



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC CASE NO. 243 OF 2013

COUNTY GOVERNMENT OF NYERI.....APPLICANT

-VERSUS-

THE NATIONAL ENVIRONMENT MANAGEMENT

AUTHORITY.....RESPONDENT

RULING

1. The applicant's Chamber summons application dated 22nd April, 2015 and filed on 23rd April, 2015 was brought under the provisions of Rule 11(2) of the Advocates (Remuneration) order. It sought the following orders:-

- 1. That there be a stay of execution of the taxed costs herein pending the hearing and determination of this application.**
- 2. That the Taxing Master's order dated 17th April, 2015 taxing the Bill of Costs dated 19th January, 2015 be set aside and the Bill be taxed afresh.**
- 3. That the costs of this application be provided for.**

2. The grounds on which the said application was based were as follows:-

(i) The defendant's Bill of costs dated 19th January, 2015 has errors as the figures do not add up.

(ii) If execution of the taxed costs proceeds, there will be a miscarriage of justice as the Bill of Costs was taxed as drawn when there is a figure of Kshs.200,000/= which is not part of the items and the instructions fees should have been taxed in accordance with Schedule 6, Paragraph 1(a) as the suit was dismissed after a preliminary objection before hearing.

(iii) The plaintiff/Judgment-Debtor has already filed an objection to the illegal taxation.

3. The application was supported by an affidavit sworn by Charles Wahome Gikonyo.

4. He deponed that the bill of costs dated 19th January, 2015 was taxed on 17th April, 2015 at Kshs.764,027/=; That in that bill of costs there is an unexplained Kshs.200,000/= which is not part of the items on the bill of costs; that the total bill of costs amounts to Kshs.564,027/= but the total figure is Kshs.764,027/= which the taxing master failed to scrutinize and note the error in the total.

5. It is his further contention that this matter was never heard and the entire suit was struck out on a preliminary objection therefore schedule VI (COSTS OF PROCEEDINGS IN THE HIGH COURT) of the Advocates (Remuneration Amendment) order, 2006 paragraph 1(ii) should have applied.
6. He prays that a stay of execution be granted and this court do tax the bill of costs in accordance with the law.
7. Despite the respondent/defendant's counsel having been served with the application and an order issued on 25th April 2015 on 22nd April, 2015, he did not respond to the application or attend court on 3rd June, 2015.
8. This matter was placed before me on 5th June, 2015 because the court was not sitting on 3rd June, 2015. Mr. Kingori holding brief for Mr. Wahome sought another hearing date for the application. The court set down the application for hearing for 21st September, 2015.
9. On 21st September, 2015 the defendant/respondent and/or his advocate did not attend court. Counsel for the applicant proceeded to argue the application and urged the court to allow the same as it was unopposed.
10. A careful perusal of the court record reveals that after the court set down the application for hearing of application on 21st September 2015 in the absence of the respondent' counsel, no affidavit of service was filed by the applicant showing that the respondent's counsel was served with the hearing notice for 21st September, 2015. It is possible therefore that the respondent and/or his counsel may not have been aware that the application was coming for hearing on that date.
11. Although at the time of hearing this application the respondent had not responded to this application, counsel for the applicant still had a duty to inform the respondent's counsel of the hearing date for the application.
12. For the above reasons, I will not consider the merits or lack thereof of the application at this stage, but will instead direct that the applicant serves a hearing notice upon counsel for the respondent. A fresh date for re-hearing the application is given as 25th January, 2015.

Dated, signed and delivered at Nyeri this 5th day of November, 2015.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Wahome Gikonyo for the applicant

N/A for the respondents

Court assistant - Lydia