



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**MISCELLANEOUS CIVIL APPL. 13 OF 2015**  
**KINYUA MUYAA & CO. ADVOCATE.....CLAIMANT**  
**VS**  
**KPA PENSION SCHEME & 8 OTHERS.....RESPONDENT**  
**RULING**

**Introduction**

1. The Application before the court is the Notice of Motion dated 23.11.2015. It is brought by the Respondent in the client Advocate bill of costs dated 2.7.2015 (herein after referred to as the client). The Motion seeks for stay of the said bill of costs pending the hearing and determination of the intended appeal from the ruling and order of this court made on 18.11.2015. The motion also seeks for leave to appeal if required. The Motion is supported by the affidavit sworn by Mr. Justus Omar Nyakundi.
2. The Motion is opposed by the applicant in the bill of cost (herein after called the Advocate) vide the Replying affidavit sworn on 8.12.2015 by Mr. Kinyua Advocate. The Motion was heard on 10.2.2016 in the open court.

**Client's case**

3. Mr. Gachuhi, learned counsel for the client submitted that Advocate Client Bill of costs is not employee employer dispute and as such this court lacks jurisdiction over it. He relied on persuasive precedents to urge that an Advocate Client relationship is not a contract of service but a contract for services and any dispute arising therefrom should be dealt with by other courts with jurisdiction over commercial contracts. He further submitted that the Advocate will not suffer any prejudice if stay is granted because he has already been paid kshs.11 million on account.

**Advocate case**

4. M/S Muyaa, learned counsel for the Advocate submitted that this court has already made a determination that it has jurisdiction to entertain Advocates client costs in the impugned ruling. She urged the court to adopt that decision and dismiss the present motion. She further submitted that the bill to be stayed is not yet before this court but before the Taxing Officer who is a competent court. That this court should not extend its hand to curtail the said officer from doing his lawful work. That the bill of costs should only come before this court through appeal.
5. She distinguished the dispute herein from the precedents cited by the client by explaining that in those other cases the clients filed ordinary suit before the Judge while in this case, the Advocate

has filed a Bill of Costs before the Taxing Officer. On the other hand, she submitted that the advocate will suffer prejudice if taxation is delayed, the advance payment of kshs.11 million notwithstanding.

### **Client's Rejoinder**

6. Mr. Gichuhi submitted that the application for stay herein is not an appeal before the same Judge. He denied that the appeal will not delay taxation of the bill of costs. He pointed out that prayer 4 on leave to appeal had already been granted.

### **Analysis and Determination**

7. The issues for determination are:-

- a. **Whether leave to appeal should issue**
- b. **Whether the Advocate client bill of costs dated 2.7.2015 should be stayed pending the intended appeal.**

### **Leave to Appeal**

8. Mr. Gachuhi submitted that leave to appeal has already been granted. The record does not however show that. He also never showed that he needed leave to appeal. Even prayer 4 in the Motion is not certain and the counsel never submitted on the prayer for leave. The court will not come to his aid.

### **Stay of the Bill of Costs**

9. On 18.11.2015 this court made a ruling that it is not yet seized of the jurisdiction to entertain applications in respect of the bill of costs dated 2.7.2015 because it is still pending before the Taxing Officer of the court. An appellate court should always restrain itself from extending its hand to muzzle the trial courts. In this case, the bill is still pending taxation before the Taxing Officer. No appeal has been preferred from the proceedings pending before the said officer. Consequently, this court is being moved by Motions prematurely. The order being sought now can be given by the Taxing Officer before whom the Bill of Costs is pending or before the court where the appeal is preferred. Once again this court observes that it is not yet seized of the jurisdiction over the taxation dispute between the parties herein.

### **Disposition**

10. For the reasons stated above the clients Notice of Motion dated 23.11.2015 is dismissed with costs.

**Dated, signed and delivered this 6th day of May 2016.**

**ONESMUS MAKAU**

**JUDGE**