



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC. APPLICATION NO. 153 OF 2017

IN THE MATTER OF THE ADVOCATES ACT CAP 16 OF THE LAWS OF KENYA

HENRY ATHIMBU KURAUKA ADVOCATE/APPLICANT

V

CELESTINE MWENDA MUNENE RESPONDENT

AND

ELRC CAUSE NO. 2365 OF 2012 (NAIROBI)

KURAUKA & CO. ADVOCATES ADVOCATE/APPLICANT

V

CELESTINE MWENDA MUNENE CLIENT/RESPONDENT

**RULING NO. 2**

1. For determination is an application dated 6 July 2018 by the Respondent seeking orders

1. . . . .

2. **THAT**, there be stay of execution of the decree and all consequential orders of this Honourable Court, more particularly ruling issued against the Respondent/Applicant on 9<sup>th</sup> March, 2018 pending inter partes hearing of this application.

3. **THAT**, the ruling dated 9<sup>th</sup> March, 2018 and all consequential orders entered by this Court against the Respondent, be set aside and the Respondent/Applicant be given an opportunity to defend this bill of costs.

4. **THAT** the process server be called for cross examination on service of bill costs and subsequent hearing notice therefrom.

5. **THAT**, costs of this application be provided for.

2. The grounds in support of the application are that the ruling of 9 March 2018 was irregular; that the bill of costs was not served; that the hearing notice for the bill of costs was not served; that the Respondent was only aware of bill of costs in Misc Application No. 109 of 2015 arising from Cause No. 2365 of 2012 but which was withdrawn on 27 October 2016, and that the applicant had filed 3 bills of costs over the same matter.

3. When the application was placed before the Duty Court, it granted an interim stay and also directed that it be served for hearing on 23 July 2018.

4. The application could not proceed at the *inter partes* hearing as there was no evidence that the Respondent had served the applicant.

5. The Court therefore adjourned hearing of the application to 20 November 2018, and the interim stay was extended on condition that the decretal sum of Kshs 240,520/- is deposited into Court before 17 August 2018.

6. On 30 July 2018, the Respondent filed another application seeking stay of the order on deposit of the decretal sum into Court.
7. The Court declined to certify this application as urgent and directed that a date be taken in the registry.
8. On 2 October 2018, the applicant on his part filed an application seeking an order of *garnishee nisi* and the Duty Court directed that the application be settled on 4 October 2018.
9. When the Respondent's application dated 6 July 2018 came up for *inter partes* hearing, the Respondent indicated that he had served the application and that he was ready to proceed.
10. Because the advocate holding brief for the applicant did not disclose why Mr. Kurauka was not in Court, the Court directed that the application would be heard (the application had been served on 17 September 2018 but the applicant did not bother to file a response).
11. The Court has looked at the record.
12. The bill of costs in question was taxed in Cause No. 2365 of 2012.
13. The ruling by the Taxing Officer dated 28 September 2016 is explicit that there was evidence of service upon the Respondent.
14. On 10 October 2016, the Respondent sought stay of execution of the ruling by the Taxing Officer aforesaid and interim stay was granted on 11 October 2016 pending *inter partes* hearing (the Respondent did not disclose what became of the application).
15. Upon the taxation, the applicant, in terms of section 51(1) & (2) of the Advocates Act filed the instant proceedings seeking judgment for the taxed amount and the Court delivered a ruling on 9 March 2018.
16. On 13 February 2018, a Mr. Ogwe appeared in Court for the Respondent and because he complained that the application had not been served, the Court directed that service be effected and the service was effected.
17. When the application next came up on 20 February 2018, Mr. Ogwe for the Respondent confirmed that service had been effected on 14 February 2018, and that he had communicated with the Respondent who was then in Tanzania and sought for 7 days to file a response. The Court declined to adjourn for reasons on record and submissions were taken.
18. The application seeking judgment was served upon T.T. Nganga & Co. Advocates, on record for the Respondent on 14 February 2018. The service is not challenged.
19. It is not clear from the record when the Respondent debriefed his advocates who were on record and decided to act in person.
20. What the Respondent is challenging is service of the bill of costs and hearing notice which culminated in the ruling by the Taxing Officer on 28 September 2018.
21. There is evidence on record that the Respondent's advocate then on record was served.
22. In respect of Misc Application No. 109 of 2015, there is a copy of Notice of Withdrawal of the Bill of Costs filed in Court on 27 October 2016.
23. In regard to the order for stay of execution, the Respondent did not comply with the condition upon which interim stay was granted and the Court therefore declines to exercise its discretion in his favour.
24. The Court was also not informed what became of the application filed in Court on 10 October 2016 by the Respondent challenging the taxation or why it was necessary to file a similar application.
25. In the view of the Court, the application dated 6 July 2018 lacks merit and being a replica of the application filed in Court on 10 October 2016 in Cause No. 2365 of 2012 is an abuse of the Court process.
26. It is dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 1<sup>st</sup> day of February 2019.**

**Radido Stephen**

**Judge**

**Appearances**

Applicant Kurauka & Co. Advocates

Respondent in person

Court Assistant Lindsey