objection to the taxing master's decision was filed on 14th September, 2016, which is almost four months after the offer for settlement of the Advocate's fees.

The court is not convinced that leave ought to be granted to the Respondents to challenge the taxation out of time because the Respondent knew from as early as May 2016 that the advocate's bill of costs had been taxed and allowed in the sum of Kshs. 881,073.80. After making the offer on 25th July, 2016 to pay Kshs. 300,000/= in three monthly instalments of Kshs. 100,000/= each, and the Applicant's rejection of this offer, the Respondent did not take any further action to deal with the issue. No plausible reason has been given for the delay in seeking leave to challenge the decision of the taxing master.

Allowing the Respondent's application will not accord with the objective of ensuring the just determination of proceedings in a timely manner. The application is dismissed with costs to the Applicant.

The application dated 2nd June 2016 is allowed. Judgment is entered for the Applicant against the Respondents pursuant to the certificate of taxation dated 18th May, 2016.

Dated and delivered at Nairobi this 27th day of July 2017

K. BOR

JUDGE

In the presence of: -

Mr. Waigwa for the Applicant

No appearance for the Respondents

Mr. V. Owuor- Court Assistant