



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. 3

1. For determination is an application dated 26 June 2019 by the Respondent (Celestine Mwenda Munene) seeking orders

1. ...

2. THAT warrants of attachment and sale of moveable goods dated 14th June 2019 and all consequential orders entered by this Court against me, be stayed, set aside and I be given an opportunity to defend the Bill of Costs.

3. THAT, warrants of attachment and sale of moveable goods against me offends a Ruling of this Court dated 11th April 2019 in Misc. Application 174 of 2015.

4. THAT, costs of this application be provided for.

2. When the application was placed before the Duty Court on 26 June 2019, it granted an interim stay of execution pending hearing and determination of the application.

3. The Respondent filed a supplementary affidavit on 5 July 2019.

4. When served, the applicant advocate filed a *Notice of Preliminary Objection* on 8 July 2019. The Court heard submissions on 10 July 2019.

5. The Court has considered the application, affidavits in support, the notice of preliminary objection and the record.

6. On 1 February 2019, the Court delivered *Ruling No. 2* in which the orders sought by the Respondent were

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 9th March, 2018 pending inter partes hearing of this application.

3. **THAT**, the ruling dated 9th 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.

6. The Court found no merit in the application, and held that it was an abuse of the Court process.

7. The Respondent has brought an application seeking the same orders. Without more, the Court finds the instant application an abuse of the court process.

8. But still, the Court has looked at the record after the *Ruling*, and established that the Taxing Officer made a definitive finding of fact on 27 February 2019 that the Respondent was served with the Bill of Costs, and that he filed submissions in opposition to the Bill of Costs.

9. The Respondent cannot be heard to assert that he was not afforded an opportunity to defend the Bill of Costs from which the execution sought to be stayed ensued.

10. Further, the *Ruling* delivered on 11 April 2019 in Nairobi High Court Misc Application No. 174 of 2015 related to taxation of costs arising from *Succession Cause No. 659 of 2013*, and not Nairobi Employment and Labour Relations Cause No. 2365 of 2012.

11. There is absolutely no legal nexus between the two actions save that the Respondent had retained the services of Kurauka & Co. Advocates.

12. An advocate is entitled to costs in respect of each retainer or instructions, and the Respondent cannot run away from such liability.

13. The instant application not only lacks merit, but is an abuse of the court process and vexatious. It is dismissed with costs assessed at Kshs 25,000/-. The Court has assessed the costs to obviate the need for another merry-go around in the administration of justice (taxation of another bill of costs).

Delivered, dated and signed in Nairobi on this 16th day of September 2019.

Radido Stephen

Judge

Appearances

Applicant Ms. Gitonga instructed by Kurauka & Co. Advocates

Respondent in person

Court Assistant Lindsey