

IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPEAL (APPLI) NO. 322 OF 2000

MOSES KIPKOLUM KOGO..... APPLICANT

AND

NYAMOGO & NYAMOGO ADVOCATES..... RESPONDENT

(Being an appeal from the Ruling/Order of the High court of Kenya at Nairobi (Ang'awa, J) dated
12th October, 2000

in

H.C.C.C. NO. 1036 OF 2000 O.S.)

RULING

By his notice of motion dated 25th July, 2002 the applicant *Moses Kipkolum Kogo* has applied for extension of time to seek a reference to full Court against the Ruling delivered by a learned single Judge of this Court (*Tunoi, JA*). Rule 54 of the Rules of this Court as read with rule 109(5) enables a party dissatisfied with the decision of a single Judge of this Court to refer the same to full Court provided he applies orally for such reference at the time of delivery of the ruling or by a letter within 7 days thereof. *Mr. Kogo* did not apply in time; hence this application. The ruling sought to be varied was delivered on 8th February, 2002. The reasons the applicant advances for not applying for the Reference in time are serious health problems, financial and personal constraints. I note that there is no tangible evidence before me of his serious health problems or other financial or personal constraints.

The issue before the learned single Judge was a challenge to the decision of this Court's Taxing Officer who taxed the applicant's bill of costs in Civil Appeal No. 322 of 2000. The applicant appeared in person in the appeal. He succeeded. He was entitled to his out-of-pockets and court fees. The Taxing Officer allowed him what he thought were reasonable out-of-pockets. The applicant was dissatisfied with an award of Shs.7,800/=. The learned single judge was not impressed with the applicant's arguments and dismissed the reference.

As the matter now stands the applicant has been paid the sum of Shs.7,800/= as well as money ordered to be paid to him by the appellants in the main appeal.

The applicant urged before me a further ground for his application namely that as a layman he was not aware of the rules in question. That, in my view, cannot be true because when the Taxing Officer delivered his ruling on taxation on 7th December, 2001 the applicant being dissatisfied with the ruling sought an order for reference to a single Judge. He knows his rights. I am not impressed, at all, with the grounds advanced by the respondent for extension of time sought. He is dissatisfied with the ruling of *Tunoi, JA* because, he says, the learned single Judge made sweeping conclusions and unjustly condemned him. It is true that the learned single judge used some robust language in throwing out the reference before him.

The applicant pleads financial constraints. Assuming that I were to allow this application the

applicant would have to pay the costs of the respondents as well as Shs.3,000/= for lodging a reference. This means he would be out of pocket by Shys.9,000/=, reasonable costs of the application being Shs.6,000/=. He does not seem to understand that he would be throwing good money which he may never recover. What he is pursuing would eventually be an exercise in futility.

I heard the applicant patiently. He is entitled to such a hearing. He did not appear to me to be a person who is ill or otherwise incapacitated. He is in full command of his faculties. This application deserves only one fate, that of dismissal. I so order. I make no order as to costs as recovery thereof would present problems to the respondents and the effort would not be worth it.

Dated and delivered at Nairobi this 18th day of March, 2003.

A.B. SHAH

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JUDGE OF APPEAL

*I certify that this is a
true copy of the original.*

DEPUTY REGISTRAR