



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

MISCELLANEOUS APPLICATION NO. 119 OF 2013

STEVE KINGI NGOMBO T/A

STEVE KITHI & CO. ADVOCATES.....APPLICANT/ADVOCATE

=VERSUS=

BERNARD ONKUNDI OTUNDO.....RESPONDENT/CLIENT

R U L I N G

Introduction:

1. The Chamber Summons dated 28th January 2015 was filed by the Client. In the Application, the Client is seeking for an order to enlarge the time fixed under Rule 11(1) and (2) of the Advocates Act for the filing of the objection to the Taxing Officer's decision delivered on 5th March 2014 in respect to the Advocate/Client Bill of Costs.

2. When the Application was first placed before me on 17th February 2015, the issue of the jurisdiction of this court to entertain the dispute was raised by the Respondent's advocate. On the same day, I directed as follows:

“This Bill of Costs emanates from a land transaction. This court has jurisdiction to deal with the Bill”.

3. The court then slated the matter for the highlighting of submissions on 10th March 2012. However, the Respondent raised the same issue of jurisdiction while arguing the Application.

4. Mr. Kiti, counsel for the Respondent, submitted that this court is only mandated to hear disputes relating to the Environment and the use and occupation of land and title to land and not to disputes relating to the payable fees between a Client and his advocate.

5. Counsel submitted that the dispute herein is about the payable fees to the advocate for drawing a conveyancing instrument and has nothing to do with the use of land or occupation of land or title to land. Counsel relied on the case of **Karisa Chengo and Others Vs R- Malindi Criminal Appeal No. 44, 45 and 76 of 2014**. Mr. Masese, counsel for the Applicant was of the view that the Bill of Costs arose out of a land transaction and therefore the court has the requisite jurisdiction.

6. Before determining the merit of the Application, I am obliged, considering the importance and seriousness of the objection raised, to consider whether indeed this court has jurisdiction to deal with the dispute herein in view of the decision of the Court of Appeal in Malindi Criminal Appeal No. 44 of 2014.

7. I say so because although I had already held that this court has jurisdiction to deal with the dispute herein, the court, on the basis of the decision of the Court of Appeal that was not available on 17th February 2015, can review that order.

8. The contemplated Reference is in respect to a Bill of Cost which was filed by the advocate for “drawing the Sale Agreement” dated 21st July 2011, the Transfer and other requisite conveying documents.

9. All the advocate is claiming in the Bill of Costs is for his fees for preparing the conveyancing documents. There was no dispute as between the parties relating to the environment and the use and occupation of, and title to land.

10. The Bill of Costs did not arise after or in a dispute relating to the environment and the use and occupation of and title to land.

11. This suit was commenced by the advocate purely for the purpose of the advocate pursuing his fees and nothing else. In the circumstances, and considering the Court of Appeal decision in Malindi Criminal Appeal No. 44 of 2014, I find and hold that I do not have the jurisdiction to determine the Application before me or any Reference that may be filed in respect to the decision of the Taxing Officer.

12. Indeed, this matter was filed in the right court, that is the High Court. The file must have come to me either by mistake or when the High Court was not sitting.

13. For those reasons, I review my orders of 17th February 2015 by holding that I do not have the requisite jurisdiction. Having heard the Application on 12th May 2015, I set aside those proceedings and direct that the matter to be placed before the Resident Judge for directions.

Dated and delivered in Malindi this 25th day of **June**, 2015.

O. A. Angote

Judge