



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: KOOME, M'INOTI & MURGOR, J.J.A.)

CIVIL APPLICATION NO NYR. 23 OF 2016

BETWEEN

CHRISTINE WANGARI CHEGE.....APPLICANT

AND

JOHN JUMA WEROBA

WANYONYI CHEBUKATI

PATRICK OCHWA

SAMUEL OUMA T/A COOTOW & ASSOCIATES

ADVOCATES.....RESPONDENTS

(Application for stay of execution pending the hearings and determination of an intended appeal against the ruling and order of the High Court of Kenya at Nakuru (Odero, J) dated 16th January 2019

in

Misc. Civil Application No. 23 of 2016)

RULING OF THE COURT

At all material times **the applicant, Christine Wangari** Chege was one of the administrators of the estate of **Rahab Wanjiru Evans (deceased)**. She instructed the respondent firm of advocates to act for the estate and they rendered legal services in litigation involving the estate in various parts of the country. The relationship between the applicant and the respondent subsequently broke down and the applicant terminated the services of the advocates and filed a notice of intention to act in person. The respondent filed its bills of costs, about 26 in number, in different courts in the Republic in a bid to recover its fees.

On 19th July 2016, the advocates obtained an order from the High Court restraining release, distribution or disbursement of proceeds of sale of one of the properties of the estate to the applicant in a bid to secure payment of their fees. On 21st November 2016 the applicant applied to the court to vary or set aside the restraining orders; to consolidate the various bills of costs and transfer them to Nakuru for taxation or alternatively to strike out the bills of costs. The basis of the application was that the advocates rendered services to the estate rather than to the applicant.

By the ruling dated 16th January 2019, the High Court found no merit in the application and declined to set aside the orders of 19th July 2016. The court found that the applicant did not deny that the advocates had rendered legal services and that consolidation and striking out of bills of costs was the jurisdiction of the taxing master, from whose decision a reference lies to the High Court.

It is that ruling that has aggrieved the applicant and led her to this Court, where she seeks stay of execution of the ruling of the High Court dated 16th January 2019 and stay of further proceedings or taxation of the bills of costs, pending the hearing and determination of an intended appeal. In her written submissions, the applicant abandoned the other prayers save the one for stay of further proceedings or taxation of the bills of cost.

On whether the intended appeal was arguable, the applicant submitted that she intended to raise a number of issues before this Court, among them whether she instructed the advocates in her personal capacity or as administrator of the estate of the deceased, whether the bills of costs can be taxed against her; whether the bills, which she claimed were similar should be taxed in one station and whether the trial court erred by refusing to set aside the orders of 19th July 2016.

On whether the intended appeal would be rendered nugatory, the applicant submitted that unless taxation was stayed, the various taxing masters will tax the bills and she will be prejudiced by having to defend all of them and ultimately the appeal will be rendered academic.

The respondent opposed the application vide replying affidavits sworn by **Patrick Ochwa**, one of its partners, on 10th May 2019 and on 26th February 2021. The respondent's position is that the intended appeal is not arguable because each bill of costs must in law be taxed by the master before whom it is filed. It is also the respondent's view that the intended appeal will not be rendered nugatory because the applicant will be heard by the taxing masters and will be at liberty to raise all her objections before them.

It is trite that to entitle the applicant to an order of stay of proceedings, or indeed any other order under **rule 5(2)(b)** of the **Court of Appeal Rules**, she must demonstrate that her intended appeal is arguable and unless proceedings in the trial court are stayed, the intended appeal will be rendered nugatory if it succeeds. (See **Githunguri v. Jimba Credit Corporation Ltd (No. 2) [1988] KLR 838**). Both of those requirements must be satisfied and it will not suffice to establish only one. (See **Republic v. Kenya Anti-Corruption Commission & 2 Others [2009] KLR 31**).

On whether the intended appeal is arguable, we agree with the applicant that it is. As has been reiterated time and again, an arguable appeal is not one which must necessarily succeed. Neither is it one that raises a multiplicity of issues. It is simply an appeal that is not frivolous, one that raises even a single *bona fide* issue deserving of full consideration by the court. (See **Kenya Tea Growers Association & Another v. Kenya Planters & Agricultural Workers Union, CA No. Nai. 72 of 2001**). We are satisfied that the issues framed by the applicant are not frivolous.

Turning to whether the intended appeal will be rendered nugatory, we noted that the bills of costs are yet to be taxed. It is common ground that under the law it is the taxing master who has jurisdiction to tax the bills and to determine any objection that any of the parties thereto may wish to raise. From the record, the bills of costs, numerous as they may be, have not been filed in courts arbitrarily. They have been filed in the courts and in the causes where the legal services were rendered. Indeed, even if they were filed arbitrarily, it would be for the taxing master to deal with such issues in the first instance.

In the circumstances of this application, we are not satisfied that the intended appeal will be rendered nugatory. Having failed to satisfy both requirements under **rule 5(2)(b)**, this application fails and is dismissed with costs to the respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

M. K. KOOME

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JUDGE OF APPEAL

K. M'INOTI

.....

JUDGE OF APPEAL

A. K. MURGOR

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR