



Mckay & Company Advocates v Oloirien Group Ranch (Miscellaneous Application 19 of 2018) [2023] KEELC 15751 (KLR) (23 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15751 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
MISCELLANEOUS APPLICATION 19 OF 2018**

M SILA, J

FEBRUARY 23, 2023

BETWEEN

MCKAY & COMPANY ADVOCATES ADVOCATE

AND

OLOIRIEN GROUP RANCH CLIENT

RULING

1. The application before me is that dated 9 May 2022 filed on behalf of the respondent/client in this Miscellaneous Suit. It seeks orders that this reference, being a reference by an advocate over taxation of Advocate/Client fees, be dismissed for want of prosecution. Nothing was filed to oppose the motion and neither did the applicant in the reference appear in court during its inter partes hearing.
2. I have gone through the record. On 8 March 2018, McKay & Company Advocates filed an Advocate/Client bill of costs for taxation. The Advocate had represented the client in the suit Kisii ELC No 47 of 2015 where the client had been sued. The Advocate presented a bill of Kshs 130,903,475/= with the sum of Kshs 130,821,900/= being instruction fees and VAT. The taxing officer thought that a sum of Kshs 100,000/= as instruction fees was adequate and increased it by a half, thus Kshs 150,000/=. She added VAT and other disbursements and eventually taxed the bill at Kshs 205,115/=. The ruling was delivered on 16 October 2018.
3. Aggrieved, the Advocate filed a reference to this Court pursuant to Paragraph 11 (2) of the *Advocates' Remuneration Order*. The reference was filed on 30 October 2018. The reference was opposed through a replying affidavit filed on 28 November 2018. The Advocate has never moved the court since filing of the reference and has never appeared during the times that the matter has been mentioned. It is this that prompted the Client to file the subject application seeking its dismissal for want of prosecution. As I have mentioned, despite being served, the Advocate failed to file anything to oppose the application and did not appear in court when the application was heard.



4. It will be observed that since filing the reference on 30 October 2018, to May 2022, when this application was filed, more than three years had lapsed. It is clear that the Advocate has lost interest in pursuing the reference. I have no reason not to allow this application and I allow it. The reference herein is dismissed with costs to the Client.

5. Orders accordingly.

DATED AND DELIVERED THIS 23TH DAY OF FEBRUARY, 2023

JUSTICE MUNYAO SILA

JUDGE,

ENVIRONMENT AND LAND COURT AT KISII

